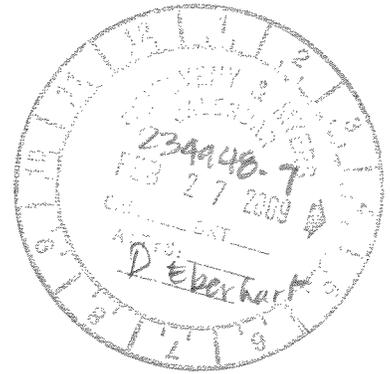


EXHIBIT 7



1 Stewart H. Foreman (CSB #61149)
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6 Attorneys for Defendants Todd Dunning
and Dunning Enterprise, Inc.

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 EBAY, INC.,

12 Plaintiff,

13 v.

14 DIGITAL POINT SOLUTIONS, INC., SHAWN
HOGAN, KESSLER'S FLYING CIRCUS,
15 THUNDERWOOD HOLDINGS, INC., TODD
DUNNING, DUNNING ENTERPRISE, INC.,
16 BRIAN DUNNING, BRIANDUNNING.COM,
AND DOES 1-20,

17 Defendants.
18

CASE NO.: CV-08-4052 JF

**DEFENDANT DUNNING
ENTERPRISE, INC.'S RESPONSES
TO PLAINTIFF'S REQUESTS FOR
ADMISSIONS**

19
20 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

21 RESPONDING PARTY: DEFENDANT DUNNING ENTERPRISE, INC.

22 SET NUMBER: ONE

23 Defendant Dunning Enterprise, Inc. ("Defendant") hereby submits the following objections
24 and responses to the Request for Admissions Set One propounded by Plaintiff Ebay, Inc. ("Plaintiff").
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26
27
28

1 GENERAL STATEMENT

2 Todd Dunning has invoked his privilege against self-incrimination pursuant to the Fifth
3 Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of
4 Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
5 section 940. Since Mr. Dunning is the sole shareholder and sole authorized representative of
6 Defendant, and the only person who can verify discovery responses on behalf of Defendant,
7 Defendant cannot provide any verified responses without compromising Mr. Dunning's right against
8 self-incrimination

9 Should Mr. Dunning determine that there is no longer the threat of potential criminal
10 prosecution and elect to withdraw his privilege against self-incrimination in the future, Defendant
11 expressly reserves the right to supplement its responses.

12 Furthermore, the Federal Bureau of Investigation has seized all documents and computers,
13 disk drives, hard drives, cell phones and servers containing information potentially related to this
14 matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused
15 all requests to provide defendants with a copy of the material seized by the FBI. Those items and
16 records may contain information responsive to the requests below, but those items and records are not
17 in the possession, custody or control of defendants.

18 This Defendant does not admit any of these requests and holds Plaintiff to its burden of proof
19 related to each and every one of them.

20 REQUEST FOR ADMISSION NO. 1:

21 Admit that Dunning Enterprise conducted business with eBay prior to May 14, 2007.

22 RESPONSE TO REQUEST FOR ADMISSION NO. 1:

23 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
24 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
25 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
26 California Constitution, and California Evidence Code section 940. Defendant further objects on the
27 ground that this request is vague and ambiguous.

28 ///

1 REQUEST FOR ADMISSION NO. 2:

2 Admit that Dunning Enterprise conducted business with eBay during at least some portion of
3 2006.

4 RESPONSE TO REQUEST FOR ADMISSION NO. 2:

5 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
6 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
7 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
8 California Constitution, and California Evidence Code section 940. Defendant further objects on the
9 ground that this request is vague and ambiguous.

10 REQUEST FOR ADMISSION NO. 3:

11 Admit that Dunning Enterprise conducted business with eBay during at least some portion of
12 2005.

13 RESPONSE TO REQUEST FOR ADMISSION NO. 3:

14 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
15 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
16 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
17 California Constitution, and California Evidence Code section 940. Defendant further objects on the
18 ground that this request is vague and ambiguous.

19 REQUEST FOR ADMISSION NO. 4:

20 Admit that Dunning Enterprise conducted business with eBay during at least some portion of
21 2004.

22 RESPONSE TO REQUEST FOR ADMISSION NO. 4:

23 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
24 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
25 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
26 California Constitution, and California Evidence Code section 940. Defendant further objects on the
27 ground that this request is vague and ambiguous.

28 REQUEST FOR ADMISSION NO. 5:

1 Admit that Dunning Enterprise conducted business with eBay during at least some portion of
2 2003.

3 RESPONSE TO REQUEST FOR ADMISSION NO. 5:

4 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
5 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
6 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
7 California Constitution, and California Evidence Code section 940. Defendant further objects on the
8 ground that this request is vague and ambiguous.

9 REQUEST FOR ADMISSION NO. 6:

10 Admit that Dunning Enterprise participated in an eBay Affiliate Marketing Program or
11 programs.

12 RESPONSE TO REQUEST FOR ADMISSION NO. 6:

13 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
14 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
15 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
16 California Constitution, and California Evidence Code section 940. Defendant further objects on the
17 ground that this request is vague and ambiguous.

18 REQUEST FOR ADMISSION NO. 7:

19 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
20 Enterprise utilized software programs and/or code that caused some Users' computers to access an
21 eBay website without the User's knowledge.

22 RESPONSE TO REQUEST FOR ADMISSION NO. 7:

23 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
24 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
25 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
26 California Constitution, and California Evidence Code section 940. Defendant further objects on the
27 ground that this request is vague and ambiguous.

28 REQUEST FOR ADMISSION NO. 8:

1 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
2 Enterprise utilized software programs and/or code that caused some Users' computers to access an
3 eBay web server without the User's knowledge.

4 RESPONSE TO REQUEST FOR ADMISSION NO. 8:

5 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
6 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
7 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
8 California Constitution, and California Evidence Code section 940. Defendant further objects on the
9 ground that this request is vague and ambiguous.

10 REQUEST FOR ADMISSION NO. 9:

11 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
12 Enterprise utilized software programs and/or code that redirected a User to an eBay website without
13 the User knowingly clicking on an Advertisement Link.

14 RESPONSE TO REQUEST FOR ADMISSION NO. 9:

15 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
16 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
17 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
18 California Constitution, and California Evidence Code section 940. Defendant further objects on the
19 ground that this request is vague and ambiguous.

20 REQUEST FOR ADMISSION NO. 10:

21 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
22 Enterprise utilized software programs and/or code that redirected a User to an eBay web server
23 without the User knowingly clicking on an Advertisement Link.

24 RESPONSE TO REQUEST FOR ADMISSION NO. 10:

25 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
26 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
27 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
28 California Constitution, and California Evidence Code section 940. Defendant further objects on the

1 ground that this request is vague and ambiguous.

2 REQUEST FOR ADMISSION NO. 11:

3 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
4 Enterprise utilized software programs and/or code that performed Cookie Stuffing.

5 RESPONSE TO REQUEST FOR ADMISSION NO. 11:

6 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
7 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
8 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
9 California Constitution, and California Evidence Code section 940. Defendant further objects on the
10 ground that this request is vague and ambiguous.

11 REQUEST FOR ADMISSION NO. 12:

12 Admit that Dunning Enterprise used methods, techniques and/or technological measures to
13 avoid detection by eBay of certain aspects of how Dunning Enterprise interacted with eBay's Affiliate
14 Marketing Program or programs.

15 RESPONSE TO REQUEST FOR ADMISSION NO. 12:

16 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
17 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
18 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
19 California Constitution, and California Evidence Code section 940. Defendant further objects on the
20 ground that this request is vague and ambiguous.

21 REQUEST FOR ADMISSION NO. 13:

22 Admit that Dunning Enterprise used methods, techniques and/or technological measures to
23 avoid detection by Commission Junction of certain aspects of how Dunning Enterprise interacted with
24 eBay's Affiliate Marketing Program or programs.

25 RESPONSE TO REQUEST FOR ADMISSION NO. 13:

26 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
27 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
28 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the

1 California Constitution, and California Evidence Code section 940. Defendant further objects on the
2 ground that this request is vague and ambiguous.

3 REQUEST FOR ADMISSION NO. 14:

4 Admit that Dunning Enterprise utilized methods, techniques and/or technological measures to
5 avoid detection by eBay of Cookie Stuffing caused by Dunning Enterprise.

6 RESPONSE TO REQUEST FOR ADMISSION NO. 14:

7 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
8 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
9 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
10 California Constitution, and California Evidence Code section 940. Defendant further objects on the
11 ground that this request is vague and ambiguous.

12 REQUEST FOR ADMISSION NO. 15:

13 Admit that Dunning Enterprise utilized methods, techniques and/or technological measures to
14 avoid detection by Commission Junction of Cookie Stuffing caused by Dunning Enterprise.

15 RESPONSE TO REQUEST FOR ADMISSION NO. 15:

16 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
17 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
18 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
19 California Constitution, and California Evidence Code section 940. Defendant further objects on the
20 ground that this request is vague and ambiguous.

21 REQUEST FOR ADMISSION NO. 16:

22 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
23 Enterprise utilized software and/or code to determine the geographic location of a User.

24 RESPONSE TO REQUEST FOR ADMISSION NO. 16:

25 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
26 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
27 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
28 California Constitution, and California Evidence Code section 940. Defendant further objects on the

1 ground that this request is vague and ambiguous.

2 REQUEST FOR ADMISSION NO. 17:

3 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
4 Enterprise utilized software and/or code to determine whether a User was located in San Jose, CA.

5 RESPONSE TO REQUEST FOR ADMISSION NO. 17:

6 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
7 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
8 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
9 California Constitution, and California Evidence Code section 940. Defendant further objects on the
10 ground that this request is vague and ambiguous.

11 REQUEST FOR ADMISSION NO. 18:

12 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
13 Enterprise utilized software and/or code to determine whether a User was located in Santa Barbara,
14 CA.

15 RESPONSE TO REQUEST FOR ADMISSION NO. 18:

16 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
17 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
18 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
19 California Constitution, and California Evidence Code section 940. Defendant further objects on the
20 ground that this request is vague and ambiguous.

21 REQUEST FOR ADMISSION NO. 19:

22 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
23 Enterprise utilized software and/or code that would disable or not engage Dunning Enterprise's Cookie
24 Stuffing technology if a User's computer was located in San Jose, CA.

25 RESPONSE TO REQUEST FOR ADMISSION NO. 19:

26 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
27 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
28 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the

1 California Constitution, and California Evidence Code section 940. Defendant further objects on the
2 ground that this request is vague and ambiguous.

3 REQUEST FOR ADMISSION NO. 20:

4 Admit that, while participating in an eBay Affiliate Marketing Program or programs, Dunning
5 Enterprise utilized software and/or code that would disable or not engage Dunning Enterprise's Cookie
6 Stuffing technology if a User's computer was located in Santa Barbara, CA.

7 RESPONSE TO REQUEST FOR ADMISSION NO. 20:

8 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
9 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
10 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
11 California Constitution, and California Evidence Code section 940. Defendant further objects on the
12 ground that this request is vague and ambiguous.

13 REQUEST FOR ADMISSION NO. 21:

14 Admit that Dunning Enterprise received commissions from eBay, whether directly or through
15 Commission Junction, that were based, in whole or in part, on Users whose computers were directed
16 to eBay's website without the User's knowledge.

17 RESPONSE TO REQUEST FOR ADMISSION NO. 21:

18 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
19 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
20 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
21 California Constitution, and California Evidence Code section 940. Defendant further objects on the
22 ground that this request is vague and ambiguous.

23 REQUEST FOR ADMISSION NO. 22:

24 Admit that Dunning Enterprise received commissions from eBay, whether directly or through
25 Commission Junction, that were based, in whole or in part, on Users who had never actually clicked
26 on a Dunning Enterprise-sponsored eBay advertisement link.

27 RESPONSE TO REQUEST FOR ADMISSION NO. 22:

28 ///

FRELAND COOPER & FOREMAN LLP
150 Spear Street, Suite 1800
San Francisco, California 94105

1 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
 2 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
 3 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
 4 California Constitution, and California Evidence Code section 940. Defendant further objects on the
 5 ground that this request is vague and ambiguous.

6 REQUEST FOR ADMISSION NO. 23:

7 Admit that Dunning Enterprise received commissions from eBay, whether directly or through
 8 Commission Junction, that were based, in whole or in part, Cookie Stuffing caused by Dunning
 9 Enterprise.

10 RESPONSE TO REQUEST FOR ADMISSION NO. 23:

11 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
 12 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
 13 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
 14 California Constitution, and California Evidence Code section 940. Defendant further objects on the
 15 ground that this request is vague and ambiguous.

16 REQUEST FOR ADMISSION NO. 24:

17 Admit that Dunning Enterprise engaged in Cookie Stuffing with the intent to defraud eBay.

18 RESPONSE TO REQUEST FOR ADMISSION NO. 24:

19 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
 20 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
 21 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
 22 California Constitution, and California Evidence Code section 940. Defendant further objects on the
 23 ground that this request is vague, ambiguous, and constitutes a legal conclusion.

24 REQUEST FOR ADMISSION NO. 25:

25 Admit that Dunning Enterprise defrauded eBay.

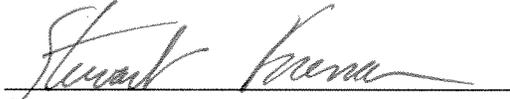
26 RESPONSE TO REQUEST FOR ADMISSION NO. 25:

27 Defendant objects to this request on the grounds that it violates Mr. Dunning's privilege
 28 against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*

1 Turley, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the
2 California Constitution, and California Evidence Code section 940. Defendant further objects on the
3 ground that this request is vague, ambiguous, and constitutes a legal conclusion.

4 Dated: February 26, 2009

FREELAND COOPER & FOREMAN LLP

5
6 By: 

7 Stewart H. Foreman
8 Attorneys for Defendants Todd Dunning and
9 Dunning Enterprise, Inc.
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FREELAND COOPER & FOREMAN LLP

150 Spear Street, Suite 1800
San Francisco, California 94105

CERTIFICATE OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action; my business address is 150 Spear Street, Suite 1800, San Francisco, California 94105.

On February 26, 2009, I served the foregoing document described as follows:

Defendant Dunning Enterprise, Inc.'s Responses to Plaintiff's Requests for Admissions

by placing a true and correct copy thereof enclosed in a sealed envelope addressed to the party(ies) of record whose name(s) and address(es) appear below:

SEE ATTACHED SERVICE LIST

[BY MAIL - CCP § 1013a] I caused such sealed envelope with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California, for collection and mailing to the office of addressee(s) on the date shown herein following ordinary business practice.

[HAND-DELIVERY/Personal/Messenger - CCP § 1011] I caused such envelope to be hand-delivered by a courier, who personally delivered such envelope to the office of the addressee(s) on the date herein.

[BY FACSIMILE - CCP § 1013(e)] - I caused such document(s) to be transmitted via facsimile electronic equipment transmission on the party(ies), whose name(s), address(es) and fax number(s) are listed above, on the date stated herein and at the time set forth on the attached transmission reported indicating that the facsimile transmission was complete and without error.

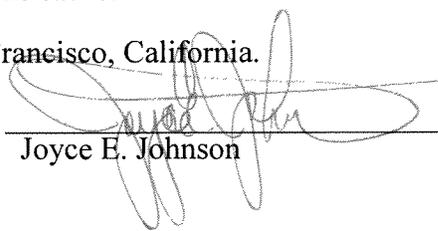
[BY FEDEX (Overnight Delivery) - CCP § 1013(c)] I caused such envelope to be delivered to the Federal Express Office in San Francisco, California, with whom we have a direct billing account, to be delivered on the next business day.

[BY E-MAIL or ELECTRONIC TRANSMISSION] . Based on a court order or agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed above. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[STATE] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[FEDERAL] Service was made under the direction of a member of the bar of this Court who is admitted to practice and is not a party to this cause.

Executed on February 26, 2009, at San Francisco, California.



Joyce E. Johnson

FREELAND COURIER & MESSENGER LLLP
150 Spear Street, Suite 1800
San Francisco, California 94105

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ATTACHED SERVICE LIST

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