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4 Temporary Receiver for US Foreclosure Relief Corp., et al.
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

10 FEDERAL TRADE COMMISSION,
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, AND THE STATE OF
13 MISSOURI,

13 Plaintiff,

14 v.

14 US FORECLOSURE RELIEF CORP.,
15 a corporation, also d/b/a US Foreclosure
16 Relief, Inc., Lighthouse Services, and
17 California Foreclosure Specialists,

18 GEORGE ESCALANTE, individually
and as an officer of US
19 FORECLOSURE RELIEF CORP.,

20 CESAR LOPEZ, individually and also
21 trading and doing business as H.E.
22 Service Company, and

23 ADRIAN POMERY, ESQ.,
24 individually and also trading and doing
25 business as Pomery & Associates,

26 Defendants.
27
28

Case No.: SACV-09-768 JVS (MLGX)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER**

DEPT: Courtroom 10C
JUDGE: Honorable James V. Selna

1 **PRELIMINARY REPORT OF TEMPORARY RECEIVER**

2 **I.**

3 **Introduction**

4 On July 7, 2009, this Court entered a Temporary Restraining Order
5 (“TRO”) appointing me as Temporary Receiver of US Foreclosure Relief Corp.,
6 and three individuals (George Escalante, Cesar Lopez, and Adrian Pomery)
7 variously doing business as US Foreclosure Relief, Inc., Lighthouse Services,
8 California Foreclosure Specialists, H.E. Service Company, H.E. Servicing, Inc.,
9 Pomery & Associates, and Homeowners Legal Assistance.

10 One of my primary mandates in the TRO is to determine whether the
11 business can be operated lawfully as a going concern. I respectfully submit this
12 Preliminary Report to advise the Court of my initial actions and preliminary
13 observations. In the short time since my appointment, I, together with attorneys
14 and accountants, have located and reviewed documents, traced financial
15 transactions, and interviewed the principals and key employees. We have also had
16 a number of conversations with officials at the State Bar of California, the
17 California Department of Real Estate (“DRE”), and an expert in the field of loan
18 modification. I can now provide the following snapshot of the structure of the
19 business, its operation, and the flow of monies.

20 Given the continuing risk to consumers, this matter is time sensitive. As
21 such, I feel it is important to share with the Court my bottom line conclusions to
22 date: Even if most of the deceptive sales practices could be cured, this is not a
23 lawful advance fee loan modification business. It is not operated and managed by
24 a lawyer or a properly licensed DRE broker. It is a phone sales operation selling
25 unlicensed loan modification services with more than 80% of its clients residing
26 outside of California. The business has processed loan modification applications,
27 but on applications taken since November 2008, only 11% have resulted in closed
28 modifications. The relationship with two different lawyers was nominal at best

1 and served primarily as a cover to dignify the business and invoke the attorney
2 exception to advance fee prohibitions. It is this advance fee component of the
3 business which is fatal to its ability to be a going concern.

4 **II.**

5 **Receivership Activities**

6 **A. Facilities**

7 At approximately 9:30 a.m. on the morning of July 9, 2009, I took
8 possession of the offices of H.E. Servicing, Inc. ("HE") at 2125 Katella Avenue,
9 Suite 330 in Anaheim and the offices of Pomery & Associates ("Pomery") at 2020
10 Chapman Avenue, Suite 220 in Orange, CA.

11 I also inspected the offices at 1010 West Chapman, Suite 200 in Orange, a
12 previous location for U. S. Foreclosure Relief Corp ("USFR"), and confirmed that
13 those offices had been vacated.

14 In taking possession of these offices, I coordinated our efforts with the
15 Orange County District Attorney's office, local Anaheim police, and investigators
16 from the State Bar of California. The District Attorney's office also executed
17 search warrants on both offices.

18 After taking control of the offices, I arranged for the external locks to be
19 changed. Since then, only my agents have had unsupervised access to the offices.

20 The Pomery office is a modest 500 square foot space for one attorney – Mr.
21 Pomery – and a receptionist. Mr. Pomery was not present. No loan modification
22 files, indeed no files of any kind, were located.

23 HE, on the other hand, was a bustling enterprise with nearly 60 employees
24 at work. HE leases 11,285 square feet in an office building across from Anaheim
25 Stadium. The actual lease for this space is between the building owner and "Sonia
26 Mendoza [Escalante's girlfriend or wife] individually and doing business as
27 Tri-Star Funding". The lease was entered into in November 2008 for a two year
28 term at \$28,212 per month. Monthly rent is paid directly from HE to the landlord.

1 The office space is well-equipped, but not extravagant, with specific areas
 2 designated for sales, operations, and finance. All employees cooperated,
 3 completed a brief questionnaire and were excused for the day. None of the
 4 principals were present, but all were contacted and appeared later in the day.

5 **B. Bank Accounts**

6 Immediately after receiving the TRO, the FTC served various banks in
 7 order to freeze assets. The following chart summarizes the accounts we are now
 8 aware of, including those that are frozen.

	BANK	ACCOUNT NAME	BALANCE IN ACCOUNT AS OF 7/13/08
1	BOA*	Adrian Pomery & Associates	\$30,000.00 <i>(estimate)</i>
2	Paypal*	US Foreclosure Relief	\$600,000.00 <i>(estimate)</i>
3	WaMu	HOLA Trust	\$131,134.50
4	WF*	Sonia Mendoz dba H.E. Service Company	\$5,591.27
5	WF	US Foreclosure Relief Corporation	(\$6.00)
6	WF	US Foreclosure Relief Corp. DBA Lighthouse Service	closed
7	WF	US Foreclosure Relief Corp.	closed
8	WF	US Foreclosure Relief Corp.	closed
9	WF	H.E. Servicing, Inc.	—
10	WF	H.E. Servicing, Inc.	—
11	WF*	H.E. Servicing, Inc.	\$105,282.03
12	WF	California Foreclosure Specialists	\$37.87
13	WaMu	Citadel Legal – Operating Checking	\$500.00
14	WaMu	Citadel Legal – Trust Account	—
		TOTAL:	\$872,540

* indicates that the amount is frozen

1 Other than the money in these accounts, there do not appear to be any other liquid
2 assets.

3 **C Interviews**

4 We have conducted multiple interviews. These include interviews of
5 Messrs. Escalante, Lopez, Pomery, and Moreno and members of the sales,
6 operations, and finance teams.

7 **D. Documents/Information/Electronic Data**

8 Upon taking possession, we confirmed that all hard copy documents were
9 secure and we retained a forensic computer firm to make images of the servers
10 and 13 laptop computers on site. We have done spot reviews of a number of other
11 laptop computers, but have refrained from imaging those computers up until this
12 point because of the cost involved. I believe that we have control of all available
13 electronic data relating to Defendants' operation. We are reviewing this
14 information in order to reconstruct the operational and financial picture.

15 **E. Forensic Accountants**

16 We have retained the firm of Riel & Associates ("Riel") to reconstruct the
17 financial activity of Defendants. To date, Riel has reviewed all available records
18 and prepared multiple reports.

19 **F. Compliance With TRO**

20 Once we secured the premises and completed a basic review of the
21 business, I took immediate steps to insure compliance with the TRO as follows:

- 22 1. Our overriding goal was to take all steps needed to achieve
23 compliance, while also trying to protect the consumer to the extent
24 possible.
- 25 2. We have suspended all sales activities – "in-take" – by excusing all
26 sales personnel who previously handled approximately 500 incoming
27 calls per day in staggered shifts from 5:00 a.m. to 5:00 p.m. We
28

1 placed a voicemail message on the sales line alerting consumers to
2 the suspension and directed them to call their lender directly or
3 contact Hope Now, a non-profit loan modification service working
4 with the Department of Housing and Urban Development.

5 3. We pulled all existing commitments for outbound marketing via
6 radio and TV advertising.

7 4. We suspended modification processing, except as to files with
8 immediate foreclosures sale dates, while we develop a detailed go –
9 forward strategy to be ready by Monday, July 20.

10 5. We placed a “Notice to Consumers” on Defendants’ operative
11 websites which reported the appointment of a Receiver and directed
12 consumers to their lender or Hope Now.

13 **G. Cooperation of Defendants**

14 All Defendants have generally been cooperative. They have met with us as
15 requested, answered all questions, and provided access to the necessary records.
16 In particular, Mr. Pomery has been forthright and appeared legitimately distressed
17 for the fate of loan modifications that are in process.

18 To date, no Defendant has delivered the Financial Statements required by
19 Paragraph VII of the TRO.

20 **III.**

21 **Summary of Business Operations**

22 At the outset, it is a challenge to precisely categorize this business. It is not
23 a law practice. It is not a licensed mortgage or real estate company. Rather, I see
24 this business as a high-pressure, cash-up-front telephone sales business targeting
25 distressed homeowners. It appears that some homeowners may have been helped,
26 but the overriding goal of the business was not to help homeowners, but to make
27 money.
28

1 **A. Structure**

2 The current structure of the business evolved from previous businesses of
3 Defendant George Escalante. After contact from the Orange County District
4 Attorney in October, 2008, Escalante began the process of dissolving USFR (and
5 its various dbas). Shortly afterwards, however, he placed an advertisement on
6 Craigslist for an attorney. That search led to Defendant Adrian Pomery, a
7 relatively recent law school graduate, who formed Pomery & Associates as the
8 nominal law firm linked to the business. The servicing arm adopted a new dba –
9 HE Servicing Company. Consumers paid their \$2,500 fee to Pomery who
10 remitted \$2,375 to HE and kept \$125. Pomery did visit the HE office – twice a
11 day in general – and was involved in communication with at least some
12 consumers. But, he had no employees involved in the business.

13 In April, 2009, Escalante set out to find a new attorney when Pomery
14 expressed a desire to withdraw from the business as he saw it as high risk.
15 Escalante ran another Craigslist ad and this time found Brandon Moreno, Stanford
16 Law class of 2004, and they together came up with a new name – Homeowners
17 Legal Assistance (“HOLA,” a dba of Cresidis Legal, Moreno’s Professional
18 Corporation) and Escalante formed a new service entity – H.E. Servicing, Inc.
19 Moreno cut a better deal than Pomery – under his arrangement, he retained \$250
20 for each file. As with Pomery, all payments were made to HOLA and placed in
21 the Cresidis Trust Account; Moreno then disbursed \$2,250 to HE. Credit card
22 payments were processed through Escalante’s merchant account and from there
23 disbursed to the lawyer’s trust accounts. At the time of my appointment, Moreno
24 and Escalante had agreed to increase the consumer fee to \$2,950, prohibit any
25 further refunds, and increase the Moreno/HOLA share to \$300 per client.

26 As best we can tell, Moreno was an infrequent visitor to the office. Moreno
27 had no employees on site at the Katella operation. The Negotiations Manager –
28 Suki Arcebido – reported to us that she had only seen Moreno once. To a person,

1 the other seven negotiators working with us this week have reported that they
2 have had no contact with Mr. Moreno, and some cannot recall actually ever
3 having seen him.

4 Despite Defendants' limited efforts to create the illusion, this was not a law
5 firm owned or operated by Pomery or Moreno/HOLA. It was Escalante's
6 business. He paid the rent, hired the employees, outfitted the offices, ran the
7 finances, and ultimately controlled the operations.

8 Attached as Exhibits 1 is a Timeline of the evolution from USFR to Pomery
9 to HOLA and as Exhibit 2 is a summary of the HE corporate structure.

10 **B. Marketing**

11 Marketing has been orchestrated and paid by HE, but put out in the name of
12 HOLA or its predecessor Pomery. As of July 9, 2009, the weekly budget was
13 \$70,000 for radio (95%) and TV (5%) advertising in 100 different media markets.
14 All these ads directed consumers to the toll free lines at the HE office in Anaheim.
15 At the time we entered the offices, Escalante was about to increase that budget to
16 \$80,000–\$100,000 a week with the expectation of new business totaling at least
17 \$270,000 a week.

18 The sales personnel in Anaheim did some outbound phone selling based on
19 "paper leads" acquired from various lead vendors. But, most sales counselors'
20 time was devoted to responding to inbound calls.

21 There is some evidence that outbound phone sales were handled through
22 third party telemarketing vendors, but no such vendor appears to be retained at
23 this time.

24 These marketing efforts were orchestrated and closely monitored for call
25 fulfillment by a media buyer based in Texas.

26 The HOLA and Pomery websites were also a source of in-bound sales
27 activity either through phone or email.

28

1 **C. Sales**

2 The Sales Department is essentially a well-appointed telephone boiler room
3 with phone cubicles for 44 sales people – “counselors” – and separate offices or
4 stations for 3 on-site managers. At my appointment, 31 counselors were on staff,
5 working staggered shifts covering 5:00 a.m. to 5:00 p.m. In the last few weeks,
6 HE has been aggressively recruiting additional sales people.

7 Counselors were paid only for completed sales. With some variations
8 based on seniority, the typical commission was \$450 for a fully paid sale – i.e.,
9 \$2,500 – with an extra \$25 if the consumer paid by debit card or wire transfer. If
10 the consumer could only handle a payment plan (minimum \$1,000 down), the
11 sales person received only a percentage (10–15%) of the amount actually paid
12 with no commission on the later payments. The incentives were clear – sell and
13 get paid in full, preferably by debit card or wire.

14 There is evidence of a “Customer Service Black Book” and a “Sales Black
15 Book” which collected memos and directives about the proper things to say and
16 proper procedures. But, my review to date leaves no question that this was a sales
17 company with sales personnel incentivized to sell. In a cursory search, we found
18 multiple examples of zealous sales techniques which, by any standard, crossed the
19 line into express consumer deception. For example:

- 20 • Sales Manager Billy Burke provided the sales team a
21 Point/Counterpoint for clients reacting to a negative Better Business
22 Bureau rating. Among his points:
- 23 ○ “We are attorney based”;
 - 24 ○ “10,000 confirmed and negotiated loan modifications” (versus
25 the actual number of 311 for the period November 2008 to July
26 8, 2009);
 - 27 ○ “90% success rate”;
 - 28 ○ “Nationwide Service and over 100 workers”;

- 1 ○ “Our lead attorney, Adrian Pomery, is a member of the
- 2 California Bar”;
- 3 ○ “We are an attorney based firm ... have a success rate second
- 4 to none ... have a real money back guarantee ... have closed
- 5 over 10,000 loan modification over the last 36 months, with
- 6 only two real complaints.” (Exhibit 3).
- 7 ● On the day before the Receiver arrived, the sales team was alerted to
- 8 the new higher fee – \$2,950 – and the new No Refund Policy. They
- 9 were encouraged to adopt a “no tell, no ask policy” about refunds.
- 10 (Exhibit 4).
- 11 ● Counselors were paid an extra commission of \$25 if they could
- 12 persuade the client to pay by direct deposit or wire transfer. (Exhibit
- 13 5).
- 14 ● Counselors were encouraged to stop being so nice – remind the
- 15 customers their problem will get even worse. (Exhibit 6).
- 16 ● Counselors were provided with prepared reminders to explain why a
- 17 “law firm” was permitted to charge advance fees under California
- 18 Civil Code Section 2945 (Exhibit 7).
- 19 ● Counselors were encouraged to refer loan modification clients to
- 20 Defendant Cesar Lopez’s new business – H.E. Debt Relief – and paid
- 21 \$2.50 for every referral. (Exhibit 8).
- 22 ● Counselors were at times instructed not to give out the attorney’s
- 23 number or contact him directly. (Exhibit 9).
- 24 ● Refunds were recently capped at \$20,000 per week. (Exhibit 10).
- 25 ● Counselors were told that with the new aggressive stance of the “new
- 26 attorney [Moreno],” it was “*open season*” on signing people up.
- 27 (Exhibit 11).
- 28 ● Counselors were instructed to never mention any connection to

1 USFR and to get rid of USFR files. (Exhibit 12).

- 2 • Counselors were reminded that the purpose of the business was to
3 make money. (Exhibit 13).
- 4 • Counselors were encouraged to stay in the grey area. (Exhibit 14).
- 5 • One counselor kept notes at his desk which stated that Brandon
6 Moreno was “the most aggressive attorney in the mortgage industry”
7 and that “we go right to the top ... and bypass loss mitigation and
8 customer service department.” (Exhibit 15).
- 9 • Counselors were regularly motivated to sell so they could win a
10 Rolex. (Exhibit 16).
- 11 • Counselors were told by the sales manager to forget about saying
12 “We do not stop foreclosures” because “we are going to lose 75% +
13 of our business. If they implement this verbiage in customer service
14 ... excuse my language but WE'RE F..... [expletive deleted].”
15 (Exhibit 17).

16 **D. Operations**

17 HE was set up to process mortgage modification applications and did, in
18 fact, successfully process some modifications. The office was adapted to move
19 applications through six “Status” stages. The various application files are color-
20 coded to identify which phase of the Escalante business they represented – USFR
21 clients were assigned manila folders, Pomery clients blue folders, and HOLA
22 clients green folders.

23 Based on the internal Pipeline Report, I can report that during the period
24 November, 2008 through July 8, 2009, a total of 2,960 loan modification files
25 were opened at HE (1957 Pomery and 1,007 HOLA) after the client paid at least
26 the minimum \$1,000 on the \$2,500 fee. Of those 2,960, 311 (11%) have ended up
27 as completed modifications. As of the date of this Report, 791 (27%) are under
28 submission at the lender, 1,051 (36%) are in various stages of preparation for

1 submission. 406 (14%) clients have received refunds because they cancelled
2 and/or their documents were never completed. 102 (4%) are awaiting payment on
3 approved refunds. Attached as Exhibit 18 is a Summary of the Pipeline Report
4 prepared by our forensic accountant, Riel and Associates.

5 We have seen strong evidence that HE purposely delayed refund payments
6 and that Escalante had recently implemented a \$20,000 per week ceiling in
7 refunds, regardless of the amount due to consumers. Consumers constantly had to
8 badger HE to receive refunds and even then they were delayed weeks and weeks.

9 A total of *eight* staff Negotiators communicated directly with clients and
10 lenders about mortgage details. Another six Negotiator assistants handled the
11 processing of documents. Negotiators were paid by HE a base salary of
12 \$500/week plus a commission of \$75 for each completed modification. None of
13 these Negotiators have any employment arrangement with either Pomery or
14 HOLA.

15 **E. Financial**

16 Our preliminary review indicates that the various components of this
17 business were profitable. Pomery (\$125 per file) and Moreno/HOLA (\$250 per
18 file) had nominal related expenses and we, therefore, estimate their profit margins
19 were very high.

20 For the period November 2008 through July 8, 2009, the complete
21 enterprise had gross revenues of approximately \$6.2 million, all paid to the two
22 lawyer trust accounts. Approximately \$620,000 was retained by the lawyers as
23 their fee and the remainder distributed to HE. For the time period of January 1
24 through June 30, 2009, we have found a report prepared by an outside accountant
25 for HE showing gross revenue of \$5.9 million, operating expenses of \$1.7 million,
26 for net income of \$4.5 million. (Exhibit 19).

27 Our investigation is still too preliminary to confirm the extent which the
28 principals also received significant withdrawals from the company.

1 Attached as Exhibit 20 is a Preliminary Inventory of HE's Office and
2 Equipment Assets.

3 IV.

4 **Can This Business Be Operated Lawfully and Profitably?**

5 Paragraph XIV of the TRO tasks me to determine if this business can be
6 operated lawfully and profitably. My conclusion is no.

7 A. **Lawfully**

8 To become a lawful going concern, this business faces significant hurdles at
9 two levels:

10 1. Misleading Consumers. The over-promise, under-deliver
11 phenomenon which is documented in the Plaintiffs' presentation to the court,
12 and confirmed by our on-site experience, could, *in theory*, be corrected. The
13 infrastructure is in place to operate a legitimate business. It would, however, take
14 a paradigm shift in the sales culture of the business and the recruiting, training and
15 supervision of the sales and operations staff. Such shifts would take time and
16 reduce profitability, but would be possible. At a minimum, the whole
17 commission structure tied to completed sales would have to be altered to remove
18 incentives for over-selling.

19 2. Structure. Even if all deceptive trade practices could be removed,
20 the basic business model has systemic flaws at two levels. Neither appears
21 curable.

22 a. Up-Front Fees. Defendants, like many loan modification
23 entrepreneurs, have aligned themselves with a lawyer in order to
24 piggy back the lawyer's exemption from prohibitions against
25 advance fee arrangements for loan modifications. Such a model is
26 fatally flawed as follows:

27 1. The consumer is deceived into believing he is hiring a lawyer
28 or a law firm;

1 2. The lawyer is engaging in improper fee splitting, has formed
2 a partnership with a non-lawyer, and is not using reasonable
3 care in the handling of his “clients.” Such practices are
4 forbidden and subject the lawyer to sanctions.

5 3. Under certain circumstances, the DRE permits licensed brokers
6 to accept advance fees for loan modifications, but the fees
7 must be paid to a trust account and only 25% can be disbursed
8 to the broker before completion of the modification. The
9 services must also be delivered by the broker or licensed
10 agents under his supervision.

11 b. Servicing Non-California Borrowers. Nearly 80% of Defendants’
12 loan modification applications have been from non-California
13 residents. Such a practice may subject the attorney whose trust
14 account serves as the enterprises’ bank account to charges that he is
15 engaged in the unauthorized practice of law in those states outside
16 California. These Defendants have been introduced to this problem
17 through Cease and Desist letters from the states of Ohio, North
18 Carolina, Indiana, and Georgia. (Exhibit 21). Likewise, a DRE –
19 licensed broker or sales agent could not represent out-of-state
20 borrowers without also complying with local state regulations.

21 **B. Profitably**

22 If the business were run lawfully, profitability would be severely
23 challenged as follows:

24 1. If sales personnel faithfully sold the service with absolutely no
25 hyperbole, hype, or misinformation, we expect that alone would
26 slow sales dramatically and would increase expenses for hiring,
27 training, and supervision.

28 2. Advance payment would be severely restricted to situations where

1 an attorney and his employees or a DRE-licensed broker and his
2 licensed sales agents were actually delivering the loan modification
3 services. Under the DRE model, only 25% could truly be paid in
4 advance. Such limits on advance fees would itself kill the
5 opportunity to build a volume business as there would not be
6 enough operating income to cover expenses. To operate on a
7 payment upon completion system would require substantial capital
8 to fund operations.

9 3. The regulatory restrictions on doing modifications outside
10 California (whether by California lawyers, California licensed
11 brokers, or others) would cripple volume, if not end out-of-state
12 business altogether.

13 In the end, it appears this business was built on two faulty assumptions –
14 (i) that a nominal relationship with a lawyer is enough to get past the general
15 prohibition against advance fees and (ii) that there are no regulatory obstacles to
16 operating outside California. Neither assumption is accurate. To the contrary,
17 state regulations abound that specifically target what this company is doing –
18 advance fee loan modification services.

19
20 Dated: July 15, 2009 /s/ Thomas W. McNamara
21 Thomas W. McNamara,
22 Court Appointed Temporary Receiver for
23 US Foreclosure Relief Corp., et al
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PROOF OF SERVICE

FTC, et al. v. U.S. Foreclosure Relief Corp., et al.
United States District Court - Central District of California, Southern Division
Case Number: SACV-09-768 JVS (MLGX)

I, Borany T. Reinbold, declare as follows:

I am an employee of a member of the bar of this Court at whose direction was made in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 West "A" Street, Suite 1150, San Diego, California 92101.

On July 15, 2009, I served the foregoing document(s) described as:

- **PRELIMINARY REPORT OF TEMPORARY RECEIVER and**
- **DECLARATION OF THOMAS W. MCNAMARA IN CONNECTION WITH THE PRELIMINARY REPORT**

on interested parties in this action:

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Counsel for The People of the State of California

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*Counsel for Defendant George
Escalante*

By Email/ ECF by electronically filing the foregoing with the Clerk of the District Court (pursuant to General Order 08-02, VII (A)) using its ECF System, which electronically notifies them via email as indicated above.

By First Class Mail: I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with United States postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.

By Personal Service: I served the documents by placing them in an envelope or package addressed to the person(s) at the addresses listed and providing them to a professional messenger service for service on this date

By Overnight Delivery: I am readily familiar with the firm's practice of collection and processing correspondence for mailing with Overnite Express and

1 Federal Express. Under that practice, it would be deposited with Overnight Express
2 and/or Federal Express on that same day thereon fully prepaid at San Diego
3 California in the ordinary course of business. The envelope was sealed and placed
for collection and mailing on that date following ordinary business practices.

4 By Facsimile: Based on agreement of the parties to accept service by fax
5 transmission, I faxed the documents on this date to the person(s) at the fax
6 numbers listed. No error was reported by the fax machine that I used. A copy of
the record of the fax transmission, which I printed out, is attached.

7 (STATE): I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

8 (FEDERAL): I declare that I am employed in the office of a member of the
9 bar of this court at whose direction the service was made.

10 Executed July 15, 2009 in San Diego, California.

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13 Borady T. Reinbold
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