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9 **THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF NEVADA**

11 PSS WORLD MEDICAL, INC. d/b/a
PHYSICIAN SALES & SERVICE, INC., a
Florida Corporation,
12
Plaintiff,
13
v.
14
15 JOHN ILVENTO, an individual, HENRY
SCHEIN, INC., a Delaware Corporation,
16
Defendants.

CASE NO.: 3:11-cv-11-365
VERIFIED COMPLAINT

17
18 Plaintiff PSS World Medical, Inc., d/b/a Physician Sales & Service, Inc. ("PSS" or
19 "Plaintiff"), for its Complaint against Defendants John Ilvento ("Ilvento") and Henry Schein, Inc.
20 ("HSI") (collectively, "Defendants") hereby alleges as follows:

21 **PARTIES, JURISDICTION, AND VENUE**

- 22 1. PSS is a Florida corporation licensed in good standing to do business in Nevada and
23 is doing business in Nevada. PSS is a leading national distributor of medical products and services
24 to physician practices.
25 2. Ilvento is an individual and resident of California. Ilvento, a long-term employee of
26 PSS, was employed by PSS as a sales representative from 1998 until May 2, 2011. Ilvento's sales
27 on behalf of PSS were primarily in Nevada.
28 3. HSI is a Delaware corporation licensed in good standing to do business in Nevada

1 and is doing business in Nevada. HSI is a competitor of PSS, and is one of the largest distributors
2 of medical supplies.

3 4. This Court has diversity jurisdiction over the subject matter and the parties pursuant
4 to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000.00, exclusive of interest and
5 costs.

6 5. Venue for this action exists in Nevada, where the acts giving rise to this action
7 occurred. Defendants engage in substantial business in the State of Nevada, and are subject to
8 personal jurisdiction in Nevada with respect to the claims in this action.

9 **PSS'S CONFIDENTIAL INFORMATION**

10 6. PSS employs sales representative who are assigned to areas and/or customers and are
11 the primary contacts from PSS for customers that are assigned to them. PSS's sales representatives'
12 job duties included servicing, maintaining, and expanding PSS's current customer accounts for the
13 benefit of PSS, as well as growing PSS's customer base by soliciting and gaining new customer
14 accounts. One of the most important aspects of their job duties is to develop customer
15 relationships, including knowledge of a customer's particular needs and preferences, which
16 constitutes information that is not publicly available.

17 7. As part of its business operations, PSS develops and maintains confidential and
18 proprietary information including without limitation, customer files with information including
19 customer contact information, customer ordering needs and preferences, customer research,
20 technical and pricing information and methods, cost of materials information, strategic and
21 marketing plans, financial management information, information regarding the identity,
22 productivity, and rankings of its sales representatives, operating policies and other business
23 procedures for the medical supply market (hereinafter referred to as the "Confidential
24 Information").

25 8. PSS's salespeople become inexorably and intimately knowledgeable of PSS's
26 Confidential Information. The aforementioned information is valuable, confidential, and
27 proprietary to PSS, and is not generally known in the public domain. The information has
28 significant economic value to PSS, and would be of significant economic value to competitors in

1 the industry.

2 9. PSS expends considerable resources to develop training programs and methods as
3 well as information, methods, and techniques to: (a) identify potential customers; (b) identify the
4 key individuals responsible for purchasing on behalf of potential customers; (c) maintain, develop
5 and nurture business relationships with its customers and potential customers; (d) learn customers'
6 business needs and product preferences; (e) set appropriate pricing to attract and maintain
7 customers; and (f) identify products that will improve customers' clinical outcomes and financial
8 performance.

9 10. To protect its legitimate business interests with respect to the aforementioned
10 information and the investment it makes in its employees, PSS takes, and at all times relevant
11 hereto has taken, reasonable and appropriate measures to maintain the secrecy of its Confidential
12 Information.

13 11. PSS's Confidential Information is disclosed to employees only on a need-to-know
14 basis and all PSS employees are prohibited from disclosing Confidential Information without
15 authorization from PSS.

16 12. PSS owns and operates computer systems and computer networks that have been
17 used and will continue to be used to conduct PSS's business operations. PSS issues passwords to
18 its employees who have access to its computer networks in order to limit access to its Confidential
19 Information maintained on those computers. PSS employees are assigned a unique computer user
20 name and password and their ability to ascertain certain Confidential Information is restricted as
21 warranted by their job duties and responsibilities. Internal access rights to PSS's systems are
22 reviewed either quarterly or annually, and an employee's right to access PSS's computer systems is
23 terminated at the end of that employee's employment with PSS.

24 13. PSS also requires its employees to sign agreements in which the employee
25 acknowledges that he or she will be granted access to PSS's Confidential Information and agrees
26 not to disclose that information without PSS's authorization or to use that information for any non-
27 PSS related purpose. PSS also provides each of its employees an employee handbook which
28 contains a Business Confidentiality policy. PSS also has a detailed Information Security Policy

1 regarding the use of its intranet and computer systems.

2 14. The substantial investment of time and money by PSS in gathering this Confidential
3 Information and maintaining its secrecy has resulted in PSS being able to serve its customer needs
4 and achieve its business objectives.

5 **ILVENTO'S EMPLOYMENT WITH PSS**

6 15. On or about April 6, 1998, Ilvento entered into a written Employment Agreement
7 with PSS (the "Agreement").

8 16. Attached hereto as **Exhibit "1"** is a true and correct copy of the Agreement.

9 17. The Agreement provides that the employment relationship created by the
10 Agreement, as well as the Agreement itself, shall be governed by Florida law.

11 18. Pursuant to paragraph 16 of the Agreement, Ilvento agreed that during his
12 employment with PSS, and for eighteen (18) months thereafter, he would refrain from, among other
13 things:

14 a. Hiring, recruiting, or attempting to recruit for any person or business
15 entity which competes or plans to compete with PSS, any person employed by
16 PSS at any time during the period of the 18 month covenant or during the 12-
17 month period immediately preceding the termination of Employee's employment
18 with PSS;

19 b. Within the geographic area described below, soliciting from any of PSS'
20 customers or prospective customers (as defined below), any business of the type
21 provided or planned by PSS at the time of Employee's termination of
22 employment with PSS; and

23 c. Within the geographic area described below, entering into, engaging in,
24 being employed by, being connected to or consulting for any person or business
25 entity which competes with is or is similar to PSS' Business or business planned
26 by PSS at the time of the Employee's termination of employment from PSS.

27 19. The geographic area is defined as "any territory to which Employee has been
28 assigned by PSS and actually serviced for PSS, and any area over which Employee has had sales or

1 managerial responsibility for territories or areas to which the Employee was assigned, serviced
2 and/or had responsibility over during the twenty-four (24) month period directly preceding his/her
3 termination of employment from PSS.”

4 20. Under paragraph 12 of the Agreement, Ilvento agreed to refrain from “directly or
5 indirectly disclosing to any third party, or using for any purpose other than for the direct benefit of
6 PSS, any of PSS’s Confidential Information during his/her employ and for 10 years thereafter,
7 whatever the reason for his/her leaving PSS’ employ.”

8 21. Ilvento’s employment with PSS necessitated his access to and use of PSS’s
9 Confidential Information. Ilvento could not have performed his job without access to this
10 Confidential Information.

11 22. Because Ilvento had executed the Agreement and agreed to the restrictive provisions
12 contained in the Agreement, PSS did, in fact, provide extensive Confidential Information to Ilvento.

13 23. In addition to gaining access to and using PSS’s Confidential Information, Ilvento
14 was responsible for servicing, maintaining, and expanding PSS’s current customer accounts, as well
15 as growing PSS’s customer base by soliciting and gaining new customer accounts.

16 24. While he was employed by PSS, Ilvento serviced many of PSS’s Nevada customers,
17 who ordered (in total) approximately \$1 million annually from PSS during the final year of
18 Ilvento’s employment.

19 **ILVENTO’S BREACHES OF HIS AGREEMENT AND DEFENDANTS’ SCHEME**
20 **TO UNLAWFULLY COMPETE WITH PSS**

21 25. On information and belief, former PSS employee Bryant Jackson (“Jackson”), who
22 was terminated from employment with PSS on or about April 16, 2010 for having discussions with
23 PSS sales representatives regarding going to work for HSI, and is now employed by HSI, solicited
24 Ilvento to quit his job with PSS to go work for HSI.

25 26. On May 2, 2011 at 9:59 p.m., Ilvento quit his job with PSS to go to work for HSI, in
26 violation of the non-competition covenant in his Agreement.

27 27. On information and belief, Defendants began to form a scheme to wrongfully obtain
28 business from PSS’s customers in Nevada beginning in or around April 2011 while Ilvento still was

1 employed by PSS.

2 28. On April 24, 2011, Ilvento installed a thumb drive on his PSS-issued laptop. Ilvento
3 also installed Ccleaner on the laptop, which is a software program designed to hide computer
4 activity. Ilvento also installed "oil change" software on his PSS laptop, which deletes and clears all
5 activity logs. Ilvento ran the oil change software on April 29, 2011. Additionally, on May 2, 2011,
6 Ilvento mounted a CDROM drive and a removable media signature was created. Further, print
7 spool artifacts were created on May 2, 2011 and linked to the company database with references to
8 quotes and pricing, suggesting that quotes and pricing information were printed to Ilvento's local
9 printer.

10 29. Commencing within a few days after he resigned from PSS, Ilvento began working
11 for HSI and, on behalf of HSI, solicited business from the PSS customers that PSS had assigned to
12 him in Nevada, in blatant violation of the non-solicitation and non-competition covenants of his
13 Agreement.

14 30. Within approximately one week after he resigned from PSS, Ilvento personally
15 visited and solicited on behalf of HSI at least eight of PSS's top Nevada customers which had been
16 assigned to Ilvento during his employment at PSS.

17 31. Upon information and belief, since becoming employed with HSI, Ilvento has
18 solicited many of PSS's other Nevada clients which had been assigned to Ilvento during his
19 employment at PSS.

20 32. The eight top customers referred to above that Ilvento solicited for HSI included
21 long-term customers which PSS introduced to Ilvento. These eight customers generated
22 approximately one-half of the total sales from customers assigned to Ilvento over the final six
23 months of his employment with PSS, thus showing that Ilvento was targeting PSS's most lucrative
24 Nevada customers for solicitation on behalf of HSI.

25 33. With regard to these top customers accounts, Jackson accompanied Ilvento on at
26 least two of these personal visits to PSS's customers' offices in Nevada on behalf of HSI.

27 34. At least two of PSS's largest Nevada clients which had been assigned to Ilvento have
28 already begun placing orders with HSI, and have had orders delivered from HSI, as a result of these

1 solicitations.

2 35. One PSS customer in Nevada reported to PSS that Ilvento indicated prices would be
3 lower with his new company, HSI.

4 36. When PSS has contacted those top Nevada clients which were assigned to Ilvento
5 during his employment, many of the clients have utilized the same phrases in responding to PSS's
6 questions, which implies that they have been coached regarding what to say if questioned about
7 Ilvento by PSS.

8 37. HSI has a pattern and practice of pirating PSS's sales representatives and the
9 customers with whom those sales representatives work, rather than training its own employees and
10 developing its own client base.

11 38. On information and belief, Ilvento has directly or indirectly provided HSI with
12 information regarding the identity, productivity, and/or rankings of some if not all of PSS's sales
13 representatives in its Western Region.

14 39. The amounts of business generated by and rankings of PSS's sales representatives
15 are confidential and not publicly available.

16 40. On May 1, 2011, Jackson contacted PSS sales representative Rob Roy ("Roy") and
17 stated that Jackson's manager at HSI, Mike McCarthy ("McCarthy"), would be contacting Roy
18 shortly. McCarthy contacted Roy on May 6, 2011, and solicited Roy for employment with HSI.

19 41. During the May 6, 2011 call between McCarthy and Roy, McCarthy stated that
20 Ilvento had revealed to HSI that over the past year, Roy had brought in more business than did
21 Ilvento.

22 42. Additionally, just days after Ilvento resigned, Jackson and/or other HSI
23 representatives began contacting multiple other PSS sales representatives regarding possible
24 employment with HSI, including but not limited to, Mike Gaumont, Tim Martin, and Deborah
25 Brack. In fact, when Jackson called Brack, he said that Ilvento was in the car with him during the
26 call.

27 43. The foregoing PSS sales representatives are some of PSS's productive veteran sales
28 representatives in the Western Region.

1 has incurred and will continue to incur attorneys' fees in connection with this matter.

2 **FOURTH CAUSE OF ACTION**

3 **MISAPPROPRIATION OF TRADE SECRETS (AGAINST ALL DEFENDANTS)**

4 73. All preceding paragraphs are incorporated by reference and made a part hereof.

5 74. PSS's Confidential Business Information as described above constitutes "trade
6 secrets" within the meaning of the Florida Uniform Trade Secrets Act, Fla. Stat. § 688.001 *et. seq.*,
7 and within the meaning of the Nevada Uniform Trade Secrets Act, NRS § 600A.010 *et seq.*

8 75. During Ilvento's long-term employment with PSS, PSS provided Ilvento with
9 valuable trade secret information for purposes of soliciting clients, maintaining client relationships,
10 and performing other job duties for PSS, which information was not known by PSS's competitors,
11 including HSI.

12 76. Prior to the wrongful acts averred in this complaint, none of PSS's competitors
13 possessed the valuable trade secret information that has been misappropriated by Defendants.

14 77. Such trade secret information includes, but is not limited to, PSS's customer
15 contacts, knowledge regarding PSS's key customers, PSS's specialized training, costs, pricing and
16 marketing strategies.

17 78. PSS's trade secret information derives independent economic value, actual and
18 potential, from not being generally known to the public or persons who can obtain economic value
19 from its disclosure and use.

20 79. PSS has legitimate business interests in protecting the confidentiality of this trade
21 secret information.

22 80. Such trade secrets are the subject of reasonable efforts by PSS to maintain its
23 secrecy, including not limited to: (a) disclosing the afore-mentioned trade secrets only to those
24 employees with a need to know in order to perform their job duties; (b) emphasizing to each
25 employee the company's need to keep such information confidential; (c) requiring its employees,
26 such as Ilvento, to sign agreements that prohibit the disclosure or use of such trade secret
27 information without the authorization of PSS or for non-PSS related purposes, and (d) maintaining
28 and enforcing a Business Confidentiality policy.

1 arising therefrom, and was aware of the same prior to receiving notice of this proceeding.

2 91. On information and belief, HSI, with full knowledge of Ilvento's contractual
3 obligations to PSS, intentionally acted to interfere with his obligations to PSS under the Agreement
4 and/or to induce him to breach the Agreement.

5 92. As a result of HSI's actions, HSI interfered with PSS's contractual relationship with
6 Ilvento, as demonstrated by Ilvento's use and disclosure of PSS's Confidential Information,
7 solicitation of PSS's clients for HSI's benefit, and solicitation of PSS's sales representatives for
8 HSI's benefit.

9 93. PSS has been harmed as a direct and proximate result of HSI's actions, has suffered
10 damages, and is entitled to be fully compensated therefore.

11 94. HSI acted with an improper motive amounting to malice and conscious disregard of
12 PSS's rights. Accordingly, PSS is entitled to recover punitive and exemplary damages from HSI.

13 95. As a result of HSI's conduct, PSS has been required to obtain legal counsel, and has
14 incurred and will continue to incur attorneys' fees in connection with this matter.

15 **SIXTH CAUSE OF ACTION**

16 **BREACH OF FIDUCIARY DUTY (AGAINST ILVENTO)**

17 96. All preceding paragraphs are incorporated by reference and made a part hereof.

18 97. Ilvento has and had a fiduciary relationship with PSS.

19 98. These fiduciary relationships demand and demanded that Ilvento owes and owed the
20 highest duties of loyalty, honesty, and full disclosure to PSS.

21 99. The foregoing alleged actions of Ilvento constitute a willful breach of his fiduciary
22 duties owed to PSS.

23 100. PSS has been harmed as a direct and proximate result of Ilvento's actions, has
24 suffered damages, and is entitled to be fully compensated therefore.

25 101. Ilvento committed the acts averred above maliciously, fraudulently and oppressively
26 with the wrongful intention of injuring PSS from an improper and evil motive amounting to malice
27 and in conscious disregard of PSS's rights. PSS is thus entitled to recover punitive damages from
28 Ilvento in amount according to proof at trial.

1 and has incurred and will continue to incur attorneys' fees in connection with this matter.

2 **NINTH CAUSE OF ACTION**

3 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

4 **(AGAINST ALL DEFENDANTS)**

5 112. All preceding paragraphs are incorporated by reference and made a part hereof.

6 113. PSS has invested substantial capital and effort to develop and maintain its current
7 and prospective customer and supplier relationships. These relationships represent the probability
8 of future economic success to PSS and PSS relies on these relationships to meet its financial goals.

9 114. PSS and HSI both provide similar services in the field of distribution of medical
10 supplies and equipment. As such, they are in direct competition for prospective contractual and
11 business relationships for the sale of their products and services.

12 115. On information and belief, HSI intentionally induced Ilvento to terminate his
13 employment with PSS, to engage in employment at HSI instead, and to use and disclose PSS's
14 Confidential Information to HSI's advantage.

15 116. By inducing Ilvento to leave PSS's employ and begin working for HSI, HSI has
16 intentionally interfered with the prospective business advantage that PSS expected to derive from
17 Ilvento's continued employment.

18 117. On information and belief, Defendants have intentionally interfered with the
19 prospective business advantage that PSS expected to derive from its business relationships with its
20 Nevada customers who were assigned to Ilvento during his employment with PSS, by unfairly
21 competing against PSS, soliciting PSS's customers utilizing Ilvento's knowledge of PSS's
22 Confidential Information, and unfairly obtaining business from PSS's customers.

23 118. By utilizing Ilvento's knowledge of PSS's Confidential Information and unfairly
24 obtaining business from PSS's customers, Defendants have intentionally interfered with the
25 prospective business advantage that PSS expected to derive from its clients' continued business.

26 119. These disruptive acts, which were neither privileged nor justified, have resulted in
27 substantial damage to PSS, including but not limited to, loss of annual revenue and the profits
28 therefrom, such actual amount to be determined according to proof at trial.

1 120. PSS has been harmed as a direct and proximate result of Defendants' actions, has
2 suffered damages, and is entitled to be fully compensated therefore.

3 121. Defendants acted with an improper motive amounting to malice and conscious
4 disregard of PSS's rights. Accordingly, PSS is entitled to recover punitive and exemplary damages
5 from Defendants.

6 122. As a result of Defendants' conduct, PSS has been required to obtain legal counsel,
7 and has incurred and will continue to incur attorneys' fees in connection with this matter.

8 **TENTH CAUSE OF ACTION**

9 **UNJUST ENRICHMENT (AGAINST ALL DEFENDANTS)**

10 123. All preceding paragraphs are incorporated by reference and made a part hereof.

11 124. Defendants have obtained, appreciated and accepted great benefits as a result of
12 PSS's establishing and nurturing its relationships with its Nevada customers, which Defendants
13 have taken advantage of by their wrongful acts described herein.

14 125. Defendants' taking and retention of customers that PSS had obtained through its
15 efforts and expenditures are unjust and inequitable.

16 126. Defendants' retention of the benefits of its wrongful actions described herein has
17 damaged, and is damaging, PSS.

18 127. PSS has been harmed as a direct and proximate result of Defendants' actions, has
19 suffered damages, and is entitled to be fully compensated therefore.

20 128. As a result of Defendants' conduct, PSS has been required to obtain legal counsel,
21 and has incurred and will continue to incur attorneys' fees in connection with this matter.

22 **ELEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION (AGAINST ALL DEFENDANTS)**

24 129. All preceding paragraphs are incorporated by reference and made a part hereof.

25 130. Defendants' actions constitute unfair competition in that such actions constitute unlawful
26 and unfair business acts and practices.

27 131. Defendants have or will benefit monetarily from their actions and statements.

28 132. Defendants' unlawful acts have caused competitive economic injury to PSS.

1 133. Defendants' profits should be disgorged in favor of PSS.

2 134. PSS has been harmed as a direct and proximate result of Defendants' actions, has suffered
3 damages, and is entitled to be fully compensated therefore.

4 135. As a result of Defendants' conduct, PSS has been required to obtain legal counsel, and has
5 incurred and will continue to incur attorneys' fees in connection with this matter.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PSS prays for judgment against Defendants as follows:

- 8 1. For an award of compensatory and consequential damages;
9 2. For an award of statutory damages;
10 3. For an award of exemplary and punitive damages;
11 4. For a temporary restraining order, preliminary injunction, and a permanent
12 injunction that enjoins Ilvento from:

13 a. soliciting from PSS's customers in Nevada who were assigned to him during the
14 twenty-four (24) months prior to the time his employment with PSS terminated, for a
15 period of eighteen (18) months from the date of Ilvento's termination of employment
16 with Plaintiff;

17 b. from directly or indirectly, soliciting or assisting in the solicitation of PSS
18 employees to terminate their employment with PSS or to work for HSI for a period of
19 eighteen (18) months from the date of Ilvento's termination of employment with
20 Plaintiff; and

21 c. using or disclosing PSS's Confidential Information for a period of ten (10) years
22 from the date of Ilvento's termination of employment with PSS.

- 23 5. For a temporary restraining order, preliminary injunction, and a permanent
24 injunction that enjoins HSI from:

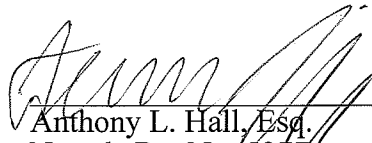
25 a. soliciting or processing any further product orders from PSS's Nevada clients
26 who were assigned to Ilvento during the twenty-four (24) months prior to the time his
27 employment with PSS terminated, other than those orders which have already been
28 placed at the time injunctive relief is issued;

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- b. allowing Ilvento to do any work for any of PSS's Nevada clients which were assigned to Ilvento during the twenty-four (24) months prior to the time his employment with PSS terminated; and
 - c. using or disclosing PSS's Confidential Information received directly or indirectly from Ilvento, including that HSI may not use such Confidential Information to solicit any PSS employee to terminate their employment with PSS or to work for HSI.
- 6. For its attorneys' fees and costs;
 - 7. For a trial by jury of all issues that may be tried to a jury;
 - 8. For prejudgment interest as allowed by law; and
 - 9. For all other relief this Court deems just, equitable and proper.

DATED this 23 day of May 2011.

HOLLAND & HART LLP



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Attorneys for Plaintiff

VERIFICATION

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STATE OF Illinois)
County of Peoria) ss.

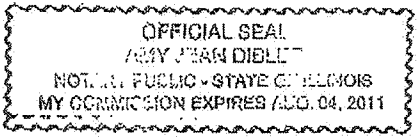
Greg Cressman, being first duly sworn, deposes and says that he is the Vice President of Sales, Western Region, for Plaintiff PSS World Medical, Inc. d/b/a Physician Sales & Service, Inc. in the above-entitled action; that he has read the foregoing Verified Complaint, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to such matters he believes them to be true.

DATED this 23 day of May, 2011.

[Signature]
GREG CRESSMAN

SIGNED AND SWORN to before me on May 23, 2011, by GREG CRESSMAN

[Signature]
Notary Public
My Commission Expires: Aug 4, 2011



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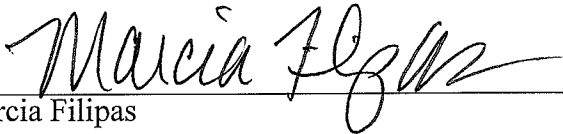
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 23rd day of May, 2011, I caused to be served a true and correct copy of the foregoing **Verified Complaint** by Personal Service:

Henry Schein, Inc.
C/O Registered Agent:
CSC Services of Nevada, Inc.
2215-B Renaissance Drive
Las Vegas, Nevada 89119

John Ilvento
1536 Chippewa St.
So. Lake Tahoe, CA 96150



Marcia Filipas

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