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 14 BENJAMIN SILVA, III

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN JOSE DIVISION**

18 SECURITIES AND EXCHANGE  
 19 COMMISSION,  
 20 Plaintiff,  
 21 vs.  
 22 BENJAMIN SILVA, III,  
 23 Defendant.

Case No. 09-05395-LHK

**STIPULATION AND PROPOSED  
 ORDER TO MODIFY SCHEDULE**

1 This Stipulation is entered into by and among Plaintiff Securities and Exchange  
2 Commission (“Plaintiff” or “S.E.C.”) and Defendant Benjamin Silva (“Defendant” or “Silva”) to  
3 continue the trial and other relevant dates as follows:

4 WHEREAS,

5 1. At the September 22, 2010 case management conference, the parties identified  
6 certain depositions that they intend to take, including the depositions of Tvia’s former CEO, CFO  
7 and outside auditor. The Court instructed the parties to conduct those depositions before the case  
8 management conference on February 2, 2011.

9 2. Following the September 22, 2010 case management conference, the Court  
10 adopted the following dates and deadlines: further case management conference on February 2,  
11 2011, close of discovery on April 15, 2011, dispositive motions due by May 5, 2011, pretrial  
12 conference on July 27, 2011, and trial on August 22, 2011.

13 3. After lengthy negotiations, on or around September 10, 2010, Tvia began  
14 producing documents and electronic information (e.g., hard drives). Tvia’s production, which  
15 currently stands at over eight hundred thousand pages (not including information on backup  
16 tapes), is substantially more voluminous than anticipated. Moreover, Tvia’s electronic  
17 information for the relevant period has been difficult to obtain because most of it is not  
18 maintained at Tvia’s offices and it is disorganized.

19 4. Tvia’s exchange server did not contain custodian files for many former employees  
20 – including the custodian files for the Defendant, Tvia’s former CFO, and much of Tvia’s former  
21 sales and accounting personnel – and therefore Defendant had to turn to Tvia’s backup tapes.  
22 Tvia has produced sixty-four unlabeled backup tapes, but still has not produced all of the backup  
23 tapes for the relevant period. It will likely take at least a month to extract and process electronic  
24 information stored on the backup tapes when the relevant tapes are identified.

25 5. On or around September 10, 2010, Tvia told Defendant’s counsel that Tvia’s  
26 former CEO, Eli Porat, took a laptop with him when he left the company. On September 30,  
27 2010, Defendant attempted to serve Mr. Porat with a subpoena seeking information contained on  
28 that laptop as well as other relevant documents and electronic information. That attempt and

1 subsequent attempts were unsuccessful. On October 26, 2010, Pagano & Kass, APC sent a letter  
2 to Defendant's counsel stating that it was authorized to accept service of subpoenas on Mr.  
3 Porat's behalf. On October 27, 2010, Defendant served Pagano & Kass, APC with the subpoena  
4 described above. On November 9, 2010, Mr. Porat served Defendant with objections to the  
5 subpoena. On December 3, 2010, Defendant's counsel and Mr. Porat's counsel had a meet and  
6 confer regarding the subpoena. Mr. Porat's counsel stated that Mr. Porat would produce a large  
7 volume of responsive documents, possibly several hundred thousand pages.

8 6. It is essential that the parties have access to and review all relevant documents  
9 before depositions of Tvia's former CEO, CFO, outside auditor, and others may take place.

10 7. The parties have agreed that a modified schedule, continuing the dates and  
11 deadlines set by the Court in its September 22, 2010 minute order, is needed. They do not ask the  
12 Court to modify the date by which the parties must conduct mediation. The parties affirm that  
13 this Stipulation is not being made for purposes of delay or harassment.

14 Accordingly, it is hereby stipulated as follows:

- 15 ■ The close of fact discovery shall be continued to June 17, 2011;
- 16 ■ The other dates and deadlines set forth in the Court's March 17, 2010 scheduling order  
17 and September 22, 2010 minute order shall be vacated, except for the February 2, 2011  
18 case management conference at which new dates and deadlines shall be set. The  
19 parties shall not be required to conduct depositions prior to the February 2, 2011 case  
20 management conference.

21  
22 **IT IS SO STIPULATED.**

23 Respectfully submitted,

24  
25 Dated: December 7, 2010

26 By: /s/Robert L. Mitchell  
Robert L. Mitchell

27 Attorneys for Plaintiff  
28 SECURITIES AND EXCHANGE COMMISSION

1 Dated: December 7, 2010

BOIES, SCHILLER & FLEXNER LLP

2 By: /s/David L. Zifkin

3 David L. Zifkin

4 Attorneys for Defendant

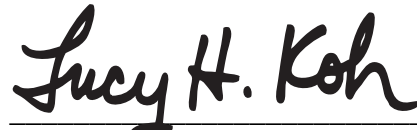
BENJAMIN SILVA

5  
6 **PROPOSED ORDER**

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8 PURSUANT TO STIPULATION, IT IS ORDERED that the close of fact discovery is  
9 continued to June 17, 2011; the other dates and deadlines set forth in the Court's March 17, 2010  
10 scheduling order and September 22, 2010 minute order are vacated; and the Court sets a case  
11 management conference for February 2, 2011, at 2 p.m., at which new dates and deadlines will be  
12 set by the Court. The parties are not required to conduct depositions prior to the February 2, 2011  
13 case management conference.

14 **IT IS SO ORDERED.**

15  
16 Dated December 13, 2010



17 HON. LUCY H. KOH  
18 United States District Court Judge