

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 THOMAS E. FRANKOVICH,
 2 **A Professional Law Corporation**
 4328 Redwood Hwy., Suite 300
 3 San Rafael, CA 94903
 Telephone: 415/674-8600
 4 Facsimile: 415/674-9900

5 Attorneys for plaintiffs

6
 7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9 DAREN HEATHERLY and IRMA)
 RAMIREZ, each an individual,)
 10)
 11 Plaintiffs,)
 12 v.)
 13 LA DORA LIQUORS and DELI; LDK)
 INVESTORS LLC, a California Limited)
 14 Liability Company; and NARINDER S.)
 15 MAROCK, an individual dba LA DORA)
 LIQUORS and DELI,)
 16)
 17 Defendants.)

CASE NO. CV-11-0805-JCS
DECLARATION OF THOMAS E. FRANKOVICH IN SUPPORT OF EX PARTE APPLICATION FOR ADDITIONAL TIME FOR PLAINTIFFS TO SERVE DEFENDANT LDK INVESTORS LLC; AND [PROPOSED] ORDER THEREON

18 **DECLARATION OF THOMAS E. FRANKOVICH IN SUPPORT OF EX PARTE**
 19 **APPLICATION FOR ADDITIONAL TIME FOR PLAINTIFFS TO SERVE**
 20 **DEFENDANT LDK INVESTORS LLC.**

21 I, THOMAS E. FRANKOVICH, declare that I am an attorney duly licensed to practice in
 22 this and all of the courts in the state of California and if called as a witness and duly sworn, I
 23 would and could competently testify to the following based upon my own personal knowledge,
 24 information and belief:

25 That I am the attorney for plaintiff DAREN HEATHERLY and plaintiff IRMA
 26 RAMIREZ.

27 Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ filed this action on
 28 February 22, 2011.

1 Pursuant to General Order 56 and Civil Local Rule 7-11, plaintiffs were to have defendants
2 served on or before April 25, 2011.

3 The defendants to this action are LDK INVESTORS LLC, a California Limited Liability
4 Company; and NARINDER S. MAROCK, an individual dba LA DORA LIQUORS and DELI.

5 Defendant NARINDER S. MAROCK was served with the summons and complaint on
6 April 6, 2011. Attached as Exhibit "A" and incorporated by reference as though fully set forth
7 herein is the proof of service.

8 Despite diligent efforts, plaintiffs have been unsuccessful in their attempt to serve
9 defendant LDK INVESTORS LLC.

10 Plaintiffs directed their process server to serve defendant LDK INVESTORS LLC at the
11 service address (837 Springbrook Drive, San Ramon, California 94582), which is indicated on
12 the summons. Plaintiffs' process server made four (4) attempts to serve defendant LDK
13 INVESTORS LLC but was unsuccessful to no avail. Per plaintiffs' process server, on April 9,
14 2011, when the process server attempted to serve defendant on this particular date, the process
15 server heard some activity inside the residence/business. However, the process server believes
16 defendant may have been evading him. Attached as Exhibit "B" and incorporated by reference as
17 though fully set forth herein is the Affidavit of Reasonable Diligence regarding defendant LDK
18 INVESTORS LLC from plaintiffs' process server.

19 Shortly afterwards, because plaintiffs' process server was unsuccessful in their attempts
20 to serve defendant LDK INVESTORS LLC, plaintiffs' attempted to serve defendant via FedEx
21 and regular U.S. Mail. Plaintiffs were unsuccessful in these alternative methods. Plaintiffs'
22 counsel office was informed by Amanpreet Kaur, who is acting on behalf of defendant
23 NARINDER S. MAROCK that the address (837 Springbrook Drive, San Ramon, California
24 94582) for defendant LDK INVESTORS LLC is in fact the correct address and that she had
25 spoken to defendant LDK INVESTORS LLC regarding service. Attached as Exhibit "C" and
26 incorporated by reference as though fully set forth herein are the letters that were included in the
27 service package written by plaintiffs' counsel to defendant LDK INVESTORS LLC on April 25,
28 2011, regarding service, Notice of Acknowledgment Receipt and tracking information.

1 In light of the above, plaintiffs are respectfully requesting an extension to serve, sufficient
2 time to resume their efforts to accomplish service on defendant LDK INVESTORS LLC and
3 further investigate this matter up to and including July 10, 2011. If plaintiffs still aren't
4 successful in their attempts to serve defendant LDK INVESTORS LLC, then plaintiffs will
5 respectfully request that this Court issue an Order permitting service on defendant LDK
6 INVESTORS LLC through publication.

7 Plaintiffs also request that the last day for the parties and counsel to conduct the General
8 Order 56 joint inspection of the premises be continued from June 2, 2011 to August 2, 2011, in
9 order to give all parties sufficient time to be served, appear, and meaningfully participate in the
10 joint inspection.

11 Respectfully submitted,

12 Dated: May 10, 2011

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

13
14
15 By: /s/Thomas E. Frankovich
Thomas E. Frankovich
16 Attorneys for Plaintiffs DAREN HEATHERLY and
IRMA RAMIREZ, each an individual

17
18 **ORDER**

19 **IT IS SO ORDERED** that plaintiffs have up to and including July 10, 2011 to serve
20 defendant LDK INVESTORS LLC with the summons and complaint. **IT IS FURTHER**
21 **ORDERED** that the last day for the parties to conduct the joint inspection of the premises be
22 continued up to and including August 2, 2011.

23
24 Dated: May 12, 2011

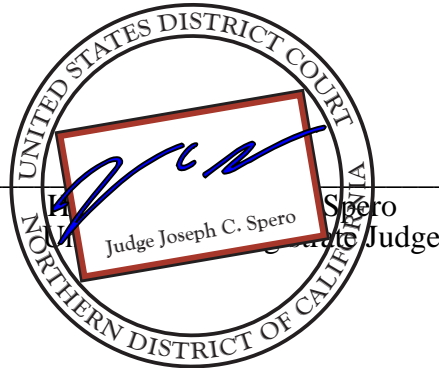


EXHIBIT A

<i>Attorney or Party without Attorney.</i> THOMAS E. FRANKOVICH (SBN 074414), Bar #74414 THE FRANKOVICH GROUP 4328 REDWOOD HIGHWAY SUITE 300 SAN RAFAEL, CA 94903 Telephone No. 415-444-5800 FAX No. 415-674-9900				<i>For Court Use Only</i>	
<i>Attorney for:</i> Plaintiff				<i>Ref. No. or File No.</i>	
<i>Insert name of Court, and Judicial District and Branch Court.</i> United States District Court, Northern District Of California					
<i>Plaintiff:</i> DAREN HEATHERLY, et al. <i>Defendant:</i> LA DORA LIQUORS AND DELI, et al					
PROOF OF SERVICE SUMMS IN CIV. ACTION		<i>Hearing Date:</i>	<i>Time:</i>	<i>Dept/Div:</i>	<i>Case Number:</i> CV11 0805 JCS

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons In A Civil Action Complaint For Injunctive Relief And Damages; Civil Cover Sheet; Welcome To The U.S. District Court, San Francisco Information Package; Notice Of Assignment Of Case To A United States Magistrate Judge For Trial; Consent To Proceed Before A United States Magistrate Judge; Declination To Proceed Before A Magistrate Judge And Request For Reassignment To A United States District Judge; Plaintiffs' Consent To Proceed Before A United States Magistrate Judge; Scheduling Order For Cases Asserting Denial Of Right Of Access Under Americans With Disabilities Act Title i & Iii; Civil Standing Orders For Magistrate Judge Joseph C. Spero; Standing Order Re: Case Management Conference; Notice Of Rule Discontinuing Service By Mail; Standing Order For All Judges Of The Northern District Of California; Ecf Registration Information Handout; Consenting To A Magistrate Judge's Jurisdiction In Northern District Of California; Letter Dated March 18th, 2011.

3. a. Party served: NARINDER S. MAROCK
 b. Person served: "JOHN DOE", MANAGER., Middle Eastern, Male, 20 Years Old, Black Hair, Brown Eyes, 5 Feet 9 Inches, 150 Pounds
4. Address where the party was served: 604 SAN BRUNO WEST
 SAN BRUNO, CA 94066
5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Apr. 06, 2011 (2) at: 8:50PM

7. Person Who Served Papers:

a. Ellenor Rios



1138 Howard Street
 San Francisco, CA 94103
 Telephone (415) 626-3111
 Fax (415) 626-1331
 www.firstlegalnetwork.com

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

- e. I am: (3) registered California process server
 (i) Independent Contractor
 (ii) Registration No. 984
 (iii) County: Santa Clara

8. I declare under penalty of perjury under the laws of the State of California and under the laws of the United States Of America that the foregoing is true and correct.
 Date: Thu, Apr. 07, 2011

EXHIBIT B

<i>Attorney or Party without Attorney:</i> THOMAS E. FRANKOVICH (SBN 074414), Bar #74414 THE FRANKOVICH GROUP 4328 REDWOOD HIGHWAY SUITE 300 SAN RAFAEL, CA 94903 Telephone No: 415-444-5800 FAX: No 415-674-9900				<i>For Court Use Only</i>	
<i>Attorney for: Plaintiff</i>				Ref. No or File No.	
<i>Insert name of Court, and Judicial District and Branch Court:</i> United States District Court, Northern District Of California					
<i>Plaintiff:</i> DAREN HEATHERLY, et al. <i>Defendant:</i> LA DORA LIQUORS AND DELI, et al					
AFFIDAVIT OF REASONABLE DILIGENCE		<i>Hearing Date:</i>	<i>Time:</i>	<i>Dept/Div:</i>	<i>Case Number</i> CV11 0805 JCS

1. I, Raimundo Carvalho, and any employee or independent contractors retained by FIRST LEGAL SUPPORT SERVICES are and were on the dates mentioned herein over the age of eighteen years and not a party to this action. Personal service was attempted on Defendant LDK INVESTORS LLC. as follows:

2. **Documents:** Summons In A Civil Action Complaint For Injunctive Relief And Damages; Civil Cover Sheet; Welcome To The U.S. District Court, San Francisco Information Package; Notice Of Assignment Of Case To A United States Magistrate Judge For Trial; Consent To Proceed Before A United States Magistrate Judge; Declination To Proceed Before A Magistrate Judge And Request For Reassignment To A United States District Judge; Plaintiffs' Consent To Proceed Before A United States Magistrate Judge; Scheduling Order For Cases Asserting Denial Of Right Of Access Under Americans With Disabilities Act Title II & Iii; Civil Standing Orders For Magistrate Judge Joseph C. Spero; Standing Order Re: Case Management Conference; Notice Of Rule Discontinuing Service By Mail; Standing Order For All Judges Of The Northern District Of California; Ecf Registration Information Handout; Consenting To A Magistrate Judge's Jurisdiction In Northern District Of California; Letter Dated March 18th, 2011..

Day	Date	Time	Location	Results
Fri	04/01/11	4:30pm	Business	NO ANSWER AT THE DOOR, QUIET INSIDE HOUSE, NO CARS IN DRIVEWAY. Attempt made by: Raimundo Carvalho, Registration #2005-0000968-00 San Francisco County. Attempt at: 837 SPRINGBROOK DRIVE SAN RAMON CA 94582.
Sun	04/03/11	9:55am	Business	NO ANSWER AT THE DOOR AGAIN, ALL BLINDS CLOSED, HONDA ACCORD IN DRIVEWAY LIC# 5JRY739. Attempt made by: Raimundo Carvalho. Attempt at: 837 SPRINGBROOK DRIVE SAN RAMON CA 94582.
Sat	04/09/11	9:05am	Business	NO ANSWER AT THE DOOR, NO CARS, SERVER HEARD SOME ACTIVITY INSIDE, THINKS THEY MAY BE EVADING HIM. Attempt made by: Raimundo Carvalho. Attempt at: 837 SPRINGBROOK DRIVE SAN RAMON CA 94582.

<i>Attorney or Party without Attorney</i> THOMAS E. FRANKOVICH (SBN 074414), Bar #74414 THE FRANKOVICH GROUP 4328 REDWOOD HIGHWAY SUITE 300 SAN RAFAEL, CA 94903 Telephone No. 415-444-5800 FAX: No. 415-674-9900				<i>For Court Use Only</i>	
<i>Attorney for: Plaintiff</i>				<i>Ref. No or File No.:</i>	
<i>Insert name of Court, and Judicial District and Branch Court:</i> United States District Court, Northern District Of California					
<i>Plaintiff</i> DAREN HEATHERLY, et al. <i>Defendant</i> , LA DORA LIQUORS AND DELI, et al					
AFFIDAVIT OF REASONABLE DILIGENCE		<i>Hearing Date:</i>	<i>Time:</i>	<i>Dept/Div:</i>	<i>Case Number</i> CV11 0805 JCS

Day	Date	Time	Location	Results
Sat	04/16/11	7:15am	Business	NO ANSWER AT THE DOOR, BLINDS CLOSED, HONDA BACK IN DRIVEWAY. Attempt made by: Raimundo Carvalho. Attempt at: 837 SPRINGBROOK DRIVE SAN RAMON CA 94582.
Mon	04/18/11	11:30am	Business	Returned Not Served on: LDK INVESTORS LLC. Business - 837 SPRINGBROOK DRIVE SAN RAMON, CA 94582

3. *Person Executing*

- a. Raimundo Carvalho
 b. **FIRST LEGAL SUPPORT SERVICES**
 1138 Howard Street
 SAN FRANCISCO, CA 94103
 c. (415) 626-3111

Recoverable Costs Per CCP 1033.5(a)(4)(B)

d. *The Fee for service was:*

- e. I am. (3) registered California process server
 (i) Independent Contractor
 (ii) Registration No.: 2005-0000968-00
 (iii) County: San Francisco

4. *I declare under penalty of perjury under the laws of the State of California and under the laws of the United States Of America that the foregoing is true and correct.*

Date: Mon, Apr. 18, 2011

Page Number 2

AFFIDAVIT OF REASONABLE DILIGENCE (Raimundo Carvalho)

6662333.fragr-sf.357041

EXHIBIT C

THE FRANKOVICH GROUP*
LAWYERS

The Vineyard • 4328 Redwood Hwy • Suite 300 • San Rafael, CA 94903
Phone: 415-444-5800 • Facsimile: 415-674-9900
April 25, 2011

Via: U.S. Mail

Ketty Bacigalupi, Agent
LDK Investors LLC
837 Springbrook Drive
San Ramon, CA 94582

Re: Daren Heatherly, et al. v. La Dora Liquors and Deli, et al.
USDC N.D. California - Case No. CV-11-0805-JCS
Our Reference: LA DORA
Subject: Service of Process

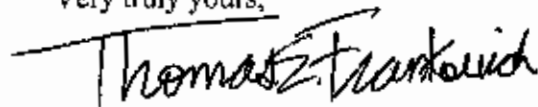
Dear Ms. Bacigalupi:

My office has made three (3) and/or more attempts to serve you as the registered agent on behalf of LDK Investors LLC with the enclosed summons and complaint to no avail. Accordingly, we are making one final attempt to serve these papers via FedEx.

Please be advised that if we do not receive acknowledgment of your receipt of these papers within 20 days, we will have no choice other than to move for service by publication. This process will require considerable time and effort, generating significant costs and attorneys' fees for which you may ultimately be held responsible. Therefore, I strongly encourage you to sign the enclosed "Notice and Acknowledgment of Receipt" and return it in the enclosed self-addressed envelope to my office upon receipt of this letter.

If you have any questions and/or concern, please contact our office. Alternatively, if you have an attorney that will be representing you, please have them contact my office. I remain,

Very truly yours,



Thomas E. Frankovich

DICTATED BUT NOT SIGNED IN THE INTEREST OF TIME

TEF/arc

(Enclosures)



Protecting the Civil Rights of the Disabled
* Thomas E. Frankovich, A Professional Law Corporation

THE FRANKOVICH GROUP*
LAWYERS

The Vineyard • 4328 Redwood Hwy • Suite 300 • San Rafael, CA 94903
Phone: 415-444-5800 • Facsimile: 415-674-9900
April 25, 2011

Via: FEDEX

Ketty Bacigalupi, Agent
LDK Investors LLC
837 Springbrook Drive
San Ramon, CA 94582

Re: Daren Heatherly, et al. v. La Dora Liquors and Deli, et al.
USDC N.D. California - Case No. CV-11-0805-JCS
Our Reference: LA DORA
Subject: Service of Process

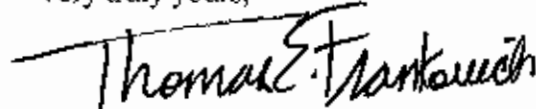
Dear Ms. Bacigalupi:

My office has made three (3) and/or more attempts to serve you as the registered agent on behalf of LDK Investors LLC with the enclosed summons and complaint to no avail. Accordingly, we are making one final attempt to serve these papers via FedEx.

Please be advised that if we do not receive acknowledgment of your receipt of these papers within 20 days, we will have no choice other than to move for service by publication. This process will require considerable time and effort, generating significant costs and attorneys' fees for which you may ultimately be held responsible. Therefore, I strongly encourage you to sign the enclosed "Notice and Acknowledgment of Receipt" and return it in the enclosed self-addressed envelope to my office upon receipt of this letter.

If you have any questions and/or concern, please contact our office. Alternatively, if you have an attorney that will be representing you, please have them contact my office. I remain,

Very truly yours,



Thomas E. Frankovich

DICTATED, BUT NOT SIGNED IN THE INTEREST OF TIME

TEF/arc

(Enclosures)



Protecting the Civil Rights of the Disabled
* Thomas E. Frankovich, A Professional Law Corporation

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
THOMAS E. FRANKOVICH,
2 ***A Professional Law Corporation***
4328 Redwood Hwy., Suite 300
3 San Rafael, CA 94903
Telephone: 415/674-8600
4 Facsimile: 415/674-9900

5 Attorneys for Plaintiffs DAREN HEATHERLY and
IRMA RAMIREZ
6

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 DAREN HEATHERLY and IRMA
10 RAMIREZ, each an individual,

11 Plaintiffs,

12 v.

13 LA DORA LIQUORS and DELI; LDK
14 INVESTORS LLC, a California Limited
Liability Company; and NARINDER S.
15 MAROCK, an individual dba LA DORA
16 LIQUORS and DELI,

17 Defendants.
18

) **CASE NO. CV-11-0805-JCS**
)
)

) **NOTICE AND ACKNOWLEDGMENT OF**
) **RECEIPT**
)

19
20 **TO: DEFENDANT LDK INVESTORS LLC, a California Limited Liability**
21 **Company.**

22 This summons and complaint are being served pursuant to Section 415.30 of the
23 California Code of Civil Procedure and Section 4(e)(1) of the Federal Rules of Civil Procedure.
24 Your failure to complete this form and return it to my office within (20) days may subject you (or
25 the party on whose behalf you are being served) to liability for the payment of any expenses
26 incurred in serving a summons on you in any other manner permitted by law.


27 ///

28 ///

1 If you are being served on behalf a corporation, unincorporated association (including a
2 partnership), or other entity, this form must be signed by you in the name of such entity or by a
3 person authorized to receive service of process on behalf of such entity. On all other cases, this
4 form must be signed by you personally or by a person authorized by you to acknowledge receipt
5 of summons. Section 415.30 provides that this summons and other documents are deemed
6 served on the date you sign the Acknowledgment of Receipt below, and you return this form to
7 my office.

8
9 Dated: April 25, 2011

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

10
11 By: 

12 THOMAS E. FRANKOVICH

13 Attorneys for Plaintiffs DAREN HEATHERLY and IRMA
14 RAMIREZ

15 **ACKNOWLEDGMENT OF RECEIPT**

16
17 This acknowledges receipt of:

- 18 1. A copy of the summons and of the complaint.

19
20 Date of receipt: _____, 2011

21
22 _____
(Signature of person acknowledging receipt,
23 with title if acknowledgment is made on
behalf of another person)

24 Date this form is signed: _____, 2011

25
26 _____
(Type or print your name and the name of
27 entity, if any, on whose behalf this form is
28 signed)



Ship Track Manage Learn FedEx Office

Search, FedEx.com 800

Detailed Results

Printer-Friendly Get Link Help

Enter tracking number

Unopened Results Historical Data

Tracking no.: 874436639208 Select time format: 12H | 24H 5mg) ac/fealims

In transit



At FedEx destination facility
PLEASANTON, CA

Shipment Dates Destination

Ship date: Apr 25, 2011

Shipment Options

Help

Hold at FedEx Location

Not available to receive your shipment? FedEx will hold your shipment at a nearby FedEx location at no extra cost. Some shipments may not be eligible for this service. Read more

Shipment Facts

Help

Service type	Standard Pak - Direct Signature Request	Reference	LA OORA LIQUORS
Weight	1.0 lbs(0.5 kg)		

Shipment Travel History

Help

Select time zone: Local Scan Time

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Apr 28, 2011 3:51 PM	Shipment exception	PLEASANTON, CA	Destroyed at customer's request
Apr 28, 2011 2:50 PM	At local FedEx facility	PLEASANTON, CA	
Apr 28, 2011 12:51 PM	Delivery exception	PLEASANTON, CA	Customer not available or business closed
Apr 28, 2011 8:08 AM	On FedEx vehicle for delivery	PLEASANTON, CA	
Apr 27, 2011 2:23 PM	At local FedEx facility	PLEASANTON, CA	
Apr 27, 2011 1:50 PM	Delivery exception	PLEASANTON, CA	Customer not available or business closed
Apr 27, 2011 8:04 AM	On FedEx vehicle for delivery	PLEASANTON, CA	
Apr 25, 2011 9:16 PM	At local FedEx facility	PLEASANTON, CA	
Apr 28, 2011 2:45 PM	Delivery exception	PLEASANTON, CA	Customer not available or business closed
Apr 28, 2011 8:08 AM	On FedEx vehicle for delivery	PLEASANTON, CA	
Apr 26, 2011 3:05 AM	At local FedEx facility	PLEASANTON, CA	
Apr 26, 2011 7:23 AM	Departed FedEx location	OAKLAND, CA	
Apr 25, 2011 8:03 PM	Arrived at FedEx location	OAKLAND, CA	
Apr 25, 2011 8:05 PM	Left FedEx origin facility	SAN RAFAEL, CA	
Apr 25, 2011 8:48 PM	Picked up	SAN RAFAEL, CA	

Won't be around for delivery?

Have us hold the shipment for convenient pickup

Learn more >



FedEx Advanced Tracking:

The ultimate in tracking visibility

Watch video >



Sign in

Search FedEx.com 800

Customer Service
New shipment
Ship to a different address
Change order

Features & Services
FedEx Signature
FedEx Home Delivery
Packaging Services

Companies
FedEx Express
FedEx Ground
FedEx Office

Follow FedEx
Facebook
Twitter
LinkedIn

1-800-4FEDX



FedEx [®] US Airbill HEB 8744 3663 9208

EXPRESS

Tracking Number

Senders Copy

1 From Priority Mail and ground service
Date 4-25-11 Sender's FedEx Account Number 582926888

Sender's Name Cooper Phone (415) 444-5800

Company FRANKOVICH, THOMAS E, AP/CL

Address 4328 REDWOOD HWY STE 300 Professional
City SAN RAFAEL State CA ZIP 94903

2 Your Internal Billing Reference LA DORA LIQUORS

3 To Recipient's Name Kelly Badgalup Phone 415.674.8600

Company LDK Investors LLC

Address 837 SPRINGBROOK DR Business Address

Address SAN RAMON State CA ZIP 94582

0431174390



Ship and track packages at fedex.com

4a Express Package Service **3** **2** **1**
 FedEx Priority Overnight
 FedEx 2Day
 FedEx Standard Overnight
 FedEx First Overnight
 FedEx Home Delivery

4b Express Freight Service **3** **2** **1**
 FedEx 3Day Freight
 FedEx 2Day Freight
 FedEx 1Day Freight
 FedEx Home Delivery

5 Packaging **3** **2** **1**
 FedEx
 FedEx Envelope
 FedEx Tube
 FedEx Box
 FedEx Pallet
 Other

6 Special Handling and Delivery Signature Options
 Signature Required
 Restricted Access
 Signature Required
 Restricted Access
 Signature Required
 Restricted Access

7 Payment **BNTR**
 Bill Me
 Bill to my Account
 Bill to my Card
 Bill to my PO
 Bill to my Other

Total Packages 1 Total Weight 1 lbs 0 oz
 Total Declared Value 605

PLEASE RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.