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11 Varnell Struck & Associates, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT
10 SAN FRANCISCO DIVISION

12 DAVID A. DUDASH,
13 Plaintiff,
14 vs.
15 VARNELL STRUCK & ASSOCIATES,
16 INC.,
17 Defendant.

Case No. C 04 2748

**DECLARATION OF BARRY KILBURN IN
SUPPORT OF REPLY TO DEFENDANT'S
MOTION TO DISMISS PLAINTIFF'S
CLASS ACTION COMPLAINT,
PURSUANT TO FRCP RULE 12(B)**

Date: November 15, 2004
Time: 2:00 p.m.
Judge: Marilyn Hall Patel
Ctrm: 15

19 I, BARRY KILBURN, declare as follows:

20 1. I have personal knowledge of the facts stated herein, and could testify competently
21 thereto if called upon to do so.

22 2. I am an employee of Varnell Struck & Associates, Inc. ("Varnell Struck"). At all
23 times relevant to this litigation, I was Varnell Struck's Western Regional Manager for the VST
24 division. I first became the regional manager for the VST division in March 2001.

25 3. The western region encompasses California. I was directly responsible for all of
26 VST's service specialists operating in and around San Francisco, Oakland and San Jose. I was
27 also responsible for additional service specialists in California who operated in Los Angeles and
28

1 Orange counties.

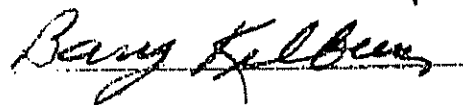
2 4. Lowe's opened its first store in the San Francisco/Oakland/San Jose region in
3 2001, when the company opened a store in San Bruno. In 2002, Lowe's opened additional stores
4 in Antioch, Livermore and Union City, and in 2003, Lowe's opened another store in Gilroy. At
5 all times relevant to this litigation, Lowe's did not have any other stores in the San
6 Francisco/Oakland/San Jose area.

7 5. Throughout the time that Lowe's has maintained stores in the San
8 Francisco/Oakland/San Jose region, VST has assigned only one (1) employee to regularly service
9 and work out of those stores.

10 6. As of the filing of this lawsuit, VST had four (4) employees regularly working in
11 and around Los Angeles and Orange counties.

12 7. At all times relevant to this litigation, VST had capacity for only one employee to
13 be working in the San Francisco/Oakland/San Jose region, whereas there was capacity for as
14 many as four (4) employees to be working in and around Los Angeles and Orange counties.

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed this 1st day of November, 2004 in Spokane,
18 Washington.

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20 Barry Kilburn

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