

# Exhibit 12

The portion of Exhibit 12 cited in this Motion for Reconsideration is the Declaration of Robert B. Kaplan, which was attached to Pl. SEC's Mem. of Law in Opp'n to Def. Mark Cuban's Mot. for Attorneys' Fees and Expenses, Civ. Action No. 3-08-cv-2050-D (SAF), United States District Court, Northern District of Dallas, filed Sept. 30, 2009.

Exhibit 12 in its entirety was originally filed with this Court on March 16, 2010, with Docket Doc. No. 22 (Def.'s Reply to Pl.'s Opp'n to Def.'s Partial Mot. for Summ. J.).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 3-08-CV-2050-D (SAF)
	:	
<b>MARK CUBAN,</b>	:	
	:	
Defendant.	:	
	:	

**DECLARATION OF ROBERT B. KAPLAN IN SUPPORT OF PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO MARK CUBAN'S  
MOTION FOR ATTORNEYS' FEES AND EXPENSES**

I, Robert B. Kaplan declare as follows:

1. I am over 18 years of age and am employed as an Assistant Director in the Division of Enforcement of the United States Securities and Exchange Commission ("SEC" or "Commission"), the plaintiff in the above-captioned matter. I have been employed at the Commission for 14 years. My duties are to supervise and conduct investigations into allegations of potential violations of the United States securities laws. I make this Declaration in support of Plaintiff Securities and Exchange Commission's Memorandum of Law in Opposition to Defendant Mark Cuban's Motion for Attorneys' Fees and Expenses.

2. From its beginning, I supervised an investigation (assigned internal reference number HO-10576) into whether Mark Cuban had engaged in insider trading in Mamma.com Inc. securities.

3. Former Commission trial attorney Jeffrey Norris, located in the Commission's Fort Worth Regional Office at the time, did not participate in the Commission's investigation

and had no role in the review, recommendation, or litigation of this case. Further, Norris had no direct or indirect supervisory relationship or role with anyone working on the investigation. The investigation was conducted entirely by the enforcement staff in Washington, D.C. The Norris/Cuban email exchanges and the matters referenced therein were not a factor in, and had no effect on, the initiation or continuation of the investigation or the staff's decision to recommend that the Commission file insider trading charges against Cuban.

4. Washington, D.C. investigative staff interviewed Cuban concerning his trading in Mamma.com in December 2006. On March 12, 2007, as a result of his unwillingness to appear voluntarily for testimony, Cuban was served a subpoena related to his trading in Mamma.com from the Washington, D.C. staff conducting the investigation. Although the procedure has subsequently been changed, at that time, Commission staff could only issue subpoenas after being authorized by the Commission following a presentation of facts to the Commission sufficient to support issuance of a formal order. By March 12, 2007, the Washington, D.C. staff had sufficiently investigated Cuban's trading activity to determine that a subpoena was necessary, had sought and received formal order authority from the Commission to issue the subpoena, and had prepared and sent the subpoena.

5. Cuban's counsel presented legal and factual arguments to the staff during an in-person meeting on July 19, 2007 in Washington, D.C. On August 8, 2007, new counsel for Cuban contacted the SEC, and on August 9, 2007 requested permission to make an additional Wells submission, which the Commission staff and Cuban's counsel agreed would be due by September 7, 2007. Cuban's counsel failed to meet the September 7, 2007 deadline for a second Wells submission. Cuban's counsel ultimately made an untimely second Wells submission on September 21, 2007. Cuban's untimely Wells submission and all of the interview transcripts that

Cuban submitted therewith, along with his first Wells submission, were provided to the Commission for its consideration when deliberating the recommended enforcement action.

6. I supervised one of two temporally and substantively distinct investigations involving Mamma.com. The earlier investigation, assigned internal reference number HO-09900, was conducted by one team of investigators, under different supervision. A second, subsequent investigation into Cuban's trading in Mamma.com, assigned reference number HO-10576, was conducted by a different team of investigators, under my supervision. The earlier Mamma.com investigation, HO-09900, was not closed at the request of anyone assigned to HO-10576. No direct or indirect exchange or inducement for testimony concerning Cuban's trading, including the closing of the earlier Mamma.com investigation, was provided to any witness in the investigation. There was no quid pro quo of any sort exchanged by the SEC for allegedly perjured or any other testimony from Mamma.com executives concerning Cuban.

7. Then-Commission Chairman Christopher Cox, to avoid any potential appearance issues, recused himself from the Commission's vote on whether to authorize an enforcement action against Cuban.

8. Attached as Exhibit 1 is a true and correct copy of the complete transcript of investigative testimony of Mamma.com CEO Guy Fauré on January 11, 2007.

9. Attached as Exhibit 2 is a true and correct copy of the complete transcript of investigative testimony of Mamma.com CEO Guy Fauré on September 27, 2007.

10. Attached as Exhibit 3 is a true and correct copy of a July 2, 2004 article quoting an email sent by Mark Cuban that was produced by Mark Cuban in the investigation.

11. Attached as Exhibit 4 is a true and correct copy of an email from Mark Cuban dated August 11, 2004 that was produced by Mark Cuban in the investigation. The Commission has redacted personal identifying information of a third party from the document.

12. Attached as Exhibit 5 is a true and correct copy of an email from Mamma.com Executive Chairman David Goldman dated June 23, 2004 that was produced to the Commission in the investigation.

13. Attached as Exhibit 6 is a true and correct copy of excerpts of a transcript of an unsworn statement obtained from Mamma.com Executive Chairman David Goldman by attorneys at Dewey & LeBoeuf LLP on September 6, 2007 that was produced by Mark Cuban in the investigation.

14. Attached as Exhibit 7 is a true and correct copy of an email from Mark Cuban dated June 30, 2004 that was produced by Mark Cuban in the investigation.

15. Attached as Exhibit 8 is a true and correct copy of the complete transcript of investigative testimony of Mark Cuban on April 3, 2007.

16. Attached as Exhibit 9 is a true and correct copy of an email from Mamma.com Executive Chairman David Goldman dated June 28, 2004 on behalf of himself and Mamma.com CEO Guy Fauré that was produced to the Commission in the investigation.

17. Attached as Exhibit 10 is a true and correct copy of an email from Mamma.com Executive Chairman David Goldman dated June 29, 2004 that was produced to the Commission in the investigation.

18. Attached as Exhibit 11 is a true and correct copy of an email from Mamma.com CEO Guy Fauré dated June 28, 2004 that was produced to the Commission in the investigation.

19. Attached as Exhibit 12 is a true and correct copy of an email from Mamma.com CEO Guy Fauré dated June 28, 2004 that was produced to the Commission in the investigation.

20. Attached as Exhibit 13 is a true and correct copy of a letter sent by SEC Division of Enforcement Associate Director Scott W. Friestad on September 24, 2007.

Pursuant to 28 U.S.C. § 1746, I, Robert B. Kaplan, declare under penalty of perjury that the foregoing is true and correct.

Executed on September 30, 2009  
Washington, D.C.

A handwritten signature in black ink, appearing to read "Robert B. Kaplan", is written over a horizontal line.

Robert B. Kaplan