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ADR

Attorneys for IT.COM, INC. and Defendant
INSTITUTIONAL TRADING CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KWONG HIU YUNG,

Plaintiff,

v.

INSTITUTIONAL TRADING
CORPORATION, a corporation, IT
DISCOVERY, INC., a corporation, DOES 1 to
100,

Defendants.

CV 11-01056
Case No.

PSG

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)

Superior Court of Santa Clara County,
Case No. 110CV189319

Complaint Filed: December 10, 2010
Trial Date: None Set

TO: THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant INSTITUTIONAL TRADING CORPORATION ("ITC") hereby removes to this Court the California state court action described below.

1. On December 10, 2010, an action was commenced in the Superior Court of the State of California in and for the County of Santa Clara entitled, Kwong Hiu Yung, Plaintiff v. Institutional Trading Corporation, a corporation, IT Discovery, Inc., a corporation, Does 1 to 100, Defendants, Case No. 110CV189319 ("Complaint"). The Complaint contains the following causes of action: (1) Breach of Contract to Pay Wages and Other Remuneration, (2) Labor Code §

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA-SAN JOSE

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FAXED

1 970 – Misrepresentation by Institutional Trading Corporation, (3) Wrongful Termination by
2 Institutional Trading Corporation and IT Discovery in Violation of Public Policy, (4) Labor Code
3 § 1050 – Misrepresentation, and (5) Defamation, Conversion and Breach of Privacy.

4 2. The first date upon which Defendant ITC received a copy of the Complaint was
5 February 7, 2011, when Defendant received by mail a copy of the Complaint and Summons from
6 the Superior Court for the County of Santa Clara. A copy of the Complaint, Summons, Civil
7 Lawsuit Notice, and ADR Information Sheet are attached hereto.

8 3. This is a civil action of which this Court has original jurisdiction under 28 U.S.C.
9 §1332(a) and is one that may be removed to this Court by Defendant pursuant to 28 U.S.C.
10 §1441(a) and (b) because it is a civil action between citizens of different states and the matter in
11 controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs.

12 4. Complete diversity of citizenship exists in that Plaintiff was, at the time he filed
13 this action and still is, a citizen of the State of California as alleged in Paragraphs 3 through 5 of
14 the Complaint. Defendant ITC was and is a corporation incorporated under the laws of the
15 District of Columbia with its principle place of business in the District of Columbia. The
16 Complaint also names as Defendant “IT Discovery, Inc.” and alleges that it is a wholly owned
17 subsidiary of Defendant ITC and has the same corporate headquarters as Defendant ITC in the
18 District of Columbia. (Complaint ¶6(b).) The inclusion of Defendant “IT Discovery, Inc.” as a
19 party does not destroy diversity jurisdiction for two reasons. First, the Complaint does not allege
20 that IT Discovery, Inc. is either incorporated or has its principle place of business in California.
21 Rather, the Complaint alleges that it is headquartered in the District of Columbia at the same
22 address as Defendant ITC. Second, there is no such entity as IT Discovery, Inc. “IT Discovery”
23 is an e-discovery software product that is sold by IT.com, Inc. IT.com, Inc. was and is a
24 corporation incorporated in the District of Columbia with its principle place of business in the
25 District of Columbia. Because “IT Discovery, Inc.” does not exist as an entity, its citizenship
26 should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §1332 and 28
27 U.S.C. §1441(b).

28

1 5. Without conceding that Plaintiff is entitled to damages or could recover damages
2 in any amount whatsoever, the amount in controversy in this action exceeds \$75,000. 28 U.S.C.
3 §1332(a). Where a plaintiff's state court complaint is silent as to the amount of damages claimed,
4 the removing defendant need only establish that it is more probable than not that plaintiff's claim
5 exceeds the jurisdictional minimum. Sanchez v. Monumental Life Ins. Co., 95 F.3d 856, 860-861
6 (9th Cir. 1996). The amount in controversy exceeds the sum of \$75,000, exclusive of interest and
7 costs, for the following reasons: (1) the Complaint alleges Plaintiff was employed by Defendant
8 ITC from November 11, 2005 at an annual base salary of \$110,981.00 until he was allegedly
9 wrongfully terminated on December 12, 2006 (Complaint, ¶¶ 3, 8-39, and prayer for relief); (2)
10 Plaintiff claims that he has suffered and will continue to suffer substantial losses in income "for
11 years in the future" which includes severance pay, past and future lost bonuses, salary increases,
12 stock option grants, promotions, relocation costs, " a myriad of fringe benefits," and "lost
13 opportunities essential for advancement of Plaintiff's career;" (3) Plaintiff claims he has also
14 suffered emotional and physical sickness, injuries and distress, anguish, embarrassment,
15 humiliation, and injury to reputation; and (4) Plaintiff claims he is entitled to double damages,
16 treble damages and punitive damages, attorney's fees, and "such other and further relief as may
17 be just and proper." (Complaint, ¶¶ 10, 17, 18, 19, 22, 23, 28, 30, 38, 39 and prayer ¶¶ 1-9.)
18 These sums taken together clearly exceed an amount in controversy above the jurisdictional
19 minimum.

20 6. In determining whether the amount in controversy exceeds \$75,000, the Court
21 must presume the plaintiff will prevail on each and every one of his claims. Kenneth Rothschild
22 Trust v. Morgan Stanley Dean Witter, 199 F.Supp.2nd 993, 1001 (C.D. Cal. 2002), citing Burns
23 v. Windsor Ins. Co., 31 F.3d 1092, 1096 (11th Cir. 1994) (the amount in controversy analysis
24 presumes that "plaintiff prevails on liability") and Angus v. Shiley Inc., 989 F.2d 142, 146 (3d
25 Cir. 1993) ("the amount in controversy is not measured by the low end of an open-ended claim,
26 but rather by reasonable reading of the value of the rights being litigated"). The amount in
27 controversy may include general and special compensatory damages and attorney's fees which
28 are recoverable by statute. Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155-1156 (9th Cir.

1 1998). Punitive damages are also included in calculating the amount in controversy. Davenport
2 v. Mutual Ben. Health & Acc. Ass'n, 325 F.2d 785, 787 (9th Cir. 1963). See also, Aucina v.
3 Amoco Oil Co., 871 F.Supp. 332 (S.D. Iowa 1994). In Aucina, the defendant-employer
4 established the amount in controversy exceeded the jurisdictional minimum where the former
5 employee asserted claims for lost wages, lost benefits, mental anguish, and punitive damages.
6 The court noted: “[b]ecause the purpose of punitive damages is to capture a defendant’s attention
7 and deter others from similar conduct”, the plaintiff’s claim for punitive damages “might alone”
8 exceed the jurisdictional minimum. Id. at 334. It cannot be said to a legal certainty that Plaintiff
9 would not be entitled to recover the jurisdictional amount. Anthony v. Security Pacific Financial
10 Services, Inc., 75 F.3d 311, 315 (7th Cir. 1996); Watson v. Blankinship, 20 F.3d 383, 386-387
11 (10th Cir. 1994). Accordingly, Plaintiff’s allegations satisfy the jurisdictional prerequisite for
12 amount in controversy.

13 7. This Notice of Removal has been filed within the time frame provided by 28
14 U.S.C. §1446(b), because it was filed within 30 days after Defendant ITC’s first notice of the
15 Complaint.

16 8. Venue lies in the United States District Court for the Northern District pursuant to
17 28 U.S.C. §§1441(a) and 1391(a) because the state court action was filed in Santa Clara County, a
18 county within this district, and this is the judicial district in which the action arose. Because the
19 action arose in Santa Clara County, it should be assigned to the San Jose Division of this Court.
20 Civil L.R. 3-2(e).

21 9. For all the foregoing reasons, this Court has original jurisdiction of this matter
22 under 28 U.S.C. §§1332(a) and 1441(b).

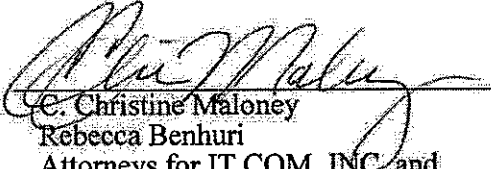
23 WHEREFORE, Defendant prays the above action now pending against it in the Superior
24 Court of the State of California for the County of Santa Clara be removed to this Court.

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Dated: March 7, 2011

JACKSON LEWIS LLP

By: 
C. Christine Maloney
Rebecca Benhuri
Attorneys for IT.COM, INC. and
Defendant INSTITUTIONAL TRADING
CORPORATION

4821-8156-7240, v. 1

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Pro Se Plaintiff

EXHIBIT
FILED

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Deputy Clerk
By R. Nelson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

KWONG HIU YUNG,
Plaintiff,
vs.
Institutional Trading Corporation, a corporation,
IT Discovery Inc., a corporation, DOES 1 to
100,
Defendants.

Case No.: **110CV189319**

**COMPLAINT FOR DAMAGES WITH
DEMAND FOR JURY TRIAL**

Causes of Action:

- 1. Breach of Contract to Pay Wages and Other Remuneration**
- 2. Lab. C. § 970 Misrepresentation by Institutional Trading Corporation**
- 3. Wrongful Termination by Institutional Trading Corporation and IT Discovery in Violation of Public Policy**
- 4. Lab. C. §1050 Misrepresentation**
- 5. Defamation, Conversion, and Breach of Privacy**

Plaintiff Kwong Hiu Yung, an individual, alleges as follows:

1. This is an employment law action arising from the recruitment and employment of Plaintiff Kwong Hiu Yung ("Yung"), to serve as Chief Scientist at Institutional Trading Corporation ("ITC") and IT Discovery Inc ("ITD"), both corporations with headquarters in Washington DC. Plaintiff's causes of action include:

#1: breach of contract to pay wages and other remuneration, including claims for penalties and interest pursuant to California Labor Code §§ 201 and 203;

#2: misrepresentation inducing relocation, in violation of California Labor Code §§ 970 and 972;

#3: wrongful termination in violation of public policy

#4: misrepresentation preventing or attempting to prevent former employee from obtaining employment, in violation of California Labor Code §§ 1050 and 1054;

#5: defamation, conversion, and breach of privacy

2. Regarding Plaintiff's claims for unpaid wages and other remuneration, Plaintiff previously filed with San Jose DLSE claims for wages, expenses, and relocation misrepresentation. Because the DLSE has yet to respond, however, the Plaintiff also includes those claims in this civil complaint. Should the DLSE be able to resolve those claims in a timely manner, the Plaintiff reserves the right to withdraw without prejudice.

3. On November 11, 2005, Plaintiff began working for ITC from his home in San Jose California. The Plaintiff outlined mathematical models and proposed solutions for document retrieval system, in response to a call for proposal. After making considerable progress toward winning a government contract, ITC invited Plaintiff to start and lead a new subsidiary fully owned and operated by ITC. On December 12, 2006, ITC terminated Yung and refused to buy back Yung's founding shares of the subsidiary. Moreover, ITC retroactively reincorporated the subsidiary into ITD, by backdated the incorporation date to December 01, 2006, well before Yung was terminated.

Venue

4. This court is a proper venue because both the Defendants and Plaintiff are actively in California, particularly Stanford University, Silicon Valley, San Jose, San Francisco, and the San Francisco Bay area:

(a) Defendants have on board technical advisers from Stanford University, Borland, and Google. Michael Klausner, Tod Nielsen, and Adam Bosworth all live in the San Francisco Bay area, actively work for Defendants, and are compensated.

(b) Defendants worked with many California companies, including Borland, Inxight, NEC, IBM, Microsoft, and Google. Defendants had been in business discussions with these and other California corporate entities.

(c) Defendants and Plaintiff actively pursued business with California companies.

(d) Defendants and Plaintiff actively recruited prospective advisers and employees.

(e) Defendants and Plaintiff made business trips to the San Francisco Bay area, in addition to communications via telephone, email, and postal mail.

(f) Defendants threatened and blackmailed Plaintiff by contesting Plaintiff's unemployment claim with the California EDD.

(g) Defendant ITC recruited Plaintiff at Stanford University in Palo Alto, California.

(h) At the time of his recruitment, Plaintiff was a resident of San Jose, Santa Clara County, California.

(i) Plaintiff entered into his employment contract while living in the San Francisco Bay area, with the intention that much of Plaintiff's work would be done in California, including monthly business trips to California at Plaintiff's discretion, for the first six months, and including regular work in California to recruit employees, recruit technical advisors, and to meet with colleagues in Google, Yahoo, Microsoft, NEC, and other companies with a significant presence in Silicon Valley. Each such business trip lasted approximately a week, to allow Plaintiff to establish and cultivate business and technology contacts in Silicon Valley.

(j) Even while physically in Washington DC, Yung actively worked in Silicon Valley to recruit technical employees and to foster relationships with technical advisors. Throughout 2006, Plaintiff traveled to the San Francisco Bay area for business. Plaintiff actively engaged business affiliates in California. In fact, as Chief Scientist, Plaintiff was charged with establishing business relationships with Silicon Valley, home to many other high-tech partners.

(k) Plaintiff started work for ITC even while Plaintiff was still living in San Jose California. Between 2005/11/11 and 2005/12/01, Plaintiff was actively working for ITC but was not paid.

(l) Plaintiff's first month of pay December 2005 was issued without DC or VA state deductions. Instead Plaintiff's wage was file against California tax return for 2005. ITC recognized that Plaintiff was still living in the California but could not deduct taxes for California. Defendant ITC failed to make any employer contributions to social security, medicare, unemployment insurance, and disability insurance. Plaintiff also filed for health insurance under a VA address because Plaintiff could not offer insurance for California address.

(m) Plaintiff traveled to the San Francisco Bay area for business throughout the year, including December 2006, the month of unpaid wages.

(n) Plaintiff worked via telephone and email with many business affiliates in the San Francisco Bay area, including Borland, NEC, and Google.

(o) In fact, Plaintiff was hired mainly to establish presence and business relations in Silicon Valley area, the home of many partners and competitors in the information retrieval business.

(p) Plaintiff filed California tax return for year 2006.

Plaintiff's only relocation expense was shipping a car in September 2006. Most of Plaintiff's belongings remained California. Plaintiff continued to live in California.

Parties

5. Plaintiff is a naturalized United States citizen. At the time of his recruitment, Plaintiff was a resident of San Jose, California, where the Plaintiff currently also resides. Defendant ITC interviewed Plaintiff when Defendant ITC was actively recruiting a Chief Scientist to start the new subsidiary ITD. Plaintiff was Defendant ITC's top choice because Plaintiff had close ties to Stanford University and Silicon Valley, where Defendant ITC was seeking to establish contacts for its business and recruiting efforts.

6. Relative to all counts, Plaintiff sues fictitious Defendants Does 1 through 100, inclusive, because their names, and/or capacities, and/or facts showing them liable are not known presently. Plaintiff will amend his Complaint when the true names and capacities have been ascertained. Plaintiff is informed and believes, and on such grounds alleges, that each Doe Defendant is responsible in some actionable manner for the events, occurrences, injuries, and damages alleged herein.

(a) Defendant ITC is a corporation headquartered in 1100 Connecticut Avenue NW 310, Washington DC 20036. On its website (<http://www.it.com/>), ITD advertises technical advisors and business connections in California, especially the San Francisco Bay area. The Defendant ITC recruited and hired the Plaintiff.

(b) Defendant ITD is a corporation headquartered in 1100 Connecticut Avenue NW 310, Washington DC 20036. On its website (<http://www.it-discovery.com/>), ITD advertises technical advisors and business connections in California, especially the San Francisco Bay area. ITD is a wholly owned subsidiary of ITC and was incorporated January 01, 2007 but backdated retroactively to December 01, 2006.

(c) The terms "Defendants" will refer collectively to the aforesaid Defendants acting by and through their managerial employees, and each of them.

(d) Managerial employees of the Defendants, in doing the acts and things described in this complaint, were acting within the course and scope of their respective agencies and/or employment with the Defendants, and each of them, with the knowledge and consent of the Defendants, and each of them, unless otherwise indicated.

(e) Unless otherwise indicated, each Defendant is sued as the agent and employee of every other Defendant acting within the course and scope of said agency, and/or employment, and with the knowledge and consent of every other Defendant. Further, each Defendant agreed and conspired with the other Defendants, to injure Plaintiff Yung and the general public, and each co-conspirator committed the acts alleged herein in furtherance of their conspiracy.

First Cause of Action: Breach of Contract

to Pay Wages and Other Remuneration, against Defendant ITC

7. The allegations of paragraphs 1 through 6, inclusive, are fully incorporated herein by this reference, the same as if completely set forth herein.

8. Plaintiff's written contract of employment with Defendant ITC was executed in Palo Alto, California. A true and correct copy of such contract is attached hereto as Exhibits **20051120_cordover_compensationsummary, 20051126_cordover_engagementletter, 20060202_cordover_healthinsurance, 20060202_cordover_salaryincrease** and is incorporated herein by reference. Plaintiff's annual base salary was \$110981.00, including additional wage to cover health insurance. Plaintiff's employment termination was effected on December 12, 2006, but the Defendant ITC forced the Plaintiff to work through December 19, 2006 with a promise of salary through December 31, 2006. Defendant ITC breached a promise to effect stock options at the promised price; breached a promise to provide to Plaintiff a promised health insurance; and breached a promise to pay earnings consisting of unpaid salary, unpaid accrued sick days and vacation days, \$9608.40 in travel expenses for business trips promised at Plaintiff's discretion, an Apple MacBook Pro laptop computer worth \$3K. The Defendants previously gifted laptop to Plaintiff but later converted to their own use and benefit Plaintiff's said laptop computer, together Plaintiff's personal and proprietary files and materials contained therein.

9. At all times during his employment with Defendants, Yung met the bona fide requirements for the position held, was fully willing and able to perform the duties and obligations of his contract of employment, and complied with all his obligations under the contract of employment.

10. As a direct and proximate result of Defendants violation of its contractual commitments to Plaintiff, including, but not limited to, violation of the implied covenant of good faith and fair dealing and the violation of the contractual commitment to pay promised remuneration, Plaintiff has suffered, continues to suffer, and will continue to suffer for years in the future, substantial losses in income that he would not have suffered had Defendant not engaged in such conduct. These losses include severance pay, past and future lost bonuses, salary increases, stock option grants, promotions, severance pay, relocation costs, a myriad of fringe benefits, and lost opportunities essential for advancement of Plaintiff's career.

**Second Cause of Action: Misrepresentation in
Violation of California Labor Code §970,
Against Defendants ITC and ITD**

11. The allegations of paragraphs 1 through 6, inclusive, are fully incorporated herein by this reference, the same as if completely set forth herein.

12. California Labor Code §970 provides, in pertinent part, as follows:

No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:

- (a) The kind, character, or existence of such work;
- (b) The length of time such work will last, or the compensation therefor;

13. California Labor Code §972 provides, in pertinent part, as follows:

. . . [A]ny person, or agent or officer thereof who violates any provision of Section 970 is liable to the party aggrieved, in a civil action, for double damages resulting from such misrepresentations. Such civil action may be brought by an aggrieved person or his assigns or successors in interest, without first establishing any criminal liability.

14. Plaintiff was induced by ITC, his former employer to relocate Plaintiff's residence from San Jose, California, to Washington DC, based upon knowingly false promises regarding compensation to be paid and working conditions. Specifically, Defendants falsely represented that:

(a) ITC recruited Plaintiff with stock options worth \$3000. But when the stock options were delivered in the second quarter of work, they were worth only \$1500, half as promised.

(b) ITC terminated Plaintiff right ahead of anniversary date for vesting and refused to buy back stock option as promised. Moreover, ITC reincorporated retroactively reincorporated subsidiary into ITD, to deny Plaintiff's founder claim to subsidiary.

(c) ITC promised reimbursement for Plaintiff's trip expenses to California, at Plaintiff's discretion. To avoid paying for the trips, ITC terminated Yung December 12, 2006, before Plaintiff could submit his trip expenses.

(d) ITC promised health insurance. However, no health insurance was delivered for the first month December 2005 or last month December 2006.

15. The above-described conduct of Defendants ITC and ITD toward Plaintiff Yung constituted knowing and willful misrepresentation of compensation and working conditions, in violation of California Labor Code §970.

16. Plaintiff relied to his detriment upon the aforesaid knowingly false representations made by Defendants ITC and ITD.

17. As a direct and proximate result of this conduct in violation of Labor Code §970 by such Defendants, and each of them, Plaintiff has suffered, continues to suffer, and will continue to suffer for years in the future, substantial losses in income that he would not have suffered had Defendants not engaged in such conduct. These losses have included, but are not limited to, past and future lost bonuses, salary increases, stock option grants, promotions, severance pay, real estate sale costs, relocation costs, a myriad of fringe benefits, and lost opportunities essential for advancement of Plaintiff's career. In addition, Plaintiff incurred, and continues to incur, emotional and physical sickness, injuries and distress, anguish, embarrassment, humiliation, and mortification, and injury to reputation, in an amount not yet ascertained but within the minimum jurisdiction of this Court.

18. Pursuant to Labor Code §970, as a direct and proximate result of such Defendants' conduct in violation of Labor Code §972, Plaintiff is entitled to recover double damages from Defendants ITC and ITD.

19. Such Defendants' conduct in violation of Labor Code §970 was calculated to damage Plaintiff's career, was so patently outrageous as to offend ordinary human sensibilities, and was carried out by such Defendants knowingly, willfully, maliciously, recklessly, and oppressively, with intent to vex, injure, annoy, humiliate, and embarrass Plaintiff, and with conscious disregard for all Plaintiff's rights. By reason of such acts, Plaintiff Yung is entitled to recover from such Defendants punitive damages, in an amount according to proof, to the extent such punitive damages exceed double damages.

**Third Cause of Action: Wrongful Termination
in Violation of Public Policy, against Defendant ITC**

20. The allegations of paragraphs 1 through 6, inclusive, are fully incorporated herein by this reference, the same as if completely set forth herein.

21. The above-described conduct of Defendant constituted wrongful termination of Plaintiff's employment at ITC and ITD, in violation of several public policies: the public policy enunciated by California Labor Code §970, prohibiting misrepresentation inducing relocation to or within California to take a new job; the public policy enunciated by California Labor Code §1050, making it a misdemeanor for an employer to make a misrepresentation that prevents or attempts to prevent a former employee from obtaining new employment.

22. As a direct and proximate result of the wrongful termination in violation of public policy by such Defendant, Plaintiff Yung has suffered, continues to suffer, and will continue to suffer for years in the future, substantial losses in income that he would not have suffered had Defendant not engaged in such conduct. These losses have included, but are not limited to, past and future lost bonuses, salary increases, stock option grants, promotions, severance pay, real estate sale costs, relocation costs, a myriad of fringe benefits, and lost opportunities essential for advancement of Plaintiff's career. In addition, Plaintiff incurred, and continues to incur, emotional and physical sickness, injuries and distress, anguish, embarrassment, humiliation, and mortification, and injury to reputation, in an amount not yet ascertained but within the minimum jurisdiction of this Court.

23. Defendant's wrongful termination of Plaintiff Yung was calculated to damage Plaintiff's career, was so patently outrageous as to offend ordinary human sensibilities, and was carried out by such Defendant knowingly, willfully, maliciously, recklessly, and oppressively, with intent to vex, injure, annoy, humiliate, and embarrass Plaintiff, and with conscious disregard for all Plaintiff's rights. Such was done with malice and ill will.

**Fourth Cause of Action: Interference and Blacklisting
in Violation of California Labor Code §1050,
against Defendants ITC and ITD**

24. The allegations of paragraphs 1 through 6, inclusive, are fully incorporated herein by this reference, the same as if completely set forth herein.

25. California Labor Code §1050 provides: "Any person, or agent or officer thereof, who, after having discharged an employee from the service of such person or after an employee has voluntarily left such service, by any misrepresentation prevents or attempts to prevent the former employee from obtaining employment, is guilty of a misdemeanor."

26. California Labor Code §1054 provides: "In addition to and apart from the criminal penalty provided any person or agent or officer thereof, who violates any provision of sections 1050 to 1052, inclusive, is liable to the party aggrieved, in a civil action, for treble damages. . . ."

27. The above-described conduct of Defendants constituted a violation of Labor Code §§1050, 1054.

28. As a direct and proximate result of such conduct in violation of Labor Code §1050 by such Defendants, Plaintiff Yung has suffered, continues to suffer, and will continue to suffer for years in the future, substantial losses in income that he would not have suffered had Defendant not engaged in such conduct. These losses have included, but are not limited to, past and future lost bonuses, salary increases, stock option grants, promotions, severance pay, real estate sale costs, relocation costs, real estate sale costs, relocation costs, a myriad of fringe benefits, and lost opportunities essential for advancement of Plaintiff's. In addition, Plaintiff incurred, and continues to incur, emotional and physical sickness, injuries and distress, anguish, embarrassment, humiliation, and mortification, and injury to reputation, in an amount not yet ascertained but within the minimum jurisdiction of this Court.

29. Pursuant to Labor Code §1054, as a direct and proximate result of Defendant's conduct in violation of Labor Code §1050, Plaintiff Yung is entitled to recover treble damages.

30. Defendant's conduct in violation of Labor Code §1050 by was calculated to Plaintiff's career, was so patently outrageous as to offend ordinary human sensibilities, and carried out by such Defendant knowingly, willfully, maliciously, recklessly, and oppressively with intent to vex, injure, annoy, humiliate, and embarrass Plaintiff, and with conscious disregard for all Plaintiff's rights. Such was done with malice and ill will. By reason of such acts by Defendants, Plaintiff is entitled to recover from Defendants punitive damages, in an amount according to proof, to the extent such punitive damages exceed treble damages.

**Fifth Cause of Action: Defamation,
against Defendants ITC and ITD**

31. The allegations of paragraphs 1 through 6, inclusive, are fully incorporated herein by this reference, the same as if completely set forth herein.

32. Plaintiff Yung's supervisor, the CEO of ITC and ITD, refused to reimburse expense for business trips promised at Yung's discretion, and terminated Yung after Yung tried to enforce the written contract. The CEO at first terminated Yung in a fit of rage December 12, 2006, but then forced Yung to work for another week to ensure transfer of key technology. Instead of paying Yung through December 31, 2006 as promised, the CEO reneged and tried to force Yung to sign severance (Exhibit 20061219_cordova_severance), which backdated Yung's termination to December 8, designated termination with cause, and forced Yung to forfeit stock options, and forced Yung to work without pay. As consideration for signing the severance agreement, the CEO further withheld Yung's computer along with personal, private, and proprietary files and also threatened that Yung's Internet usage pattern was secretly recorded.

33. At the time, Defendants were fully aware that Plaintiff would be legally required to re-publish to prospective employers, clients, regulatory agencies, and others the subject false statements of fact they were making about Plaintiff, including false statements of fact reflecting negatively upon his reputation, his professional performance, and his competence in his trade and profession.

34. Plaintiff has to inform prospective employers of his involuntary termination at ITC and ITD after a short tenure, with the accompanying untrue innuendo that he engaged in undefined "misconduct" that warranted involuntary termination. This untrue message reflects negatively upon Plaintiff's reputation, his professional performance, and his competence in his occupation.

35. Via all the above communications, Defendants caused, and subjected Plaintiff to, the publications by Defendants, and by Plaintiff himself, of false and unprivileged statements of fact, directly and by innuendo, impugning Plaintiff's reputation, professional performance, and competence in his trade and profession. Defendants' aforesaid statements injured, and continue injure, and tend to injure, Plaintiff's reputation. As a direct and proximate result of Defendants' defamation of Plaintiff, prospective employers will not hire Plaintiff.

36. Defendant made its above-referenced communications, including the underlying denigrating message by innuendo, without a good faith belief in the truth of such statements and without reasonable grounds for believing that such were true. Additionally, Defendants via their "misconduct" communication, untruly depicted Plaintiff in a negative light, objectionable to a reasonable person. Such depiction had, and has, a very strong tendency to injure Plaintiff's reputation among prospective employers, especially human resources managers who screen prospective applicants for employment. Defendants' above-referenced communication constituted defamation, in violation of California Civil Code §§ 44-45.

37. Plaintiff was, and shall always be, required to re-publish Defendants' defamation, whenever a prospective employer asks him whether he has been terminated from a job, and why.

38. As a direct and proximate result of Defendants' defamation of Plaintiff, Plaintiff has suffered, and continues to suffer, substantial special damages. These losses have included, but are not limited to, past and future lost bonuses, salary increases, stock option grants, promotions, severance pay, real estate sale costs, relocation costs, a myriad of fringe benefits, and lost opportunities for advancement of Plaintiff's career. In addition, Plaintiff incurred, and continues to incur, emotional and physical sickness, injuries and distress, anguish, embarrassment, humiliation, and mortification in an amount not yet ascertained but within the minimum jurisdiction of this Court.

39. Defendant's defamation of Plaintiff Yung was calculated to damage Plaintiff's career, was so patently outrageous as to offend ordinary human sensibilities, and was carried out by such Defendant knowingly, willfully, maliciously, recklessly, and oppressively, with intent to vex, injure, annoy, humiliate, and embarrass Plaintiff, and with conscious disregard for all Plaintiff's rights. Such was done with malice and ill will. By reason of such acts by Defendants, Plaintiff is entitled to recover from Defendants punitive damages, in an amount according to proof.


Prayer for Relief

Plaintiff requests the following relief:

1. Compensatory damages consistent with proof;
2. The greater of punitive damages or double damages on the Labor C. §970 cause of action;
3. The greater of punitive damages or treble damages on the Labor C. §1050 cause of action;
4. Punitive damages on all other tort causes of action;
5. Court costs;
6. Prejudgment interest;
7. Attorneys' fees according to any provision of law;

-
8. Trial by jury;
 9. Such other and further relief as may be just and proper.

Dated: December 08, 2010

By: 
KWONG HIU YUNG
Pro Se Plaintiff



Kwong Yung <khyung@gmail.com>

compensation summary

Mark A. Cordover <mark@it.com>
Para: Kwong Yung <khyung@gmail.com>

20 de noviembre de 2005 8:21

I agree, Kwong. /mark

—Original Message—

From: Kwong Yung [mailto:khyung@gmail.com]
Sent: Sunday, November 20, 2005 1:52 AM
To: Mark A. Cordover
Subject: compensation summary

Hello Mark,

Below is the summary of our conversation Saturday 11/19 morning.
Contingent on the final offer letter, I plan to start work 12/01.

- 1) I shall receive 3% of IT.com over the course of 3 years.
- 2) I shall receive \$110K in salary each year.
- 3) I shall travel to San Francisco Bay Area at least three times by April 2006.

Kwong Yung

Agreement Letter

Mark A. Cordover <mark@it.com>
Para: Kwong Yung <kyung@gmail.com>
Kwong,

By this email I wish to confirm the following understanding between us:
I will begin work on or about December 1, 2005. Your responsibility is to improve and deepen the search technology and other technologies, and to have substantial participation in the overall business challenges of developing

immediately a 3% interest in a newly formed company called IT.com. I will retain immediately all intellectual property developed over the course of the last two years within an older District of Columbia corporation called Institute. The ownership of the domain name www.it.com shall remain with me. The ownership of the domain name IT.com shall be established as \$100,000.00. I will grant you a pro-rata share of that stock grant (\$3,000.00). The grant of stock which allows IT.com to repurchase all of the stock in one year, two-thirds of the stock should you leave between the first and second year, two-thirds of the stock should you leave between the second and third years. Thereafter IT.com shall have a group policy.

I have granted the standard health insurance benefits (Blue Cross of California to DC as discussed by us and shall pay the cost of the insurance at least three times (at your discretion) any time during the term of the agreement.



Kwong Yung <khyung@gmail.com>

w2 form; health insurance

Mark A. Cordover <mark@it.com>
Para: Kwong Yung <khyung@gmail.com>

2 de febrero de 2006 7:01

I will ask Paige. I think it may have something to do with treating everyone equally which is mandated by law. If that is the case, I will adjust the difference in salary. Let me ask her.

—Original Message—

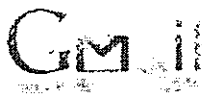
From: Kwong Yung [mailto:khyung@gmail.com]
Sent: Thursday, February 02, 2006 8:51 AM
To: Mark A. Cordover
Subject: w2 form; health insurance

Hello Mark

I need my W2 form for 2005.

Why am I being charged for 125 Health Insurance? You told me that insurance was included.

Kwong Yung



Kwong Yung <khyung@gmail.com>

w2 form; health insurance

Mark A. Cordover <mark@it.com>
Para: Kwong Yung <khyung@gmail.com>

2 de febrero de 2006 8:09

Here is the explanation

-----Original Message-----

From: pbicpa@comcast.net [mailto:pbicpa@comcast.net]
Sent: Thursday, February 02, 2006 9:43 AM
To: Mark A. Cordover
Cc: pbicpa@comcast.net
Subject: Re: FW: w2 form; health insurance

W-2s were mailed to employees 1/30/06. I will increase Kwong's salary to cover the health insurance-yes everyone needs to be treated the same way.

----- Original message -----

From: "Mark A. Cordover" <mark@it.com>

> What is the answer to this? The need to treat every one equally? If so then
> se should add this to his salary because I did promise him coverage without
> charge. When we will you send W-2's?

>
>
>
>

> -----Original Message-----

> From: Kwong Yung [mailto:khyung@gmail.com]
> Sent: Thursday, February 02, 2006 8:51 AM
> To: Mark A. Cordover
> Subject: w2 form; health insurance

>
>

> Hello Mark

>
>

> I need my W2 form for 2005.

>
>

> Why am I being charged for 125 Health Insurance? You told me that
> insurance was included.

>
>

> Kwong Yung

>
>

Gmail - w2 form; health insurance

<http://mail.google.com/mail/?ui=2&ik=0c609b64ac&view=pt&q=mar...>

|>

December 19, 2006

This agreement, dated December 19, 2006 by and between Kwong Yung, formerly employed by IT.com at 1100 Connecticut Ave. NW, Washington D.C., and Mark A. Cordover, CEO of IT.com, is entered into to memorialize the terms of an employment separation, effective December 8, 2006. Accordingly:

1. Kwong Yung shall turn over all keys to Suite 310, including the castle card key, the alarm key, and the key the garage door entrance.
2. Kwong Yung shall complete an outline, in as much detail as possible, of a description of the code he has written in Matlab for our eDiscovery product, so as to make as seamless as possible a handoff to someone else to further develop the code and the product. If at any point within the next 12 months, there shall be requested by IT.com some assistance in understanding the code or more generally the work product that Kwong Yung has produced for IT.com during his term of employment here, Kwong Yung shall completely and unreservedly cooperate to effect a smooth handoff of this work product.
3. IT.com shall pay Kwong Yung his normal salary pro-rated for the month of December up through Friday December 8, 2006 – the date of termination for cause. In addition, IT.com will purchase the original 30 shares granted to Kwong Yung under a Restricted Stock Agreement dated December 1, 2005 for the sum of \$1,500.00. No further claims of any kind shall be claimed or prosecuted by Kwong Yung or by IT.com in the future, and this payment shall constitute the full and final payment from IT.com for Kwong Yung's services including those that have yet to be performed as outlined above.

Agreement entered into this the _____ day of December, 2006

By:

Kwong H. Yung

Mark A. Cordover

20061219_cordover_severence

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
IT Discovery Inc

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
Kwong Hiu Yung

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED**

FEB -2 2011

By _____ **A. FLORESCA**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO!)** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **Superior Court of Santa Clara**
191 N First St
San Jose CA 95113

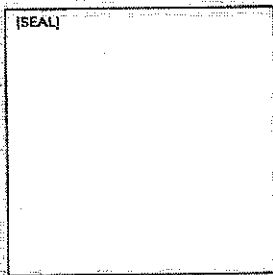
CASE NUMBER:
(Número del Caso): **110CV189319**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kwong Hiu Yung, 1376 Keenan Way, San Jose CA 95125-5990, 415-680-3925

DATE: **FEB 2 2011**
(Fecha)

Clerk, by **DAVID H. YAMASAKI**
(Secretario/Jefe Ejecutivo Officer Clerk) **A. FLORESCA** Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under:

<input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Institutional Trading Corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Kwong Hiu Yung

FOR COURT USE ONLY
SOLO PARA USO DE LA CORTE

FILED

FEB -2 2011

County of Santa Clara

By: _____
Attorney

R. FLORESCA

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(El nombre y dirección de la corte es): Superior Court of Santa Clara
191 N First St
San Jose CA 95113

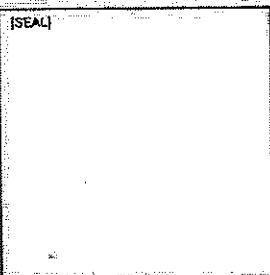
CASE NUMBER
(Número del Caso): 110CV189319

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kwong Hiu Yung, 1376 Keenan Way, San Jose CA 95125-5990, 415-680-3925

DATE:
(Fecha) FEB 2 2011

Clerk, by **DAVID H. YAMASAKI** Deputy
(Secretario) **R. FLORESCA** **(Adjunto)**

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under:	<input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER:

1:0CV189319

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons and Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable Mark Pierce Department: 9

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: MAY - 3 2011 Time: 1:30 pm in Department: 9

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < **Mediation** is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < **Neutral evaluation**, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-