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

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 3:08-cv-02050 (SAF)**
MARK CUBAN,	)	
Defendant.	)	

REPLY BRIEF OF DEFENDANT MARK CUBAN IN SUPPORT OF MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS

INTRODUCTION

The SEC is seeking to evade this Court's December 4, 2009 Order ("Order") allowing discovery related to Mr. Cuban's Fees Motion. The limited discovery the SEC has provided so far confirms that a) the SEC misled this Court when it asserted in its Complaint that Mr. Cuban had "agreed" to keep information confidential, and b) the SEC enforcement staff engaged in conduct that would meet anyone's reasonable definition of inappropriate behavior, evidencing an animus and bias against Mr. Cuban. Given what the tip of the iceberg looks like, it is no surprise that the SEC is fighting so vigorously against having to reveal the vast bulk of the responsive documents in its possession.

The SEC's Opposition to Mr. Cuban's Motion to Compel ("SEC Opp.") is full of misrepresentations, red herrings, and irrelevant protests intended to distract the Court from the real issue here: that Mr. Cuban is entitled to the production of the SEC's remaining documents so as to accomplish the goals of the Order.[1] The SEC's assertions of privilege are especially ill-founded. Unlike the normal situation, where a party is seeking to discover information from another party's counsel that may well be available by other means, here the counsel *is* the other party. The SEC staff consists largely of lawyers and virtually every document the agency creates, especially in the enforcement context, can be cloaked in one privilege or another (as the SEC is obviously anxious to do here). There simply is no way to determine the extent of the SEC's bad faith without piercing those privileges, and given that Mr. Cuban has already demonstrated the existence of numerous instances of misconduct on the part of the SEC staff, the Court should use its discretionary authority to do so.

---

[1] Of particular note are the SEC's repeated allegations that Mr. Cuban is trying this case in the press. The SEC *began* this case by issuing a press release on November 17, 2008, accusing Mr. Cuban of a fraud and then making its senior officials available for public comment. *See, e.g.*, November 17, 2008 email among SEC HO-10576 team, Bates Nos. SEC-MC0300037-38 (noting the press release must be ready immediately upon filing) (Tab 1 at 2-3); Jack Lynch and Liz Robbins, *S.E.C. Accuses Mark Cuban of Insider Trading*, N.Y. Times, November 17, 2008 (Tab 2 at 5-6). The SEC apparently believes that it has the exclusive right to promote its cases in the press and the targets of those cases should remain silent. Mr. Cuban disagrees.

ARGUMENT

I. DOCUMENTS PRODUCED OR OBTAINED TO DATE SHOW EVIDENCE OF BAD FAITH AND THE SEC'S OPPOSITION DOES NOT DISPEL THIS EVIDENCE

A. The SEC Had No Evidence To Support Its Theory of Liability

The SEC claims that "the factual record supported the existence of the confidentiality agreement necessary for filing this action." SEC Opp. at 8. Wishing does not make it so. As the SEC's discovery responses to date confirm, not one witness has said that Mr. Cuban *agreed* to keep any information confidential. Knowing this critical weakness in its case, the SEC nonetheless chose to file a complaint asserting the existence of a confidentiality agreement, apparently to further its singular goal of ensuring that it was able to bring an insider trading case against a high-profile target.

B. The Photo Montage Evidences Bias and Animus

The SEC asserts that the photo montage sent by the supervisor of the Cuban investigation to two of the highest ranking members of the Enforcement Division was part of an effort "[t]o protect Mr. Cuban's privacy" by informing "SEC officials" why it was necessary to seek a formal order of investigation in a closed session. SEC Opp. at 3. The SEC provides no evidence to support this assertion (*e.g.*, an affidavit from one of these "SEC officials") because the entire premise is laughable.[2] The e-mail responses to the montage by the two highest members of the enforcement unit (one of which is selectively and misleadingly quoted[3]) certainly do not make any reference to Mr. Cuban's privacy or a closed session. Moreover, if informing SEC officials about Mr. Cuban

---

[2] Throughout its Opposition, the SEC repeatedly makes new, and often inflammatory, factual assertions that are wholly unsupported by any evidence. Additional examples include the SEC's counter-description of the "tamp down" call between Mr. Aguilar and Ms. Riewe and the supposed statements by "counsel for other witnesses" concerning Mr. Cuban's request for interviews. *See* Opp. at 5 n.15. Mr. Cuban will not burden the Court with a motion to strike, but it is obvious that the Court should give these assertions no weight.

[3] In its Opposition, the SEC claims that Ms. McKown responded to Mr. Friestad's email by stating, "[now] I feel fully informed." The full response from Ms. McKown was "Now I feel fully informed. The picture with the money is particularly helpful and certainly speaks a 1,000 words, if not more." Moreover, during the parties' meet-and-confer (and the SEC's follow up letter), the SEC told Mr. Cuban's counsel that the photos were provided because Ms. McKown and Ms. Thomsen did not know who Mr. Cuban was. Conveniently, the first mention of any attempt to protect Mr. Cuban's privacy was not made until the SEC Opp. was filed several weeks later.

was the goal, it would seem logical that rather searching for and compiling an unflattering montage of photos of Mr. Cuban, Mr. Friestad would have provided his supervisors something informative and factual, such as Mr. Cuban's biography on the Dallas Mavericks' website or even a Wikipedia link. The SEC's post hoc rationalization for Mr. Friestad's e-mail is nothing more than a confirmation of the extent to which the e-mail reveals the staff's bias and animus.

C. The Staff Engaged in Misconduct Relating to Fact Witnesses

"It is imperative that prosecutors and other officials maintain a posture of strict neutrality when advising witnesses of their duties and rights."[4] "Their role as public servants and as protectors of the integrity of the judicial process permits nothing less."[5] The law makes clear that *any* attempt to limit or restrict opposing counsel's access to material fact witnesses is inappropriate.[6] The SEC acted in direct contravention of this public policy. On February 12, 2010, Christopher Aguilar affirmed in an affidavit[7] that Ms. Riewe had told him, in what Mr. Aguilar described as a "tamp down" effort, that it was her personal preference he not make a witness available to Mr. Cuban's counsel. As a result, Mr. Aguilar "was concerned that producing Mr. Owen to Mr. Cuban's counsel for a more formal interview would not be in the best interests of MCF, given its good relationship with the SEC and its history of cooperation with that regulator." The SEC's attempts to dissemble Mr. Aguilar's affidavit and disprove that the agency is guilty of a federal crime notwithstanding, the simple fact is that Ms. Riewe, who works for MCF's primary regulator, encouraged Mr. Aguilar not to make a key witness available to Mr. Cuban's counsel. Ms. Riewe clearly acted in bad faith, which is all that Mr. Cuban needs to establish to obtain sanctions.[8]

---

4 *United States v. Rich*, 580 F.2d 929, 934 (9th Cir. 1978).

5 *Id.* at 934.

6 *See, e.g., Gregory v. United States*, 369 F.2d 185 (D.C. Cir. 1966) (reversing conviction and stating that it was inappropriate for a prosecutor to interfere with the preparation of the defense by effectively denying defense counsel access to the witnesses except in the prosecutor's presence).

7 *See* Tab 3 at 8-10.

8 As previously noted in Mr. Cuban's Motion to Compel ("Cuban Mot."), the tamp-down call was not raised *before this Court* prior to this point because Mr. Cuban did not want to make any public accusation for which he did not have solid proof. *See* Cuban Mot. at 2, n.1. The SEC acknowledges, however, that it has known about this issue since Sept. 2007, but it apparently took no action in response to learning of Ms. Riewe's misconduct. SEC Opp. at 4 n.12. Finally, while Mr. Cuban uses the term "witness tampering" in his brief, he inarguably did not – and does not – accuse anyone of violating any federal or state witness tampering statute. Thus the SEC's faux outrage and the witness

D. Evidence Suggests The Mamma.com Investigation Was Closed to Elicit Favorable Testimony

The documents produced to date indicate that the SEC enforcement staff investigating Mamma.com reached a conclusion in or around October 2006 to close the investigation yet never formalized its decision.[9] In July 2007, Richard Greenberg, counsel for Mamma.com, encouraged the SEC to close its investigation due to, among other reasons, its cooperation on other important matters.[10] This obviously is a reference to the company's assistance with the investigation of Mr. Cuban. The SEC readily admits there was no ethical wall between the two investigative teams and that, on occasion, enforcement staff from both investigative units shared information.[11] The Mamma.com investigation was formally closed shortly after Mr. Greenberg's letter and just before the SEC deposed Mr. Faure for the second time. Mr. Cuban should be permitted to obtain documents demonstrating whether the SEC's response to Mr. Greenberg was pure coincidence or, as already appears more likely, a bad faith attempt to elicit testimony favorable to the SEC.

II. SEC SHOULD PRODUCE DOCUMENTS WITHHELD BASED ON THE OBJECTION TO TEMPORAL SCOPE

The SEC objects to providing responsive documents created after November 17, 2008, when the SEC's Complaint was filed, but before August 28, 2009, when Mr. Cuban filed his sanctions motion. The SEC's objection is nonsensical. First, the SEC claims that it already "has produced or logged post-filing documents and information where they relate back to events which are the focus of the allegations." SEC Opp. at 9. In other words, the SEC has already engaged in the necessary search for responsive documents created during the proposed time period and cannot claim that this search is too burdensome. Second, although Mr. Cuban has largely complained of SEC activities that took place prior to the filing of its Complaint, one key item has no exact temporal boundary: the SEC's bias and animus against Mr. Cuban. Given that the limited discovery to date has already

---

tampering cases it cites are yet another obvious distraction and irrelevant to the issue of bad faith.

[9] *See* SEC Response to Mr. Cuban's Interrogatory No. 14. (Tab 4 at 14.). *See also* October 17, 2006 Mem. A. Chion to Y. Zelinsky. (Tab 5 at 16-17.)

[10] *See* July 18, 2007 letter from R. Greenberg to the Y. Zelinsky (Tab 6 at 19-21.)

[11] *See* SEC Response to Mr. Cuban's Interrogatory No. 17. (Tab 7 at 24-25.)

amply demonstrated the existence of this bias and animus, it is appropriate for the SEC to provide any additional responsive documents created after November 17, 2008 and before August 28, 2009 (when the agency was put on notice of Mr. Cuban's allegations).

III. SEC SHOULD BE REQUIRED TO FULLY ANSWER THE INTERROGATORY REGARDING MR. CUBAN'S SUPPLEMENTAL WELLS SUBMISSION

The information sought by Mr. Cuban's Interrogatory No. 6 is clear, but the SEC appears committed to dodging the question. Mr. Cuban did not merely ask whether his supplemental Wells submission had been "provided" to the SEC Commissioners, but also asked whether it had been ***reviewed and considered*** by the SEC Commissioners before they decided to initiate this action against Mr. Cuban. Mr. Cuban is not "shifting goalposts" by insisting that the interrogatory be answered; the SEC is avoiding its obligation under Rule 33. The SEC has provided no specific objection that would allow it to limit its answer and should thus be required to fully answer the interrogatory.

IV. THE SEC'S OPPOSITION FAILS TO SUPPORT ANY OF ITS CLAIMS FOR PRIVILEGE

The SEC's weak position is evidenced by its accusation that Mr. Cuban "employs hyperbolic language to malign the Commission in hopes that his passion alone will convince the Court to overrule the SEC's claims of privilege." SEC Opp. at 2, n. 6. [12] Movants with the facts and the law on their side hardly need to resort to passion. While Mr. Cuban can certainly understand why the SEC is anxious not to have its privileged documents ever see the light of day, there is simply no way to ultimately determine the full extent of the SEC's bad faith without them. Accordingly, the Court should exercise its discretionary authority to order the production of these documents.

A. <u>The SEC's Opposition Fails to Demonstrate That The Court Should Not Order Production Of Documents Withheld Under The Work Product Doctrine</u>

To obtain discovery of the SEC's non-opinion work product, Mr. Cuban is required to

[12] The SEC's accusation looks like an act of self-loathing. Scattered through the SEC's Opposition are terms like, "reckless," "deliberately inflammatory," "professionally irresponsible," "preposterous," "affront to the standards of civil litigation" and the statement that "Mr. Cuban will stop at nothing."

demonstrate substantial need for the information and an inability to obtain the substantial equivalent without undue hardship.[13] Both prongs of this test are easily met here. Mr. Cuban is seeking information concerning the bad faith actions of the SEC's *attorneys* during the course of their investigation and prosecution of this case. It should go without saying that Mr. Cuban has a substantial need for the factual work product of the attorneys in question and there is no other source for the same information. Depositions provide no substitute in the circumstances here, given the passage of time and the substantially greater credibility of contemporaneous documents. [14] Moreover, the SEC has refused to produce for deposition any of the relevant individuals, although Mr. Cuban should be permitted to take those depositions with or without the SEC's non-opinion work product. Motion for Protective Order at 10.[15]

As for the SEC's opinion work product, the SEC mischaracterizes Mr. Cuban's explanation of the extraordinary circumstances of this case that warrant compelling the discovery of that work product as well. SEC Opp. at 14. The documents that Mr. Cuban seeks, and for which the SEC asserts opinion work product privilege, are documents that fall under the categories of discovery set forth in the Order. Cuban Mot. at 12; SEC Opp. at 14. As clearly demonstrated above, the evidence Mr. Cuban discusses in his Motion strongly suggests that the SEC acted in "bad faith, vexatiously, wantonly, or for oppressive reasons" and cannot be dismissed as mere "hyperbole and speculation." See Cuban Mot. at 1-3; SEC Opp. at 14. This evidence of bad faith by the SEC constitutes extraordinary circumstances sufficient to overcome the opinion work product privilege.[16]

---

[13] *In re Int'l Systems & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1240 (5th Cir. 1982).

[14] In *Southern Railway Co. v. Lanham*, 403 F.2d 119, 127 (5th Cir. 1969), the Fifth Circuit found it was "doubtful that appellees could presently obtain a full and accurate disclosure of the facts" where ten months elapsed between witness statements and filing of a lawsuit, and "almost another year intervened before the interrogatories were answered and the motion to produce was entertained by the Court." Here, over *five years* have passed since the time of the creation of some of the documents Mr. Cuban seeks and any potential deposition dates.

[15] The SEC cites *Int'l Systems*, 693 F.2d at 1240, for the proposition that "broad unsubstantiated assertions of unavailability or faulty memory" are insufficient to establish undue hardship. SEC Opp. at 15. However, plaintiffs in *Int'l Systems* sought to demonstrate that witnesses might be unavailable because they were foreign nationals, not, as the SEC does here, because defendants attempted to prevent witnesses from being compelled to testify. *Id.* Here the SEC deposition witnesses' proposed unavailability is clearly relevant to the undue hardship Mr. Cuban's will face in obtaining the information he seeks regarding the SEC's misconduct without production of the documents at issue.

[16] None of the cases that the SEC cites in discussing the work product doctrine in its Opposition address whether governmental misconduct constitutes "extraordinary circumstances" warranting the production of opinion work product and are thus inapposite. SEC Opp. at 13-16.

B. The SEC Fails To Establish that the Attorney-Client Privilege Applies

The SEC inaccurately states that Mr. Cuban fails to recognize the right of government agencies to assert the attorney-client privilege. SEC Opp. at 16. Rather, Mr. Cuban stands by his actual position that the SEC's claims to protection under the attorney-client privilege fail because the SEC has not meet its burden of proving that this narrowly construed privilege applies.

As stated in Mr. Cuban's motion to compel and not disputed by the SEC in its Opposition, the SEC had an obligation to show that the information withheld as attorney-client privileged was actually kept confidential.[17] In an unsuccessful attempt to meet its burden, the SEC claims that "[n]one of the documents for which the attorney-client privilege is asserted was shared with anyone outside the agency. The logs also demonstrate that the documents were treated confidentially within the agency." SEC Opp. at 17. Arguing that the documents are privileged because they were not shared with anyone outside the agency is absurd – 3,500 people work at the SEC.[18] Information shared amongst a group of 3,500 people is not attorney-client privileged.

Moreover, the SEC's log fails to demonstrate that the documents were treated confidentially within the agency. The privilege log's glossary suggests that the documents were shared with 114 people, undermining the argument that the sharing of documents was "narrowly confined." Further, according to the privilege log, persons not listed on the glossary were also provided with documents. By not indentifying the positions these individuals held, the SEC clearly fails to establish that the documents were distributed narrowly or, in fact, kept within the agency.

C. A Sufficient Showing Has Been Made to Pierce the Deliberative Process Privilege

The SEC's assertion of the deliberative process privilege is improper and insufficient. To properly invoke the deliberative process privilege, the "agency head or his or her authorized designee must invoke the privilege through an affidavit which states, *inter alia,* that he or she has reviewed *each of the relevant documents* and provides the reason(s) why preserving confidentiality

---

[17] *Mead Data Central, Inc. v. United States Dep't of Air Force*, 566 F.2d 242, 254 (D.C. Cir. 1977).

[18] The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation, http://www.sec.gov/about/whatwedo.shtml (last visited April 30, 2010).

– rather than the agency's interest in the particular action – outweighs the public interest in disclosure."[19] Second, "the agency must supply the court with 'precise and certain reasons' for maintaining the confidentiality of the requested document."[20] An 'indiscriminate claim of privilege may in itself be sufficient reason to deny it.'"[21] Finally, "the time to make the showing that certain information is privileged is at the time the privilege is asserted, not months later when the matter is before the Court on a motion to compel."[22]

Adherence to these requirements ensures that the documents sought to be protected are in fact "(1) part of the deliberative process by which policies or decisions are formulated; and (2) truly of a predecisional, or advisory or recommendatory nature, or expresses [sic] an opinion on a legal or policy matter, or otherwise were reflective of a deliberative process."[23] The declaration of the SEC's designee, Elizabeth Murphy, does not state she has reviewed *each document*, but improperly states that the SEC invokes the privilege for certain *categories* of documents.[24] The Murphy declaration also fails to state with particularity what information is subject to the privilege, and provides only one vaguely stated – not precise and certain – reason why confidentiality should be maintained: because of an alleged "inhibiting effect on the fullness and frankness of written expression among the Commission and its staff members."[25] To top it off, the SEC failed to provide the declaration prior to responding to Mr. Cuban's motion to compel. In sum, the SEC's purported showing of the deliberative process privilege (through its inadequate affidavits) is blanket, indiscriminate, and late. The Court should therefore reject it.

Moreover, even if the Court determines the privilege is validly asserted as to some documents, because the privilege is qualified and discretionary, the Court may deny the privilege and order disclosure, especially "where the documents sought may shed light on alleged

---

19 *Kaufman v. New York*, No. 98 Civ. 2648, 1999 WL 239698, at *3 (S.D.N.Y. Apr. 22, 1999) (emphasis added).
20 *Walsky Construction Co. v. United States*, 20 Cl.Ct. 317, 320 (Cl. Ct. 1990).
21 *Revelle v. Trigg*, No. 95-5885, 1999 WL 80283, at *2 (E.D. Pa. Feb. 2, 1999) (quoting *United States v. O'Neill*, 619 F.2d 222, 227 n9 (3d Cir. 1980).
22 *Anderson v. Marion County Sheriff's Dep't*, 220 F.R.D. 555, 562 n. 5 (S.D. Ind. 2004).
23 *LNC Invs., Inc. v. Republic of Nicar*., No. 96 Civ. 6360, 1997 WL 729106, at *2, (S.D.N.Y. Nov. 21, 1997).
24 *See* Declaration of Elizabeth Murphy (Murphy Dec.) at SEC Opp. Appendix 98-99.
25 *Id.*

government malfeasance."[26] Mr. Cuban clearly has satisfied that standard. For example, one of the central issues to be determined in the sanctions motion is whether the SEC knew that it lacked a sufficient factual and legal basis to bring an insider trading case against Mr. Cuban. Clearly, therefore, the transcripts and tapes of the November 13, 2008 Executive Session will be crucial in deciding that issue. Further, the deliberative process privilege yields when the lawsuit is directed at the government's subjective motivation in taking a particular action.[27] The SEC's purported interest in full and frank discussions among the Commission staff does not outweigh the need of Mr. Cuban and this Court to determine the facts and opinions on which the SEC based its decision to file this case against Mr. Cuban.[28]

D. The SEC Does Not Establish That the Law Enforcement Privilege Applies

The SEC claims that the law enforcement privilege applies to civil actions, yet only cites a D.C. Circuit case as support, and fails to examine the controlling Fifth Circuit decision cited by Mr. Cuban. *See In re U.S. Dep't of Homeland Security*, 459 F.3d 565, 570 n.2 (5th Cir. 2006).[29] In *Homeland Security*, the Fifth Circuit held that the law enforcement privilege is a qualified privilege that is "a subcategory of the executive privilege" and exists "to protect government documents relating to an ongoing criminal investigation." *Id.* The Fifth Circuit has not recognized a law enforcement privilege for civil investigations.

As for the SEC's claim that Mr. Cuban did not analyze the ten *Frankenhauser* factors, it is unnecessary to examine those factors where, as here, the agency has asserted the privilege as to types of information that are not protected.[30] It also would be nonsensical to require an analysis of

---

[26] *In re Franklin Nat. Bank Securities Litigation*, 478 F.Supp. 577, 582 (E.D.N.Y. 1979);

[27] *See In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 145 F.3d 1422 (D.C.Cir.1998), *on rehearing*, 156 F.3d 1279 (D.C.Cir.1998) ("If the plaintiff's cause of action is directed at the government's intent, however, it makes no sense to permit the government to use the privilege as a shield.").

[28] The SEC also fails to effectively rebut Mr. Cuban's argument that no documents regarding communications *among, to or from the staff* after December 31, 2007 are covered by the deliberative process privilege. It is indisputable that as of that date the *staff*, as opposed to the *Commission*, had reached its decision concerning whether to bring a case against Mr. Cuban.

[29] The SEC also inaccurately claims that Mr. Cuban did not identify the documents at issue, when he did so in the very first paragraph of the applicable section: Electronic Document Privilege Log entries 13, 22, 276 and 513.

[30] Including documents pertaining to: (1) people who have been investigated in the past but are no longer under investigation, (2) who merely are suspected of a violation without being part of an ongoing criminal investigation, and

those ten factors given that "the privilege lapses either at the close of an investigation or at a reasonable time thereafter based on a particularized assessment of the document." *Id.* (*citing Am. Civil Liberties Union v. Finch*, 638 F.2d 1336, 1344 (5th Cir. 1981) ("Even the files of active law enforcement agencies lose their privileges after particular investigations become complete."). The investigation of Mr. Cuban was not a criminal investigation and has been closed for years, so there can be no possible harm to the investigative process by releasing the documents.[31]

CONCLUSION

The SEC's enforcement staff's conduct and motivations are under scrutiny and, by necessity, their documents, whether cloaked in privilege or not, should be produced. The fact that the limited discovery to date has already established the existence of SEC misconduct makes Mr. Cuban's motion to compel even more appropriate. In sum, the totality of the evidence known so far demands a full review of the responsive documents. Mr. Cuban respectfully asks the Court to compel the SEC to produce these documents or, to the extent warranted, the Court should undertake an in camera review of the documents to determine whether they should be produced.[32]

---

(3) people who may have violated only civil provisions. *Id.* at 570.

[31] The SEC's protestations over the Privacy Act are unnecessary. Mr. Cuban has already stated that it is his understanding that documents for which the SEC seeks Privacy Act protection refer to disciplinary action against Jeffrey Norris and, if that is correct, he does not seek any such documents. *See* Cuban Motion at 19; Cuban Opp. at 5. It is Mr. Cuban's position, however, that any of these documents, or portions thereof, that are otherwise responsive to Mr. Cuban's document requests should be produced.

[32] The SEC's request that this Court appoint a Special Master if it decides to engage in an in camera review of the documents is revealing. SEC Opp. at 25. If, as the SEC repeatedly claims, its investigation and prosecution of the case against Mr. Cuban was "conducted in good faith" and "Cuban's allegations of 'misconduct' are unfounded" (SEC Opp. at 12), it is hard to see what possible undue prejudice could result from having this Court review the privileged documents.

Respectfully submitted,

DEWEY & LEBOEUF LLP

/s/ Lyle Roberts

By: _____

Lyle Roberts (*pro hac vice*)
D.C. Bar No. 464789
Stephen A. Best
D.C. Bar No. 428447
Ralph C. Ferrara (*pro hac vice*)
D.C. Bar No. 156380
DEWEY & LEBOEUF LLP
1101 New York Avenue, NW
Washington, D.C. 20005
Telephone: (202) 346-8000
Facsimile: (202) 346-8102
lroberts@dl.com
rferrara@dl.com
sbest@dl.com

Christopher J. Clark (*pro hac vice)*
N.Y. Bar No. 2854222
DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, New York 10019
Telephone: (212) 259-8000
Facsimile: (212) 259-6333
cjclark@dl.com

Attorneys for Mark Cuban

OF COUNSEL:

Stephen M. Ryan
Texas Bar No. 24002881
DEWEY & LEBOEUF LLP
1000 Main Street, Suite 2550
Houston, Texas 77002
Telephone 713-287-2025
Fax: 713-445-2125
sryan@dl.com

FISH & RICHARDSON P.C.

Thomas M. Melsheimer
Texas Bar No. 13922550
melsheimer@fh.com
Steven H. Stodghill
Texas Bar No. 19251100
stodghill@fr.com
John C.C. Sanders, Jr.
Texas Bar No. 24057036
jsanders@fr.com
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone: 214-747-5070
Fax: 214-747-2091

CERTIFICATE OF SERVICE

On March 30, 2010, I electronically submitted the Reply Brief of Defendant Mark Cuban in Support of Motion to Compel Responses to Interrogatories and Production of Documents, with Appendix, with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Lyle Roberts

Lyle Roberts