UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARK E. PHILLIPS, Plaintiff, v. KYLEEN ELISABETH CANE aka MICHAEL CANE, aka MICHAEL EISELMAN; JAUNITA MARY JARDIN aka JAN WALLACE, aka JAN JARDINE, aka JOAN REARDON, aka ROB SCRUGGS; and DOES 1-25, Defendants.	Case Number: **COMPLAINT** 1. **Breach of Contract;** 2. **Breach of Fiduciary Duty;** 3. **Fraud;** 4. **Conspiracy;** 5. **Indemnity.** **JURY DEMAND**

Plaintiff Mark E. Phillips files this complaint for damages against Kyleen Elizabeth Cane, aka Michael Cane, aka Michael Eiselman; and Juanita Mary Jardin, aka Jan Wallace, aka Jan Jardine, aka Joan Reardon, aka Rob Scruggs, and Does 1-25 (collectively "defendants"), and upon information and belief alleges as follows:

INTRODUCTION

This case arises out of defendant Ms. Cane's conduct as the Trustee of a voting trust imposed upon plaintiff Mark Phillips to control his majority shares in MOD Systems, Inc. (hereinafter "MOD"), a company he founded and operated for over four years. Defendant was an adviser and confidant of plaintiff as he struggled to maintain control of his company against allegations of wrongdoing. Unbeknownst to plaintiff, defendant Ms. Cane is the long-time friend, lawyer and co-conspirator of plaintiff Mr. Phillips' main antagonist, the long-time fraud Jan Wallace. The failure of Ms. Cane to disclose her obvious, entrenched conflicts of interest, conflicts of interest so obvious that she was removed as trustee by the Honorable John P. Erlick, Judge of the Superior Court of the State of Washington. But the failure of Ms. Cane to disclose her conflicts of interest was not mere negligence, but followed a pattern of fraud that she and her co-conspirator, defendant Jan Wallace, had employed to gain control of companies in jurisdictions across the Western United States. Once designated as the trustee, Ms. Cane breached her contractual obligations, abrogated her fiduciary duty, and failed to take into account plaintiff's interests in exercising her duties as executor of the trust. Instead, Ms. Cane took steps in pursuit of her own interests as well as the interests of her co-conspirator, Ms. Wallace. As their long and nefarious business history has proven, Ms. Cane and Ms. Wallace intended to take control of MOD at a time when it received a $35 million investment, for their own personal gain. The direct result of Ms. Cane's fraud and deceit, MOD was destroyed and plaintiff lost not only his business, but all of his personal assets as well. This Complaint seeks to recompense plaintiff for all of the damages suffered as a result of defendants' actions.

THE PARTIES

1. Plaintiff Mark E. Phillips is an individual and a resident of King County, State of Washington. He is the founder and at various times was the majority shareholder of MOD, a business organized under the laws of the State of Washington with its principal place of business in King County, State of Washington. He was also the sole shareholder of several other Washington corporations, including Banana, MetaWallet and A Dot Corporation.

2. Defendant Kyleen Elisabeth Cane, aka Michael Cane, aka Michael Eiselman is a resident of the State of Nevada, and a licensed attorney practicing in the Las Vegas area. Ms. Cane holds herself out as a securities attorney specializing in public corporate law. She has a long association and business history with Ms. Wallace, acting not only as her personal attorney in various litigation matters, but as her business partner and adviser as well.

3. Defendant Juanita Mary Jardine, aka Jan Wallace, aka Jan Jardine (and other various pseudo-names) is a citizen of Canada who resided in Scottsdale, State of Arizona, at the time of the conduct alleged herein. It is believed that Ms. Wallace had interests in various businesses in the United States and abroad at the time, even though she had entered the country under a "visitor" visa and was therefore legally barred from working. It is further believed that Ms. Wallace has returned to live in Canada.

4. Doe defendants 1 thru 25 are individuals who acted in concert with the named defendants in their illegal and tortious conduct, and whose identities or conduct are unknown to plaintiff at this time. When such identity or conduct is discovered, plaintiff will seek leave of court to amend the complaint.

JURISDICTION AND VENUE

5. This court has diversity jurisdiction over these claims against Ms. Cane pursuant to 28 U.S.C. §1332(a)(3), as Mr. Phillips, Ms. Cane and Ms. Wallace are residents of different states, and the amount in controversy exceeds $75,000.

6. This Court has personal jurisdiction over all defendants because each defendant conducts business activities in this jurisdiction, voluntarily entered into written contracts within this jurisdiction, and has caused harm to Mr. Phillips within this jurisdiction.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because defendants have substantial contacts with and/or the majority of the pertinent witnesses may be found in this district; many of the events giving rise to this lawsuit have arisen and continue to occur in this district; and defendants have committed the majority of their alleged tortious acts in this district.

FACTUAL ALLEGATIONS

Mr. Phillips Founds MOD Corporation

8. Plaintiff Mark Phillips founded MOD in 2005 along with Anthony Bay. Mr. Bay contributed $50,000 towards the new company with Mr. Phillips contributing office space, staff, computer and other equipment, cash, and his personal credit to support the new company in an amount estimated to be $3 million.

9. Mr. Phillips also contributed a stream of income due and owing to A Dot Corporation from work done on other, unrelated projects; which income supported MOD after its formation. Over time, Mr. Phillips also set up a line of credit using his personal credit that MOD could access, as well as loaned MOD more than $1 million dollars.

10. Plaintiff Mr. Phillips was the majority shareholder of MOD and its CEO as well as its Chief Technology Officer up until his ouster from the company in 2009.

11. MOD was a technology company that licensed Mr. Phillips' intellectual property in order to create an efficient system to deliver digital video content to consumers via an SD card.

12. Plaintiff Mr. Phillips founded Banana in 2006. Mr. Phillips was its sole shareholder and director until defendant Mr. Arnold's investment in Banana in 2006.

13. Banana was set up to hold certain of Mr. Phillips' intellectual property that was used to design a system to allow consumers to make purchases using their cellular telephones. It was anticipated that this technology would be especially useful in countries that lacked a comprehensive and extensive monetary infrastructure.

14. Plaintiff Mr. Phillips founded A Dot Corporation in 2003. A Dot was set up to develop certain computer technologies that would be used in products designed for consumers. A Dot was Mr. Phillips "technology incubator" that allowed him to develop different technologies that would have applications with computers and smart devices. For example, A Dot was hired by Microsoft to develop and write code for its smart watches.

15. As Mr. Phillips' intellectual property and the amount of related technology increased, he planned to set up different corporations that would license certain of his intellectual property to develop and market certain, related products. This general plan for technical development led to the formation of MOD and Banana; each designed to license specific intellectual property to develop and market distinct products.

16. MOD, Banana and A Dot were parties to various inter-company and service agreements that govern the sharing of resources, including staff and intellectual property. These agreements do not permit any employee of one company to access the computers of another company without specific authorization.

17. The data encryption work performed by Mr. Phillips, A Dot, MOD, and Banana for digital entertainment, digital technology, and financial transactions is so sensitive that each company controlled access to its own computers and strictly limited access to their computers. No defendant had permission, implicit, tacit, implied or otherwise to access any of the computers at any of the companies of MOD, Banana, and A Dot.

Mr. Phillips Meets Ms. Wallace;
Ms. Wallace Steals Passwords and Invades A Dot's Computers

18. Mr. Phillips was introduced to Ms. Wallace in the Spring of 2006 at a fund raiser in Palm Springs. Ms. Wallace, who styles herself at times as a fundraiser for start-up companies as well as a CEO of several public companies, was introduced to Mr. Phillips as someone who could help him raise additional funds to help MOD and his other businesses expand.

19. In 2007 and 2008, Ms. Wallace and Mr. Phillips spent a substantial amount of time together, and, in addition to the business relationship that Ms. Wallace had with MOD, A Dot, Banana and Mr. Phillips, a personal relationship developed between the two. While Mr. Phillips was busy working, Ms. Wallace was using her business and personal relationship with Mr. Phillips to gain access to all of Mr. Phillips' property in order to glean information about MOD, A Dot, Banana, and the other companies and to illegally access the computers of MOD, A Dot, Banana, and the other companies.

20. At no time was Ms. Wallace given permission to access any of the data on any of the computers for any of the companies by Mr. Phillips or any other person.

21. It is believed that Ms. Wallace gained unauthorized access to the computers of all the companies by copying down passwords she found or stole from documents or computers, or by surreptitiously observing passwords being typed into portable computers.

22. Ms. Wallace also attempted to ingratiate herself with Mr. Phillips' assistants and it is believed that some of the confidential and protected information she obtained was gleaned either surreptitiously from them or by creating some ruse to get the information. She is an experienced and accomplished con.

23. Starting in the spring of 2008, Ms. Wallace has boasted to various individuals that she had gained access to all of A Dot's computers and had used that access on numerous occasions for her personal purposes, and that she has given the information to others, including some defendants, most notably, defendant Ms. Cane.

24. At the time, MOD was going through the due diligence process to issue additional debt instruments in conjunction with a $35 million investment from Toshiba, NCR and Deluxe Corporation. Ms. Wallace attempted to parlay her business consulting and her personal relationship with Mr. Phillips into a substantial gift of shares in MOD. When Mr. Phillips neither gave nor offered Ms. Wallace shares in MOD, she became irate and vowed to destroy Mr. Phillips.

25. Ms. Wallace attempted to blackmail Mr. Phillips into a financial settlement for an alleged physical altercation in Japan. That proved unsuccessful as well. Ms. Wallace, unable to extort money from Mr. Phillips, together with her long time co-conspirator, plotted to oust Mr. Phillips from MOD and take over his shares in MOD.

Wallace Invades Mr. Phillips' Personal Computers and Accounts

26. Without authorization from Mr. Phillips, Ms. Wallace accessed his personal computers and personal accounts, including his G-mail account. It is believed and alleged that she gained access to Mr. Phillips' passwords through the same, surreptitious means as she accessed the passwords to the A Dot accounts. Mr. Phillips' personal accounts were similarly protected by passwords, but these passwords were not shared nor given to any other person at MOD or any of the other companies.

27. Between 2006 through 2009 defendant, Ms. Wallace would access Mr. Phillips' personal information and then email the documents she found to her own email account. It is believed that Ms. Wallace then erased the email that "sent" Mr. Phillips' personal information to her own account to conceal her theft and access from Mr. Phillips.

28. The information that Ms. Wallace accessed and stole was personal and, in turn, confidential. For example, Ms. Wallace stole personal emails between plaintiff Mr. Phillips and his mother and sister. More importantly, Ms. Wallace accessed Mr. Phillips personal financial information, including statements from his money managers. The stolen statement would be used against him by the defendants in seeking to force him to settle their unfounded claims against him.

29. Mr. Phillips did not learn of Ms. Wallace's unauthorized access to his personal accounts and computers and the theft of his personal information until January 2013, when he was released from custody and able to review all the documents from his criminal trial. Included in the hundreds of thousands of separate documents is a report from the CART team of the FBI, which documents the unauthorized access of Mr. Phillips' personal accounts and computers by Ms. Wallace, Mr. Eric Lundvall and

Mr. Smyth. Discovery from the criminal case has also shown that Ms. Wallace shared the stolen information directly with Mr. Arnold, Ms. De Haan and Mr. Smyth.

Wallace Gives Stolen Data to Cane and Others

30. Without authorization from Mr. Phillips/A Dot, Ms. Wallace showed data she stole from Mr. Phillips and A Dot computers, including confidential banking and accounting records belonging to Mr. Phillips/A Dot, to her long-time business associate, Ms. Cane, an attorney, who Ms. Wallace herself had recommended and helped seat on MOD's board of directors. Wallace also showed the data to Mr. Bay. She is believed to have manipulated some of the data she stole before delivering it to others, including defendants Mr. Smyth and Ms. De Haan.

31. Ms. Wallace has boasted to third parties that she was able to "steal" protected data from A Dot computers over a period of several months and that she gave this stolen data to Mr. Smyth, who as Mr. Arnold's attorney was frequently at odds with MOD's management over various issues, including the ownership of Mr. Phillips' intellectual property and corporate control issues. Ms. Wallace was motivated to steal and then use the stolen information and data from the plaintiff' computers by sheer greed and revenge. Ms. Wallace had already tried, on several occasions, to extort more money from plaintiff; and, she was aware of the value of the Series A financing from Toshiba, et al to Mr. Phillips and to MOD.

32. Ms. Wallace was incensed at Mr. Phillips when he rejected any attempt to grant stock and or options in MOD to Ms. Wallace following the Series A financing deal. She not only argued repeatedly and vehemently with Mr. Phillips, but threatened him and told third parties that she would "ruin [and destroy] him." Additionally Ms. Wallace wanted revenge against Mr. Phillips, who had again unilaterally ended their turbulent, tumultuous personal relationship in December 2007; a relationship that Ms. Wallace fostered solely to gain access to Mr. Phillips' assets and to enrich herself.

33. Upon information and belief, Ms. Wallace shared this stolen data with Ms. Cane, and together they plotted a way to oust Mr. Phillips from MOD and to gain control of his shares in the corporation.

34. In furtherance of this conspiracy, in March 2008, Ms. Wallace contacted one of the investors in MOD, the well-known Seattle angel investor, Mr. Robert Arnold, and was put in contact with his attorney, Mr. Jeffery Smyth. It is believed that Ms. Wallace offered to share the information she had stolen from A Dot computers with Mr. Smyth. According to Mr. Smyth's statements to the FBI in January of 2011, he met with Ms. Wallace in December 2008, January 2009, and again in December 2009 in Seattle or at her home in Arizona and downloaded stolen information on a thumb drive; and that he received e-mails and documents of plaintiff's that he knew to be stolen by Ms. Wallace. Over the same period of time, third parties have witnessed Mr. Smyth and Ms. Wallace engaged in social settings, flirting with each other and intoxicated, further cementing their conspiracy against plaintiff.

35. Defendant Ms. Cane knew that the information she received from Ms. Wallace was "stolen" from Mr. Phillips, that Ms. Wallace was not authorized to access the Phillips/A Dot computers, and that she was not authorized to share any information or data that she had illegally acquired.

The Sordid Wallace/Cane History

36. Ms. Wallace was introduced to plaintiff as a "fund raiser" and a corporate adviser to start-up companies. She held herself out as the CEO of several companies as well as a corporate consultant. While she may have been a business woman and CEO of public companies at one time, when she met Mr. Phillips she was none of the above. She is an accomplished con artist, liar and fraud. Ms. Wallace set her sights on Mr. Phillips.

37. Ms. Wallace, a Canadian citizen, was in the United States on a "visitor's visa," making her ineligible to work or earn money. To get around this prohibition, she used up to six different social security numbers, kept most of her money off shore, and hid behind a plethora of corporate identities and structures.

38. Ms. Cane, the former Michael Cane, and also known as Michael Eiselman, a male lawyer, leads a law firm in Nevada, Cane Clark LLP, that holds itself out as specializing in corporate transactions and securities matters.

39. Ms. Wallace's ties to her co-conspirator and partner, Ms. Cane, go back as early as 1996. For over a decade they have been involved in various ventures, many of them testing the legal and ethical limits of business transactions. In almost all instances in which Ms. Cane represented Ms. Wallace and her companies, they have been sued for questionable transactions and/or fraud.

40. More relevant, Ms. Wallace and Ms. Cane have a distinct modus operendi for assuming control of small or start-up corporations. She and Ms. Cane have perfected their scheme over the years.

41. Ms. Wallace's motivation for turning the stolen Phillips/A Dot information over to Ms. Cane is believed to be in furtherance of one of their long-running schemes to gain control of MOD and Banana. In the past, Ms. Wallace and Ms. Cane, working in concert and sometimes with the participation of others, target companies desiring to go public, force them into shell companies in a reverse merger (sometimes laden with undisclosed or mis-described debt instruments that latter are "called" by Wallace or her cohorts after the transaction is consummated), cause "whistleblower" complaints against company executives often involving a pattern of allegations involving sexual misconduct or drug abuse, instituting sham litigation review committees or audit committees, installing members of their own small group of cronies on the boards of the target companies and/or the sham litigation/audit committees, and ultimately taking over the companies.

42. The scheme (as documented by publicly available securities records and legal pleadings in other cases involving Dynamic Associates, Legal Access Technologies, MW Medical, Secured Diversified Investments, Davi Skin, among many others) commonly involves bankrupting the companies and/or issuing large amounts of securities to connected parties, and sending assets offshore into nominee bank accounts in the Cayman Islands and Bermuda.

43. Companies affiliated with Wallace and/or Cane have been or are the targets of government investigation in securities fraud and money laundering schemes. Wallace, Cane and/or their business associates usually end up in control of the companies they target. MOD, Banana, and A Dot are believed to have become targets of this fraud ring starting as early as 2007.

44. The nefarious activities of Ms. Wallace and Ms. Cane have resulted in over a dozen lawsuits and investigations. A brief summary of Ms. Wallace's activities can be found in the whistle blower complaint filed with the IRS by forensic accounting expert, Dennis Mandell. A true and correct copy of Mr. Mandell's complaint is attached hereto as Exhibit "A."

45. Ironically, Banana, using the codename MetaWallet, had software algorithms that detected and identified the sophisticated money laundering scheme that Cane and Wallace employed in their illicit activities, which information was used as the basis for Mr. Mandell's IRS Whistleblower Complaint. Additionally, plaintiff Mr.

Phillips used the information gleaned from all the public records to compile a lengthy complaint against Ms. Wallace and Ms. Cane. A true and correct copy of the Phillips' complaint is attached hereto as Exhibit "B."

The Defendants Conspire and Ms. Cane is Appointed as Trustee of the Phillips Voting Trust

46. In early 2008, defendant Ms. Wallace, on the advice with Ms. Cane, approached Mr. Arnold and it is believed entered into an agreement to provide Mr. Arnold and his agents and designees, Ms. Julia De Haan, Mr. Arnold's accountant, and Mr. Smyth, with the confidential and protected data that she had stolen from Phillips/A Dot's computers.

47. The defendants and the Arnold team agreed to use the information in an attempt to force Mr. Phillips to relinquish control of both MOD and Banana and ultimately to give up substantial amounts of the equity that he held in both corporations.

48. To accomplish their goals, Mr. Smyth used the stolen information to level baseless allegations against Mr. Phillips. Mr. Smyth not only sends letters to various parties, but on behalf of Mr. Arnold, causes baseless, unfounded "derivative" claim lawsuits against MOD and Banana.

49. Mr. Phillips, unaware of the conspiracy of Ms. Wallace, Ms. Cane, and the Arnold camp, had asked Ms. Wallace for a recommendation for an "independent" board member to put on the MOD board of directors before Mr. Smyth began making his allegations. The MOD board of directors sets up a "Demand Review Committee" to investigate the allegations made by Mr. Smyth.

50. Prior to her appointment as a MOD board member, Ms. Cane met with Mr. Phillips in Los Angeles in which Ms. Cane assures plaintiff she will be "independent" and will assist Mr. Phillips in his goal to grow MOD; thereby establishing a fiduciary relationship with Mr. Phillips. At the time, Mr. Phillips knew only that Ms. Cane was a "business attorney" recommended by Ms. Wallace. She did not disclose the depth and quality of their relationship during this initial meeting with Mr. Phillips.

51. As a result of the allegations, defendant Ms. Wallace recommends that Mr. Phillips appoint her co-conspirator, Ms. Cane, to the MOD board of directors Demand Review Committee (hereinafter "DRC").

52. The recommendation of the DRC was to place Mr. Phillips shares (he was the majority shareholder) into a Voting Trust to be administered by Ms. Cane. Mr. Phillips was hesitant to agree to the Voting Trust, but Ms. Cane convinced Mr. Phillips to agree to the Trust by assuring him that everything will be transparent and public, and telling him that Ms. Wallace has put a "hit" on Mr. Phillips that will be recalled if he no longer has control of his shares in MOD. Ms. Cane told Mr. Phillips that agreeing to the Voting Trust will keep him safe.

53. Based upon the promises, threats and assurances from defendant Ms. Cane, Mr. Phillips agreed to place his MOD shares into the Voting Trust, with Ms. Cane appointed as the trustee. A true and correct copy of the Voting Trust Agreement is attached hereto as Exhibit "C".

54. At no time did Ms. Cane ever disclose to plaintiff her extensive conflicts of interest, including her past associations and representation of Ms. Cane, her long history of surreptitiously taking control of corporations, and the plan of the defendants and the Arnold camp to oust Mr. Phillips, take control of MOD, and use the Toshiba investment for their own enrichment.

55. It is believed that Ms. Cane had no intention of complying with either her fiduciary responsibilities or her contractual obligations on behalf of Mr. Phillips, but, instead, planned all along to continue the conspiracy with Ms. Wallace to assume control of MOD and then access its capital for their own, personal gain.

56. The result of the DRC was that Mr. Phillips was ousted from MOD. He also realizes at this time that Ms. Cane is not an "independent" board member; that not only does she have the obvious conflicts of interest described above, but she breaches the Voting Trust as well as her fiduciary duties to Mr. Phillips by taking actions against his interests.

57. Specifically, Ms. Cane was instrumental in ousting Mr. Phillips from MOD and took actions against the interests of Mr. Phillips by continuing to negotiate with the Arnold camp regarding settlement with them of derivative claims by giving them some of the Phillips' shares.

58. Once ousted, Mr. Phillips researched both defendants Ms. Cane and Ms. Wallace and learned of their checkered past and close relationships. He detected a pattern in their behavior that has allowed them to hostilely take over corporations in the past and their modus operendi of "reverse-merging" corporations into entities in foreign jurisdictions. This has allowed Ms. Cane and Ms. Wallace to keep the majority of their profits outside of the United States.

59. After he learned of the history of theft by Ms. Wallace and Ms. Cane, Mr. Phillips retained counsel to represent A Dot to represent its interests in the transactions. The A Dot attorney, Ms. Harmeet K. Dhillon, drafted a letter to the investors in the Series A transactions regarding the conduct of Ms. Cane and Ms. Wallace. A true and correct copy of that correspondence is attached hereto as Exhibit "D".

60. In addition, Mr. Phillips filed his "whistleblower complaint" about the securities and monetary violations of Ms. Cane and Ms. Wallace with the IRS.

61. In response, defendants Ms. Wallace and Ms. Cane, along with the Arnold camp, Ms. De Haan and Mr. Smyth, reported Mr. Phillips' "misconduct" to the FBI and the United States Attorney's Office in Seattle. Each of these individuals, in subsequent interviews with federal law enforcement officials, lied about various aspects of their dealings with Mr. Phillips, about important details of their "association," and about their own interests in the demise of Mr. Phillips.

62. So obvious and incurable was the conflicts of interest associated with Ms. Cane, that on November 12, 2009, Judge John P. Erlick of the King County Superior Court approved an order allowing Mr. Phillips to remove Ms. Cane as member of the MOD DRC and trustee of the Voting Trust. See Exhibit "E" attached hereto.

63. Discovery has shown that defendant Ms. Wallace first contacted Mr. Arnold's office prior to March 2008. This is important because Toshiba had already given MOD a "loan" of $4 million and was set to complete the Series A financing later that year for the full $35 million. More importantly, it is before Ms. Cane was appointed to the MOD board of directors, prior to the DRC, and prior to the Voting Trust. The defendants and the Arnold camp misrepresented the date they first met to the federal officials because it would become obvious that they had been conspiring long before they made any complaint to federal officials, and that their complaint, at this late date, was intended to oust Mr. Phillips from MOD in furtherance of their conspiracy.

Mr. Phillips' Substantial Damages

64. Mr. Phillips has been substantially damaged as a result of the tortious conduct in this case. Plaintiff has been damaged by having to expend substantial time, money, and resources to realize and be able to prove that the defendants not only improperly accessed Phillips/A Dot computers, but then stole protected, confidential data and information which was then used against Mr. Phillips.

65. Mr. Phillips was forced to hire computer technicians to assess the damage to Phillips/A Dot's portable computers and to investigate the status of A Dot's larger computers, as well as the amount and quality of data stolen by defendants, which remains in the control of defendants and their cohorts.

66. Mr. Phillips has particularly been damaged by defendant Ms. Cane's breach of her fiduciary duty and her breach of the Voting Trust Agreement because as a result of that misconduct, Mr. Phillips lost all of his interest in MOD, and his other corporations are now, essentially, worthless.

67. As a further result of defendants' tortious conduct, MOD and Banana, once valued at $123 million and $60 million, respectively, are now essentially worthless. Additionally, Mr. Phillips had licensing agreements for the use of his intellectual property with MOD in the amount of $5 million and a license agreement with Banana in the amount of $2.5 million. These licensing agreements have never been paid. And all intellectual property contributed to MOD for majority stock was ignored when voted.

68. Some of Phillips/A Dot's computers are believed to have been reformatted, overwritten, imaged and copied, all of which affect the integrity of any data remaining and effectively destroy much or all of the original data, including data belonging to Phillips/A Dot's clients.

69. As a further consequence of defendants' tortious conduct, plaintiff has suffered significant loss of income of $500,000 per year, plus 30% performance bonus. Mr. Phillips' employment contract with MOD has not been honored as a proximate result of defendants' conduct and allegations.

70. Mr. Phillips' monetary damages are believed to exceed $100,000,000.

First Cause of Action
Breach of Contract (Voting Trust Agreement)
(Against Defendant Kyleen Cane)

71. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 70 as if set forth fully herein.

72. Each and every contract imposes upon its parties the covenant of good faith and fair dealing. This same covenant is imposed upon those persons retained or hired to perform the duties and obligations of that contract.

73. Defendant Ms. Cane willingly and knowingly agreed to act as the trustee on behalf of Mr. Phillips and agreed to perform all duties and obligations under the Voting Trust Agreement.

74. Defendant Ms. Cane specifically agreed to act as Mr. Phillips' trustee, understanding she was to vote the shares in the trust as benefitted his best interests.

75. Defendant Ms. Cane breached her obligations under the Voting Trust by taking actions contrary to the best interests of Mr. Phillips, and further, taking actions that would benefit her personally.

76. Specifically, Ms. Cane breached the Voting Trust by agreeing to transfer stock to Mr. Arnold, by voting to remove plaintiff as CEO, by voting to alter plaintiff's salary, and by failing to protect plaintiff's job including not seeking the approval of the Voting Trust before terminating Mr. Phillips.

77. As a result of defendant's wrongful conduct, plaintiff Mr. Phillips has been damaged by the loss of his equity shares in MOD, by the loss of MOD as an on-going concern, and by the loss of his annual salary as a MOD officer and employee.

78. As a proximate cause of defendant's wrongful, intentional and fraudulent conduct, plaintiff has suffered damages as alleged above according to proof at trial.

Second Cause of Action
Breach of Fiduciary Duty
(Against Defendant Ms. Cane)

79. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 70 as if set forth fully herein.

80. Defendant Ms. Cane, by advising Mr. Phillips and by agreeing to act as his trustee in the Voting Trust enjoyed a fiduciary relationship with Mr. Phillips.

81. Defendant breached her fiduciary duty to plaintiff by taking actions and exercising her trustee duties contrary to the best interests of plaintiff.

82. Specifically, Ms. Cane breached her fiduciary duty by agreeing to transfer stock to Mr. Arnold, by voting to remove plaintiff as CEO, by voting to alter plaintiff's salary, and by failing to protect plaintiff's job including not seeking the approval of the Voting Trust before terminating Mr. Phillips.

83. As a result of defendants' wrongful conduct, plaintiff has been significantly damaged, including the loss of his employment, the loss of his company, and the loss of his reputation.

84. As a further result of defendants' wrongful conduct, plaintiff has been forced to expend significant amounts to retain and employ attorneys in an effort to protect his interest, and to have defendant removed as his trustee.

85. The acts of defendant were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

86. Plaintiff has been damaged in a significant amount, and should be awarded compensatory damages in an amount to be proven at trial.

Third Cause of Action
Fraud
(Against All Defendants)

87. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 70 as if set forth fully herein.

88. Defendants Ms. Cane and Ms. Wallace made certain representations to plaintiff in regard the Voting Trust, their willingness to aid and support plaintiff, and their goal to help plaintiff retain control of his companies.

89. Representations made by Ms. Cane and Ms. Wallace that they would support plaintiff and help him keep control of MOD were, in fact, false. Each defendant knew these representations to be false at the time they were made.

90. Defendants made those representations to induce plaintiff to do certain things in reliance upon these representations; namely, to lull plaintiff into believing that Ms. Cane and Ms. Wallace would help him and consider his interests in performing acts and making recommendations.

91. Defendants had no intention of honoring those obligations and duties to which he consented. In fact, it appears that Ms. Cane and Ms. Wallace intended all along to use their position of trust with plaintiff to "steal" MOD from him by gaining control of his shares and then raiding the investment capital invested by Toshiba, NCR and Deluxe. Defendants planned to remove Mr. Phillips from MOD and to take as much of his contractual and property rights as possible.

92. Plaintiff reasonably relied upon these representations of defendants to his detriment. He accepted advise from Ms. Cane and Ms. Wallace and agreed to appoint Ms. Cane to the MOD board of directors and as his trustee in the Voting Trust.

93. As a result of his reliance, plaintiff was significantly damaged by the loss of his job, his company, and future earnings and projects in an amount to be proven at trial.

94. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

Fourth Cause of Action
Conspiracy
(Against All Defendants)

95. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 70 as if set forth fully herein.

96. The defendants, and all of them, did knowingly and willfully conspire and agree to a plan of action that was designed and intended to cause plaintiff harm and to damage him.

97. The goal of the conspiracy was to wrongfully possess or steal as much of plaintiff's property as possible, thus enriching themselves at plaintiff's expense. Specifically, defendant Ms. Wallace intended to defraud plaintiff into giving her shares in MOD for her "consulting" services. When this proved unsuccessful, Ms. Wallace conspired with her long time partner, Ms. Cane, as well as the Arnold camp to remove Mr. Phillips from any management or ownership role in MOD and Banana in order to enrich themselves at Mr. Phillips' expense.

98. The defendants took several steps to accomplish these goals, including but not limited to, the following actions:

(a) Stealing, or causing to be stolen personal and confidential information belonging to plaintiff and A Dot;

(b) Using the stolen information in an effort to force plaintiff to relinquish his positions as CEO of MOD and Banana;

(c) Using the stolen information in an attempt to extort plaintiff;

(d) Prevaricating and lying to federal investigators about Mr. Phillips' conduct;

(e) Breaching Agreements with plaintiff by filing frivolous and unfounded lawsuits.

99. As a proximate cause of Defendant's wrongful, intentional and fraudulent conduct, plaintiff has suffered damages as alleged above according to proof at trial.

100. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial

Fifth Cause of Action
Contractual Indemnity
(Against Defendant Kyleen Cane)

101. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 70 as if set forth fully herein.

102. Defendant Ms. Cane agreed to act as the trustee for Ms. Phillips in that agreement identified above as the Voting Trust.

103. That written agreement contains specific clauses requiring any party to the agreement to indemnify Mr. Phillips under certain circumstances. Specifically, section 5.3 of the Voting Trust Agreement entitled "Indemnification" outlines the duties of any party to indemnify Mr. Phillips.

104. The acts of defendant Ms. Cane are of the type and quality as to trigger her obligation to indemnify and reimburse Ms. Phillips for all funds, including attorneys' fees, in having to remove Ms. Cane as the trustee in the Voting Trust.

105. As such, the damages suffered by plaintiff are of the nature that defendant is required to indemnify plaintiff by operation of the contract.

106. Plaintiff requests an order that defendant Ms. Cane be required to indemnify plaintiff for any and all costs associated with the action to remove her from her position as trustee of the Voting Trust, including but not limited to attorneys' fees, costs, and any other fees allowed under the contract.

PRAYER FOR RELIEF

107. WHEREFORE, plaintiff, Mr. Phillips, prays for judgment against defendants, jointly and severally, as follows:

108. For actual and consequential damages in an amount to be determined at trial, but believed at this time to exceed $100,000,000;

109. For the imposition of a constructive trust upon Defendants' ill-gotten gains as a result of the tortious activities detailed above, and disgorgement of said gains;

110. For exemplary damages for Defendants' misconduct in an amount to be determined at trial;

111. For attorney's fees to the extent permitted by law or by contract;

112. For costs of suit; and

113. Such other and further relief as this Court deems just.

DEMAND FOR JURY TRIAL

Under Fed.R.Civ.P. 38(b), plaintiff demands jury trial of all issues raised by the Complaint.

DATED this 3th day of April, 2013

mark phillips

MARK PHILLIPS, Pro-Se

EXHIBIT “A”

MILLER
CHEVALIER

George M. Clarke, III
Member
(202) 626-1573
gclarke@milchev.com

February 12, 2010

VIA HAND DELIVERY

Internal Revenue Service
Whistleblower Office
SE: WO
1111 Constitution Ave. NW
Washington, DC 20224

Re: Form 211 Submission by Dennis Mandell

To Whom It May Concern:

Please find enclosed the completed Form 211 and related attachment and exhibits, which are being submitted to the Whistleblower Office on behalf of Dennis Mandell. We represent Mr. Mandell in connection with his Form 211 submission and ask that any communications regarding the submission, or any ensuing investigation, be directed to the undersigned. Thank you for your attention to this matter, and please contact us with any questions at your earliest convenience.

Best regards,

George M. Clarke, III

Form 211 (Rev. December 2007)	Department of the Treasury - **Internal Revenue Service** **Application for Award for Original Information**	OMB No. 1545-0409 Date Claim Received: Claim No. (completed by IRS)

1. Name of individual claimant	2. Claimant's Date of Birth (Month, Day, Year)	3. Claimant's SSN or ITIN
Dennis Mandell	[redacted]	
4. Name of spouse *(if applicable)*	5. Spouse's Date of Birth (Month, Day, Year)	6. Spouse's SSN or ITIN

7. Address of claimant, including zip code, and telephone number

[redacted]

8. Name & Title of IRS employee to whom violation was reported	9. Date violation reported:
N/A	N/A
10. Name of taxpayer (include aliases) and any related taxpayers who committed the violation: Jan Mary Wallace	11. Taxpayer Identification Number(s) (e.g., SSN, ITIN, or EIN): 765-14-7593
12. Taxpayer's address, including zip code: 6929 E. Cheney Dr., Paradise Valley, AZ	13. Taxpayer's date of birth or approximate age: 54

14. State the facts pertinent to the alleged violation. (Attach a detailed explanation and all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.) Explain why you believe the act described constitutes a violation of the tax laws.

See attached.

15. Describe how you learned about and/or obtained the information that supports this claim and describe your present or former relationship to the alleged noncompliant taxpayer(s). (Attach sheet if needed.)

See attached.

16. Describe the amount owed by the taxpayer(s). Please provide a summary of the information you have that supports your claim as to the amount owed. (Attach sheet if needed.)

See attached.

Declaration under Penalty of Perjury

I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver that such application is true, correct, and complete, to the best of my knowledge.

DM

17. Signature of Claimant

2/4/10

18. Date

MAIL THE COMPLETED FORM TO THE ADDRESS SHOWN ON THE BACK

STATEMENT OF FACTS

1. Jan Mary Wallace resides at 6929 E. Cheney Dr., Paradise Valley, Arizona. Her social security number is 765-14-7593.

2. Ms. Wallace has dual citizenship in Canada and purportedly in the Cayman Islands, but she is a resident alien and U.S. taxpayer.

3. Ms. Wallace is currently Chief Executive Officer, President, and a Director of Davi Skin, Inc. ("Davi Skin"), a thinly-capitalized, publicly-traded cosmetics company located either at 11990 San Vicente Blvd., Suite 300, Los Angeles, CA 90049 or 4223 Glencoe Avenue, Suite 130, Marina Del Rey, California.[1] Ms. Wallace is also President of Wallace Black Financial Services, a consulting company that assists firms with raising equity capital. Until January 17, 2008, Ms. Wallace also served as President, CEO, and a Director of Secured Diversified Investment, Ltd., a small publicly-traded company.

4. Ms. Wallace owns, directly or indirectly, and uses several offshore bank and securities accounts, as well as several offshore entities, to conceal her assets and trading profits from illegal penny stock "pump and dump" schemes and other activities.

5. Although the exact amounts at issue are unknown, Ms. Wallace has hidden substantial assets abroad, totaling millions of dollars. Upon information and belief, Ms. Wallace has not disclosed the existence of these assets or accounts to the Internal Revenue Service under Title 31 and has not reported the income generated in these accounts under Title 26.

6. Based on a Davi Skin Active Shareholder Report as of July 13, 2007 (issued by Davi Skin's transfer agent, Pacific Stock Transfer Company), attached hereto as Exhibit A, the

[1] For reasons unknown, Davi Skin has been unable to timely file its required disclosures with the Securities Exchange Commission ("SEC") for over a year.

four largest unrestricted common stock positions in Davi Skin were held by Arch Ltd., Hepburn Holdings Ltd., Sunshine Ltd., and The Chloe Group of Companies (Chloe is the name of Ms. Wallace's daughter).[2] All four of these companies are owned and/or controlled by Ms. Wallace, and all four have the same address: The LOM Building, 27 Reid St., Hamilton, Bermuda.

7. The LOM Building is owned and occupied by LOM Holdings, a Bermuda-based parent company of a group of financial services companies founded by brothers Brian Lines and Scott Lines. "LOM" stands for Lines Overseas Management. The Lines brothers and LOM Holdings are currently being sued by the SEC for engaging in illegal "pump and dump" penny stock scams. The complaint in this lawsuit, filed in 2007 in the U.S. District Court for the Southern District of New York, is attached hereto as Exhibit B. In addition to providing offshore brokerage services and administrative services for corporate nominees, the LOM group also provides offshore banking services. *See* <http://www.lom.com/>.

8. Ms. Wallace routinely wires funds to LOM Securities in Bermuda and the Cayman Islands as payment for administration of her corporate nominees Arch Ltd., Sunshine Ltd., Hepburn Holdings, Ltd., and The Chloe Group of Companies. *See* Exhibit C attached hereto. Ms. Wallace has wired funds to LOM using JP Morgan Chase and HSBC Bank USA as correspondent banks, with beneficiary banks including The Bank of Bermuda Limited (account number 1010-956504) and Bank of NT Butterfield (Bermuda) (account number 20.006.840.351501.100).

9. Ms. Wallace has also used and/or controls a firm named Bridge Street Services Limited in these transactions.

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[2] Another large Davi Skin shareholder, Artist House Holdings, Inc., based in Japan, sued Davi Skin and its principals in 2006 for securities fraud. According to a Form 8-K filed with the SEC

(footnote continued on next page)

10. Ms. Wallace uses these offshore entities to acquire free-trading shares in defunct, publicly-traded corporate shells. These shell entities are then sold to a private company in what is termed as a "reverse merger."[3] The transaction is a means of taking a private company public without the cost and scrutiny associated with an initial public offering.

11. After materially false information touting the merger and prospects for the new company is disseminated to the investing public (the "pump" phase), Ms. Wallace then causes her offshore corporate nominees (such as Arch Ltd., Hepburn Holdings Ltd., Sunshine Ltd., and The Chloe Group of Companies) to sell the free-trading shares of the company at an artificially-inflated price (the "dump" phase). Thereby, Ms. Wallace pockets substantial profits on the sale of the stock, and in turn avoids paying capital gains on the sales as the shares are sold by offshore nominees and the proceeds are retained in offshore accounts.

12. By her own admission under oath, Ms. Wallace has been sued at least six or seven times for fraud or similar malfeasance with respect to her roles in various public companies. In one such case, *Thomas & Wong General Contractor, Inc. v. Blume Law Firm, et al.*, Superior Court of Arizona (Maricopa County), CV No. 2005-051325, Mr. Edward Tarapaski testified under oath that Ms. Wallace maintains offshore bank accounts. An excerpted copy of the trial transcript is attached hereto as Exhibit D.

(footnote continued from previous page)
by Davi Skin on July 9, 2008 and signed by Ms. Wallace, the lawsuit was settled for $650,000.

[3] Upon information and belief, Ms. Wallace has a long-standing relationship with Cane Clark, LLP, a Las Vegas-based securities law firm well known as a facilitator of thinly-capitalized reverse-merger transactions. Also upon information and belief, Ms. Wallace has conspired with several individuals in her pump and dump activities, including Kyleen Cane, a principal of Cane Clark LLP, as well as Devi Johal and Mujit Johal. These individuals may use offshore banking and brokerage arrangements similar to Ms. Wallace's in order to conceal their activities.

13. Dennis Mandell, the whistleblower in this action, discovered the above information through an investigation of allegations of fraud associated with one of the companies Ms. Wallace appears to have intended to use as part of one of her pump and dump schemes.

LEGAL ANALYSIS

Based on the facts outlined above and upon information and belief, Ms. Wallace is in violation of two primary sets of rules administered by the IRS with respect to assets and transactions in foreign jurisdictions: (1) the foreign bank account reporting regime under 31 U.S.C. § 5314 and the regulations promulgated thereunder (commonly referred to as the "FBAR" requirements), and (2) the anti-deferral regime of subpart F of the Internal Revenue Code. These violations have resulted and continue to result in the material underreporting and fraudulent concealment of Ms. Wallace's income and assets and render Ms. Wallace subject to civil penalties and interest, as described below.

Although Ms. Wallace is a citizen of Canada and possibly the Cayman Islands, she is a legal resident of the United States, and as such, is a "United States person" for federal income tax purposes and therefore subject to U.S. taxation on her worldwide income. *See* I.R.C. § 7701(a)(30).

Pursuant to 31 U.S.C. § 5314 and 31 C.F.R. § 103.24, "[e]ach person subject to the jurisdiction of the United States . . . having a financial interest in, or signature authority or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the [IRS] for each year in which such relationship exists . . . ." These provisions require that a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate balances of such foreign accounts exceed $10,000 at any time during the year. As Ms. Wallace is subject to the jurisdiction of the United States, and upon information and belief has not disclosed the existence of substantial assets held in accounts with Bermudan and/or Cayman Islands banks, Ms. Wallace is in clear violation of 31 U.S.C. § 5134. Accordingly, pursuant to 31 C.F.R. § 103.57(g)(2), Ms. Wallace is subject to a penalty of up to

$100,000 for each violation (i.e., each failure to report a foreign account each year in which such account held more than $10,000 in assets).

Furthermore, I.R.C. § 951 requires that U.S. shareholders of controlled foreign corporations ("CFCs") include, on a current basis, their pro rata share of all subpart F income earned by the CFC in which they hold an interest. A "U.S. shareholder" for purposes of subpart F is a 10% or greater stakeholder in a foreign company. A company is a CFC if it is held more than 50% by U.S. shareholders. Upon information and belief, Ms. Wallace's corporate nominees managed by LOM Securities are held exclusively by herself and her immediate family members, and as such qualify as CFCs. Under I.R.C. § 952(a)(2), subpart F income includes all foreign base company income which in turn, under I.R.C. § 954(a)(1), includes all foreign personal holding company income. Section 954(c) defines foreign personal holding company income as, *inter alia*, dividends, interest, and gains from the sale of property such as stock or other capital assets. Accordingly, subpart F requires that Ms. Wallace include in her gross income all investment income and capital gains earned by her offshore entities. Upon information and belief, her failure to do so constitutes a violation of subpart F and is evidence of a willful attempt to evade her U.S. federal income tax obligations.

As a consequence of the violations described above, Ms. Wallace is subject to penalties and interest, in addition to the taxes due and owing. At a minimum, Ms. Wallace is subject to the I.R.C. § 6662 penalty for negligence or disregard of rules and regulations and/or substantial understatement of income tax, which imposes a penalty of 20% of the understatement attributable to the penalized conduct. Furthermore, Ms. Wallace may be subject to the civil fraud penalty of section 6663, which imposes a penalty of 75% of the understatement of tax liability due to fraud. The section 6663 penalty requires a showing of intent "to evade taxes known to be due and owing by conduct intended to conceal, mislead, or otherwise [to] prevent the collection of taxes, [where] there is an underpayment of tax." *Nelon v. Commissioner*, T.C. Memo. 1997-49. Ms. Wallace's failure to disclose offshore accounts and the use of offshore entities to conceal her trading activities strongly suggests an intent on Ms. Wallace's part to defraud the IRS, in addition to concealing her illegal securities activities. Finally, Ms. Wallace is also subject to interest on back taxes and penalties at a rate of 3% plus the short-term federal rate. I.R.C. § 6621(a)(2). Interest began to accrue on the due dates of the returns for which there were understatements of tax liability. I.R.C. § 6601(e)(2)(B).

2,249,825

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER

Active Share Holders	565
Active Certificates	637
Free Trading Stock	5,926,598
Restricted Stock	8,684,610
Shares Outstanding	14,611,208

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
* ABERDEEN HOLDINGS LTD INC THE LOM GROUP 27 REID ST HAMILTON, ON CANADA	08/22/2001	1960	33	R	08/22/2001	No
	Total Shares		33	Total Certificates		1
DENNIS ACKERMAN	02/25/1998	1345	1			No
	Total Shares		1	Total Certificates		1
ROBERT F. ACKERSON 60 KNOLLS CRESCENT AVE. BRONX, NY 10463-0000	02/25/1998	1074	1			No
	Total Shares		1	Total Certificates		1
WILLIAM ADAM 7584 BEL ARBOR TRL WEBSTER, NY 14580-9476	02/25/1998	1261	1			No
	Total Shares		1	Total Certificates		1
VMR AG C/O DEUTSCHE BANC ALEX BR 1635 MARKET ST 17TH FLOOR PHILADELPHIA, PA 19103	10/04/2000	1899	1,240	R		No
	Total Shares		1,240	Total Certificates		1
DONALD R AHO 1015 PINEWOOD DR PINECITY, NY 14571-0000	02/25/1998	1260	1			No
	Total Shares		1	Total Certificates		1
* BERNHARD ALTENDEITERING ORCHIDEANSTER NORDHORN, GERMANY 48529	11/03/1998	1508	5	R		No
	Total Shares		5	Total Certificates		1
BABETTE ALTMAN 4850 WINTER HAVEN WAY ROSEVILLE, CA 95747-8252	02/25/1998	1329	1			No
	Total Shares		1	Total Certificates		1
DAVID AMMERMAN 75 PENN EST EAST STROUDSBURG, PA 18301-9028	02/25/1998	1089	1			No
	Total Shares		1	Total Certificates		1
LINDA C ANDERSON	12/20/2005	5210	2,909	R	12/20/2005	No
	Total Shares		2,909	Total Certificates		1

EXHIBIT A

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
* **ARCH LTD.**	04/03/2007	5309	573,847			No
THE LOM BUILDING 27 REID STREET	**Total Shares**		**573,847**	**Total Certificates**		**1**
HAMILTON, BERMUDA HM11						
PETER ARDITA	02/25/1998	1214	1			No
1119 SAVOY DR	**Total Shares**		**1**	**Total Certificates**		**1**
MELVILLE, NY 11747-5281						
ARTIST HOUSE HOLDINGS INC	04/04/2006	5231	566,667	S	04/04/2006	No
3F YUSHIN BLDG 3-27-11 SHIBUYA	**Total Shares**		**566,667**	**Total Certificates**		**1**
SHIBUYA-KU, TOKYO JAPAN						
SYLVIA ASCHER	02/25/1998	1057	1			No
58 E 83RD ST APT 2-A	**Total Shares**		**1**	**Total Certificates**		**1**
NEW YORK, NY 10028-0000						
ASLAN DEVELOPMENT	12/01/2006	5276	3,333	R	12/01/2006	No
C/O DWYER SMITH LAW FIRM 8712 W. DODGE RD #400	**Total Shares**		**3,333**	**Total Certificates**		**1**
OMAHA, NE 68114						
470842538						
ASLAN MORTGAGE	12/01/2006	5274	2,800	R	12/01/2006	No
2242 SO. 156 CIR	**Total Shares**		**2,800**	**Total Certificates**		**1**
OMAHA, NE 68130						
911749681						
GENEVIEVE F. AUBRY	02/25/1998	1092	1			No
16 EDGEWOOD RD	**Total Shares**		**1**	**Total Certificates**		**1**
PEEKSKILL, NY 10566-0000						
BANKHAUS H AUFHAEUSER	10/12/1999	1661	41			No
KAT KAPITALBERATUNG TOELZERSTRASSE 23	10/12/1999	1662	41			No
GENEVA, SWITZERLAND 82031	**Total Shares**		**82**	**Total Certificates**		**2**
CHRISTINE AZZARELLO	05/15/2006	5233	800			No
& GREGORY AZZARELLO JTTEN	**Total Shares**		**800**	**Total Certificates**		**1**
339 SOUTH HOWARD						
PLAINFIELD, IL 60544 325443210						
GEORGE BALOGH	02/25/1998	1140	1			No
17 SOUTH DR	**Total Shares**		**1**	**Total Certificates**		**1**
GREAT NECK, NY 11021-0000						

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
ANTHONY S. HARRISON 2900 OAKHILL LN MOUNT DORA, FL 32757-9525 202-10-4242	02/25/1998	1135	1			No
	Total Shares		**1**	**Total Certificates**		1
TRACEY HARROW 1 HERON TERRACE CAMDEN RD CARSHALTON VILLAGE SURREY, UK SM5 2NS	11/16/1999	1727	5			No
	Total Shares		5	**Total Certificates**		1
HELEN HARVARD 4020 PRATT AVE. BRONX, NY 10466-0000	02/25/1998	1077	1			No
	Total Shares		1	**Total Certificates**		1
WILLIAM M. HEALEY JR 255 SOUNDVIEW AVE. WHITE PLAINS, NY 10606-0000	02/25/1998	1107	1			No
	Total Shares		1	**Total Certificates**		1
FANNING M. HEARON, JR	02/25/1998	1353	1			No
	Total Shares		1	**Total Certificates**		1
RUDOLF HEINZ NIEDENAU 82 FRANKFURT AM, GERMANY 60325	02/03/2000	1817	100	R		No
	Total Shares		**100**	**Total Certificates**		1
JOSEPH HEJNA 254 PENNSYLVANIA ST. BUFFALO, NY 14201-0000	02/25/1998	1250	1			No
	Total Shares		1	**Total Certificates**		1
* **HEPBURN HOLDINGS LTD** THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11	04/03/2007	5310	573,847			No
	Total Shares		**573,847**	**Total Certificates**		1
FRAN HERRIDGE BOB HERRIDGE 18 ORCHARD DR ARMONK, NY 10504-0000	02/25/1998	1079	1			No
	Total Shares		1	**Total Certificates**		1
MARGERY H. HERRMANN 2202 THEALL RD RYE, NY 10580-1423 70286516	02/25/1998	1095	1			No
	Total Shares		1	**Total Certificates**		1

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
STRATEGIC GROUP LTD	01/04/2000	1781	461			No
SUITE 41/42 VICTORIA HOUS 26 MAIN STREET PO BOX 743	**Total Shares**		**461**	**Total Certificates**		**1**
COLLEEN SULLIVAN	02/25/1998	1343	1			No
	Total Shares		**1**	**Total Certificates**		**1**
HENRY L SUMMERS	02/25/1998	1056	1			No
1840 7TH AVE #5C NEW YORK, NY 10026-0000	**Total Shares**		**1**	**Total Certificates**		**1**
HERMAN SUNA	02/25/1998	1360	1			No
75 NOBLE ST. LYNBROOK, NY 11563-0000	**Total Shares**		**1**	**Total Certificates**		**1**
* **SUNSHINE LTD**	04/03/2007	5312	573,847			No
THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11	**Total Shares**		**573,847**	**Total Certificates**		**1**
GEORGE M. SWEETMAN	02/25/1998	1108	1			No
34 MORSEMERE PLACE YONKERS, NY 10701-0000	**Total Shares**		**1**	**Total Certificates**		**1**
ANDREW TABBAT	02/25/1998	1122	1			No
2218 THEALL ROAD RYE, NY 10850	**Total Shares**		**1**	**Total Certificates**		**1**
GUS TAHMIN	02/25/1998	1113	1			No
48 FIELDCREST RD. CRESTWOOD, NY 10707-0000	**Total Shares**		**1**	**Total Certificates**		**1**
MERCIAN / MAKOTO TAKEUCHI	04/07/2005	5126	10,000	S	04/07/2005	No
	Total Shares		**10,000**	**Total Certificates**		**1**
PETER P. TALLARINE	02/25/1998	1203	1			No
2286 CUSTOM VLG CT BELLMORE, NY 11710-0000	**Total Shares**		**1**	**Total Certificates**		**1**

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
TAKAHIRO TASHIO	04/07/2005	5124	317,895	S	04/07/2005	No
	Total Shares		**317,895**	**Total Certificates**		**1**
MICHAEL TEDESCO 64 OLD TAPPAN RD. GLEN COVE, NY 11542-0000	02/25/1998	1186	1			No
	Total Shares		**1**	**Total Certificates**		**1**
NORMAN L TESSIER ROAD 1 BOX 185 SHAPON SPRINGS, NY 13459-0000	02/25/1998	1240	1			No
	Total Shares		**1**	**Total Certificates**		**1**
* **THE CHLOE GROUP OF COMPANIES** THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11	04/03/2007	5311	573,847			No
	Total Shares		**573,847**	**Total Certificates**		**1**
JULIUS THELMO 62 LIVE OAK DR HOLBROOK, NY 11741-0000	02/25/1998	1210	1			No
	Total Shares		**1**	**Total Certificates**		**1**
A. THORSON 551 MAIN ST. #W201 NEW YORK, NY 10044-0000	02/25/1998	1062	1			No
	Total Shares		**1**	**Total Certificates**		**1**
MICHAEL TIGHE 333 URIBE ST LAS VEGAS, NV	05/16/2005	5150	200			No
	08/15/2005	5163	300	R	08/15/2005	No
	Total Shares		**500**	**Total Certificates**		**2**
DONALD A. TOY 45 SUTTON PLACE S APT 1414 NEW YORK, NY 10022-2444 069-28-5497	02/25/1998	1051	1			No
	Total Shares		**1**	**Total Certificates**		**1**
SARNA TRADING HOTTINGER STR 17 ZURICH, SWITZERLAND CH-8032	10/12/1999	1698	73			No
	Total Shares		**73**	**Total Certificates**		**1**
GEARY TRIGLETH 2001 HEARTHSTONE DRIVE CARROLLTON, TX 75101 447560247	08/03/2004	5047	125,000	R	08/03/2004	No
	Total Shares		**125,000**	**Total Certificates**		**1**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN N. LINES;
SCOTT G. S. LINES;
LOM (HOLDINGS) LTD.;
LINES OVERSEAS MANAGEMENT LTD.;
LOM CAPITAL LTD.;
LOM SECURITIES (BERMUDA) LTD.;
LOM SECURITIES (CAYMAN) LTD.;
LOM SECURITIES (BAHAMAS) LTD.;
ANTHONY W. WILE;
WAYNE E. WILE;
ROBERT J. CHAPMAN;
WILLIAM TODD PEEVER;
PHILLIP JAMES CURTIS; AND
RYAN G. LEEDS,

Defendants.

Civil Action No. _______________

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF ALLEGATIONS

1. This action concerns two separate, but similar, fraudulent schemes to manipulate the stock prices of two microcap companies, Sedona Software Solutions, Inc. ("Sedona") and SHEP Technologies, Inc. ("SHEP"). During the relevant periods, Sedona and SHEP shares were quoted and traded on the Over-the-Counter Bulletin Board ("OTCBB"). The schemes took place in 2002 and 2003, and involved the substantial participation of a Bermuda-based securities firm,

defendant LOM (Holdings) Ltd. ("LOM Holdings"), two of its managing principals, defendants Brian N. Lines and Scott G. Lines, and several of its subsidiaries: Lines Overseas Management Ltd. ("LOM Ltd."), LOM Capital Ltd. ("LOM Capital"), LOM Securities (Bermuda) Ltd. ("LOM Bermuda"), LOM Securities (Bahamas) Ltd. ("LOM Bahamas"), and LOM Securities (Cayman) Ltd. ("LOM Cayman") (collectively referenced herein as "LOM" or the "LOM Entities").

2. Both the Sedona and SHEP fraudulent schemes involved the undisclosed acquisition of publicly-traded shell companies, the use of LOM-controlled nominees to conceal beneficial ownership and control over Sedona and SHEP, the use of paid touters to promote Sedona and SHEP stock, and significant trading through the U.S. market in those stocks by defendants Brian Lines and Scott Lines, who are brothers. In the Sedona scheme, the Lines brothers' trading yielded approximately $1.5 million in illegal proceeds. In the SHEP scheme, trading by the Lines brothers and two of their customers, defendants W. Todd Peever and P. James Curtis, yielded approximately $4.3 million in illegal proceeds.

3. In the Sedona fraudulent scheme, defendant Anthony W. Wile ("Wile" or "Tony Wile"), a Canadian stock promoter, issued deceptive press releases and other promotional materials in early 2003 to create the misleading impression that his newly-formed private company, Renaissance Mining Corporation, Inc. ("Renaissance"), had acquired certain Central American gold mines and was a leading gold producer. At the same time, as part of the scheme, defendants Brian and Scott Lines had secretly acquired over ninety-nine percent of Sedona's outstanding shares through offshore nominees in order to merge the publicly-traded Sedona shell with Renaissance. Defendants Brian and Scott Lines also agreed to raise $6 million for Renaissance through a private placement of Renaissance stock through LOM's investment

banking arm to enable Renaissance to acquire the mines that it publicly claimed it already owned.

4. Defendant Wile then primed the market for Renaissance and Sedona shares by disseminating materially false and misleading information and orchestrating touting by defendant Robert J. Chapman, a newsletter writer who also secretly owned Renaissance shares. Between January 17 and January 21, 2003, at Wile's direction, Renaissance issued press releases announcing a merger of the two companies, when no such merger had taken place. During the same period, defendant Wile coordinated the issuance of reports by various newsletter writers touting the merger and telling the public that shares of Sedona would open around $10 per share on January 21. The purpose of this materially false and misleading information was to convince potential investors that Renaissance had already acquired the Central American mines, that the mines were fully operational, and that a lucrative investment in *Renaissance* could be made by purchasing *Sedona's* shares on the OTCBB – even though Renaissance was not an operating mining company, owned no mines, and no merger with Sedona had taken place.

5. On the morning of January 21, defendants Brian Lines, Scott Lines, Tony Wile, and defendant Wayne E. Wile ("Wayne Wile," Tony Wile's uncle) orchestrated a manipulative stock transaction over the OTCBB in which defendants Brian and Scott Lines sold, and defendant Wayne Wile purchased, 5,000 Sedona shares at $8.25 per share. At the time these orders were placed, Sedona stock had last traded at $0.03 per share seven months earlier, in May 2002.

6. Between January 21 and January 27, 2003, defendants Brian and Scott Lines sold or caused the sale of 159,300 shares of Sedona on the open market at between approximately $9 and $10 per share, yielding $1.5 million in illegal proceeds. These sales were made without a registration statement in effect, and with no valid exemptions from registration.

7. Defendant Ryan Leeds was the broker on the LOM Ltd. account at the U.S. broker-dealer through which defendants Brian Lines, Scott Lines, and LOM sold Sedona stock unlawfully into the U.S. market. Despite the existence of several red flags, Leeds failed to conduct a reasonable inquiry to determine whether LOM and the Lines brothers were engaged in an illegal distribution of Sedona stock.

8. The Sedona scheme collapsed on January 29, 2003 when the Commission suspended trading in Sedona securities.

9. In the separate, but similar, SHEP scheme, beginning in early 2002, defendants Brian Lines, Scott Lines, and LOM, along with defendants Peever and Curtis, collaborated to secretly obtain control of a publicly-traded shell company, Inside Holdings Inc. ("IHI"), through the use of LOM-controlled nominees. The scheme involved merging IHI with a private company, SHEP Ltd., paying touters to promote the new IHI/SHEP stock, and later selling their IHI/SHEP stock into the ensuing demand.

10. Unlike the Sedona scheme, the SHEP scheme came to nearly complete fruition. Throughout the first half of 2003, defendants Peever, Curtis, Brian Lines, and Scott Lines collectively sold over three million shares of IHI/SHEP into the public demand created by the paid touters, generating approximately $4.3 million in illegal proceeds. These sales were made without a registration statement in effect, and with no valid exemptions from registration.

11. Defendants Peever, Curtis, Brian Lines, and Scott Lines failed to report their IHI/SHEP purchases and sales in Commission filings, as they were required to do, and defendant Brian Lines caused several false and misleading reports to be filed with the Commission in an attempt to conceal that defendants Peever, Curtis, Brian Lines, and Scott Lines owned, and had been selling, their IHI/SHEP stock.

12. As in the Sedona scheme, defendant Leeds was the broker on the LOM account at the U.S. broker-dealer through which defendants Brian Lines, Scott Lines, and LOM sold SHEP shares unlawfully into the U.S. market. Leeds failed to conduct a reasonable inquiry to determine whether LOM and the Lines brothers were engaged in an illegal distribution of SHEP securities.

13. The Commission seeks a judgment from the Court: (a) enjoining each defendant from engaging in the transactions, acts, practices, and courses of conduct alleged in this Complaint and transactions, acts, practices, and courses of conduct of similar purport and object; (b) requiring defendants to disgorge, with prejudgment interest, the illegal profits and proceeds obtained as a result of their actions alleged herein; (c) requiring defendants to pay appropriate civil money penalties; (d) prohibiting defendants Brian Lines, Scott Lines, LOM, Wile, Wayne Wile, Peever, Curtis, and Chapman from participating in penny stock offerings; (e) prohibiting Tony Wile from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and (f) granting such other relief as this Court may deem just and appropriate.

JURISDICTION AND VENUE

14. This Court has jurisdiction of this action pursuant to Sections 20 and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t, 77v(a)], and Sections 20, 21(d), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78t, 78u(d), and 78aa].

15. The defendants made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein.

16. This Court properly has venue over this action pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa] because certain of the conduct at issue occurred in the Southern District of New York.

THE PARTIES

17. The plaintiff is the **Securities and Exchange Commission**, which brings this civil action pursuant to authority conferred on it by Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act [15 U.S.C. §§ 77t(b) and 78u(d)(1)].

18. Defendant **Brian N. Lines**, age 45, is a citizen and resident of the overseas territory of Bermuda of the United Kingdom. Brian Lines was the president and a director of LOM Holdings and its defendant subsidiaries until his resignation on July 1, 2005.

19. Defendant **Scott G. S. Lines,** age 43, is a citizen and resident of the overseas territory of Bermuda of the United Kingdom. Scott Lines is currently the president and chief executive officer of LOM Holdings and its defendant subsidiaries. During the relevant period, he held the title of Managing Director of LOM Holdings and its defendant subsidiaries. In his testimony before the Commission staff, Scott Lines asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

20. Defendant **LOM Holdings** is the Bermuda-based parent of a group of financial services companies founded by defendants Brian and Scott Lines and their father, Donald Lines. LOM Holdings is majority-owned and controlled by Scott Lines, Donald Lines, and the Lines family, and its stock is publicly traded on the Bermuda Stock Exchange. LOM Holdings and its subsidiaries are collectively referred to herein as "LOM" or the "LOM Entities."

21. The following defendants are wholly-owned subsidiaries of LOM Holdings: **LOM Capital,** LOM's investment banking arm; **LOM Bermuda,** LOM's Bermuda-based broker-

dealer; **LOM Bahamas**, LOM's Bahamas-based broker-dealer; **LOM Cayman**, LOM's Cayman Islands-based broker-dealer; and **LOM Ltd.**, LOM's administrative, financial, and clearing operations.

22. Defendant **Anthony W. Wile**, age 39, is a Canadian citizen who resides in Boca Raton, Florida. Wile was Renaissance's founder, chairman, and largest shareholder. In his testimony before the Commission staff, Tony Wile asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

23. Defendant **Wayne E. Wile**, age 63, is a Canadian citizen and a resident of the Cayman Islands, who also maintains a home in Scottsdale, Arizona. Wayne Wile is Tony Wile's uncle. In his testimony before the Commission staff, Wayne Wile asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

24. Defendant **Robert J. Chapman**, age 72, resided in Punta Gorda, Florida during the relevant period. Chapman publishes *The International Forecaster*, a subscription-based newsletter. Upon information and belief, he currently resides in Mexico and continues to publish his newsletter through his website, www.theinternationalforecaster.com.

25. Defendant **William Todd Peever**, age 48, resides in Vancouver, British Columbia and is a Canadian citizen and LOM client.

26. Defendant **Phillip James Curtis**, age 47, resides in Vancouver, British Columbia and is a Canadian citizen and LOM client.

27. Defendant **Ryan G. Leeds**, age 35, resides in Boca Raton, Florida. Leeds was a registered representative with a U.S. broker-dealer through which LOM Ltd. traded Sedona and SHEP securities during the relevant periods. Leeds was LOM Ltd.'s account representative at that broker-dealer.

OTHER RELEVANT ENTITIES

28. **Sedona Software Solutions, Inc.** was, at all relevant times, a Nevada corporation based in Vancouver, British Columbia, Canada. During the relevant period, Sedona's stock was registered with the Commission and was traded and quoted on the OTCBB under the ticker symbol "SSSI." On January 29, 2003, the Commission suspended trading in Sedona securities for ten days. On June 30, 2006, Sedona filed a Form 15 with the Commission to terminate its registration.

29. **Renaissance Mining Corporation, Inc.** was a privately-held Delaware corporation with its headquarters in Boulder, Colorado during the relevant period.

30. **SHEP Technologies Inc.** is a public company with its headquarters in Vancouver, British Columbia, that owned intellectual property for a vehicle braking technology. SHEP was formed in September 2002 through the reverse merger of the privately-held SHEP Ltd. and Inside Holdings, Inc., a public shell company secretly controlled by Peever and Curtis. SHEP's stock is registered with the Commission and is quoted in the Pink Sheets under the symbol "STLOF." SHEP's stock was quoted on the OTCBB during the relevant period.

FACTUAL ALLEGATIONS

I. THE LOM ENTITIES

31. During the relevant period of mid-2002 through mid-2003, the LOM Entities, Brian Lines, and Scott Lines conducted extensive, regular, and continuous securities-related business in the U.S., and in the Southern District of New York, through U.S. and New York-based brokerage, clearing, and trust companies with which LOM maintained accounts or conducted business.

32. For example, in 2004, LOM earned approximately $7.5 million from trades placed through U.S. markets. This accounted for sixty-three percent of LOM's $12 million in total brokerage revenues and forty-four percent of its $17 million in overall revenues. Of LOM's $7.5 million in revenue from U.S. trading in 2004, approximately $4.1 million derived from trades placed over the OTCBB and approximately $3.4 million derived from trades executed on the NYSE.

33. During the relevant period, LOM maintained at least fifty U.S. brokerage customers. Upon information and belief, LOM communicated with those customers by mail, telephone, email, and through its website, www.LOM.com. During the relevant period, LOM also used its website to solicit retail brokerage and mutual fund customers in the U.S.

II. THE SEDONA FRAUDULENT SCHEME

A. Tony Wile Formed Renaissance and Executed a Non-Binding Letter of Intent to Acquire Gold Mines in Central America

34. In late September 2002, defendant Tony Wile and a business partner formed Renaissance with the purported objective of engaging in gold mining and exploration. Wile and his partner had met through Wile's uncle, defendant Wayne Wile, a Canadian stock promoter.

35. During the relevant period, Renaissance had no revenues, no non-cash assets, and no business activities.

36. Tony Wile owned 1,975,000 restricted shares of Renaissance stock, 900,000 of which, upon information and belief, he held secretly through two offshore nominees.

37. In late 2002, Renaissance began negotiating with a private Belize company, Central American Mine Holdings Limited ("CAMHL") to acquire three Central American gold mining properties. CAMHL had been seeking to go public, and Wile and his partner said that they could help CAMHL do so through two nearly-simultaneous transactions: the merger of Renaissance

and CAMHL, closely followed by the combined entity's reverse takeover of a publicly-traded shell company. As part of its negotiations with CAMHL, Renaissance needed to raise at least $5 million to acquire an ownership interest in CAMHL's mines.

38. On or about December 20, 2002, Wile and his partner met with Brian Lines, then president of LOM Holdings and its various subsidiaries, to discuss financing for Renaissance's proposed transaction with CAMHL and review strategies for taking the combined Renaissance/CAMHL entity public. LOM's investment banking subsidiary, LOM Capital, subsequently agreed to serve as Renaissance's investment banker to raise $5 million through a private offering of Renaissance shares (the "Offering"), thus enabling Renaissance to acquire the interest in CAMHL's mines.

39. On December 27, 2002, Renaissance signed a non-binding letter of intent to acquire CAMHL's mines in exchange for $5 million in cash to be paid at closing, the issuance to CAMHL's principals of a $4 million convertible debenture (with interest at twenty-five percent per year), and Renaissance's assumption of approximately $9 million in debt.

40. To effectuate CAMHL's objective of going public, the letter of intent required Renaissance to have become a publicly-traded company by the time of the closing, and provided that CAMHL's principals would acquire control of Renaissance's board within six months of the closing and would own approximately fifty percent of the public shell's outstanding shares.

B. <u>Brian and Scott Lines Secretly Acquired the Sedona Shell</u>

41. Shortly after meeting with Wile and his partner in late December 2002, defendants Brian Lines and, upon information and belief, Scott Lines, identified Sedona as a suitable merger partner for Renaissance and negotiated an agreement with Sedona's chairman and chief executive officer (the "Sedona CEO") to acquire 5.34 million shares of Sedona stock,

representing over ninety-nine percent of Sedona's total shares, for a total purchase price of approximately $387,500.

1. Brian and Scott Lines Funded the Acquisition and Used Nominees to Conceal Their Identities

42. On Brian Lines's instructions, LOM employees transferred approximately $128,533 from each of three LOM accounts (located at LOM Cayman and LOM Bermuda) into a single LOM Bermuda account in the name of ICH Investments Ltd. ("ICH"). The ICH account was jointly controlled by Brian and Scott Lines, and Brian and Scott Lines were also the brokers for the ICH account. Brian and Scott Lines used the ICH account to pool the $387,500 in funds needed for the Sedona purchase and accompanying payments.

43. Of the approximately 5.34 million shares of Sedona that Brian and Scott Lines acquired, four million shares were owned by the Sedona CEO and his sons, and the remaining 1.34 million shares were held by seven friends, relatives, or associates of the Sedona CEO (the "Seven Shareholders"). Although Brian and Scott Lines treated the 1.34 million shares from the Seven Shareholders as unrestricted or tradable shares, those shares were in fact restricted, because, among other reasons, Brian and Scott Lines acquired the Sedona shell as part of a single unregistered transaction.

44. Brian and Scott Lines used five LOM-controlled nominee companies (the "LOM Nominees") to execute share purchase agreements for 1.095 million Sedona shares from six of the Seven Shareholders in individual blocks of stock, each of which constituted less than five percent of Sedona's outstanding shares. Each of the LOM Nominees executed a separate purchase agreement to acquire these blocks of Sedona stock. Upon information and belief, the remaining shareholder of the Seven Shareholders sold the Lines brothers 245,000 shares of

Sedona stock without a share purchase agreement. Similarly, there was no purchase agreement with respect to the four million shares owned by the Sedona CEO and his sons.

45. The five LOM Nominees used by the Lines brothers to execute purchase agreements for the purportedly-tradable Sedona shares were Gateway Research Management Group Ltd. ("Gateway"), Clyde Resources Ltd. ("Clyde"), Warwick Ventures Ltd. ("Warwick"), Iguana Investments Ltd. ("Iguana"), and ICH Investments Ltd., an entity controlled by Brian and Scott Lines.

46. Beginning in 2001 or earlier, Brian and Scott Lines enlisted several friends and associates to execute share purchase agreements and other documents as "signature directors" of various nominee companies, including the LOM Nominees used in the Sedona purchase, in exchange for annual compensation of approximately USD $2,000. Pursuant to their arrangements with Brian and Scott Lines, these signature directors were responsible for signing documents when requested to do so by LOM or the Lines brothers. They did not pay for or beneficially own the Sedona shares purportedly acquired by these entities. Rather, their role was merely to execute documents apparently to shield Brian and Scott's identities, and/or the identities of certain LOM customers, such as defendants Peever and Curtis, who also used these LOM nominees to secretly acquire shares of issuers. LOM charged its customers a fee for using the LOM nominee companies in transactions to hide their identities.

2. *The Sedona Closing and Subsequent Events*

47. On or about January 3, 2003, Brian and Scott Lines closed their transaction to acquire the approximately 5.34 million Sedona shares for approximately $0.07 per share.

48. As part of the closing, on or about January 3, 2003 the Sedona CEO personally hand-delivered the share certificates representing the 1.095 million Sedona shares from six of the

Seven Shareholders to the Lines brothers' attorneys in Vancouver, British Columbia, to be held by the law firm in escrow until full payment had been received from the Lines brothers. The Sedona CEO retained one share certificate for 245,000 shares ("Certificate A"), in the name of one of the Seven Shareholders, rather than giving it to the law firm to be held in escrow. Upon information and belief, this block of shares had no associated purchase agreement, as discussed in paragraph 44, above.

49. On or about January 6, 2003, LOM Ltd. received Certificate A, representing 245,000 Sedona shares, which the Sedona CEO had sent directly to Brian Lines by overnight courier.

50. On the other side of the transaction, on or about January 8, 2003 Brian and Scott Lines caused their ICH account at LOM Bermuda to make several payments toward the $387,500 Sedona shell purchase price, including payments to LOM accounts for the benefit of the Sedona CEO, a $15,000 check to a U.S.-based OTCBB market maker, and a $40,000 wire transfer to a New York attorney's bank account maintained at a retail branch of Citigroup Inc. located at 111 Wall St., New York, New York 10005. By January 16, 2003, Brian and Scott Lines had fully paid for the Sedona shell.

51. On or about January 10, the Sedona CEO arranged for the four million shares held by himself and his sons to be delivered by mail to the attention of Brian Lines at LOM. On or about January 11, 2003, LOM Ltd. received these four million shares. These share certificates, which bore restricted legends, were never deposited into LOM's vault or any LOM account.

52. On or about January 14, 2003, after Tony Wile had begun to prime the market by disseminating deceptive information regarding Renaissance and its planned merger with Sedona (paragraphs 60-69, below), Brian Lines directed LOM employees to credit the 245,000 Sedona

shares represented by Certificate A to the ICH account, and to rush Certificate A to the Depository Trust and Clearing Corporation ("DTC"), so that the Sedona shares could be traded in the U.S. market. DTC is a central securities repository for U.S. brokerage firms that is used to settle securities transactions

53. On or about that same day, January 14, on Brian Lines's instructions, LOM Ltd.'s Physical Securities Department couriered Certificate A to the Manhattan offices of Mellon Securities Trust Company ("Mellon") at 120 Broadway, New York, New York, 10271. Mellon performed various securities settlement and transfer services for LOM in the United States. LOM Ltd.'s Physical Securities Department sent a fax that day to Mellon's Manhattan offices with instructions to, "Please send to the transfer agent and deposit into DTC." LOM Ltd.'s fax also contained additional handwritten instructions to Mellon to "Please RUSH deposit this cert." Mellon complied with these instructions and, on or about January 17, 2003, these shares were credited into DTC. As discussed in paragraphs 106 through 119, below, the Lines brothers subsequently sold some of these Sedona shares over the OTCBB on January 21, 2003, as part of the scheme.

54. On or about January 23, 2003, LOM Ltd. received the remaining 1.095 million of the total 5.34 million Sedona shares that Brian and Scott Lines had acquired. These shares were credited to an LOM Bahamas account in the name of Largo Flight Ltd. ("Largo-Bahamas"), which was also controlled by Brian and Scott Lines.

55. Also on or about January 23, 2003, Brian Lines directed that 327,500 Sedona shares, a portion of the shares purchased from certain of the Seven Shareholders, be sent to DTC in the United States. That same day, on Brian Lines's instructions, LOM Ltd.'s Physical Securities Department couriered Sedona share certificates totaling 327,000 shares to Mellon's

Manhattan offices, and sent a fax to Mellon's Manhattan offices with instructions to, "Please send to the transfer agent and deposit into DTC." Mellon complied with these instructions and, on or about January 28, 2003, these shares were credited into DTC.

3. *Brian and Scott Lines Failed to Report Their Beneficial Ownership of Sedona*

56. Sections 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder [15 U.S.C. § 78m(d); 17 C.F.R. § 240.13d-1 and 240.13d-2] require any person that has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of registered equity security to file a statement on a Schedule 13D with the Commission no later than ten days following the more than five percent accumulation, and the Schedule 13D must be promptly amended to disclose any material change in the facts set forth in the Schedule 13D (including the acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities). One purpose of these laws and regulations is to ensure that the public is informed of any acquisition of, or material changes to, a more than five percent position in a publicly-traded security by an individual, entity, or related group.

57. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] requires any person who is the officer, director, or beneficial owner of more than ten percent of a class of registered equity security to file a statement with the Commission. Rule 16a-3 [17 C.F.R. §240.16a-3] provides that Section 16(a) disclosures be made by filing a Form 3 for initial statements of beneficial ownership and a Form 4 for statements of changes in beneficial ownership. One purpose of these laws and regulations is to ensure that the public is informed of any acquisition of, or changes to, a stock position in a publicly-traded security by an officer, director, or principal stockholder.

58. Brian and Scott Lines, as beneficial owners of more than ninety-nine percent of Sedona's outstanding shares, were required to file, within ten days of their acquisition of a controlling interest in Sedona, beneficial ownership reports with the Commission, specifically, an original Schedule 13D and Form 3. Brian and Scott Lines failed to file such reports.

59. Sedona, as a public company with stock registered with the Commission, was required to file a current report on Form 8-K with the Commission disclosing the Lines brothers' acquisition of majority control, but failed to do so. As control persons of Sedona, Brian and Scott Lines should have caused Sedona to make such a filing, but failed to do so.

C. Tony Wile and Renaissance Unlawfully Primed the Market for Sedona Stock

60. From late 2002 through January 2003, Wile, Renaissance, and others, including several purportedly "independent" mining stock analysts, engaged in a concerted effort to publicize false and misleading information in order to prime the market for Renaissance's anticipated merger with a public shell company.

61. Wile and Renaissance assembled an extensive promotional apparatus to publicly disseminate false and misleading information to create the false impression that Renaissance had acquired three Central American gold mines and was the "Leading Gold Producer in Latin America."

62. Wile created an entity known as International Mining Group ("IMG") in early January 2003, to serve as Renaissance's "investor relations" firm, and caused IMG to distribute deceptive e-mails regarding Renaissance to various gold newsletter writers, mining-related websites, and prospective investors, as described in paragraphs 69 and 74, below.

63. On January 8, 2003, Wile and Renaissance issued a press release headlined, "Renaissance Acquires Major Portfolio of Gold Producing Assets in Latin America" ("January 8

EXHIBIT C

HEPBURN HOLDINGS LTD.
Mareva House, 4 George Street
P.O. Box N3937, Nassau, Bahamas

USD UNITED STATES DOLLARS – WIRE INSTRUCTIONS

Bank Details:	JP Morgan Chase 4 Chase Metrotech Center New York, NY U.S.A.
ABA Number:	021 000 021
SWIFT:	CHAS US 33
Account Name:	Bank of Butterfield
Account Number:	0011067808

Beneficiary Bank:	Bank of NT Butterfield Hamilton Bermuda
SWIFT:	BNTB BM HM
Account Name:	LOM Client Funds
Account Number:	20.006.840.351501.100
Reference:	1001790 – Hepburn Holdings Ltd.

M

BRIDGE STREET SERVICES LIMITED

USD WIRE TRANSFER INSTRUCTIONS

Correspondent Bank:	HSBC Bank USA 452 Fifth Avenue New York, NY 10018 U.S.A. SWIFT Code: MRMDUS33 FED ABA: 021001088 CHIPS ABA: 0108
Beneficiary Bank:	The Bank of Bermuda Limited 6 Front Street Hamilton HM 11 Bermuda SWIFT Code: BBDA BMHM
Beneficiary Account Number:	1010-956504
Beneficiary Account Name:	Bridge Street Services Limited Reference: Client and/or Company Name

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P.O. Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref: 8ULNN8G9/1236 01/11/2005

LOM Securities (Cayman) Limited
Buckingham Square, Penthouse
P.O. Box 30997SMB
West Bay Road, SMB
Cayman Islands

Sunshine Ltd

Description	USD sum
Professional Fees: 2006 Corporate Administration Fee	2,500.00
Grand Total:	USD 2,500.00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P.O. Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref: 8UML06T4/1374 01/11/2005

Ms. Devi JOHAL
LOM Securities (Bermuda) Limited
The LOM Building
27 Reid Street
Hamilton HM 11
Bermuda

Arch Ltd

Description	USD sum
Professional Fees:	
2006 Corporate Administration Fee	2,500.00

Grand Total:	USD 2,500.00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P O Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref 8UML06T4/1374 01/11/2005

Ms Devi JOHAL
LOM Securities (Bermuda) Limited
The LOM Building
27 Reid Street
Hamilton HM 11
Bermuda

Arch Ltd

Description	USD sum
Professional Fees 2006 Corporate Administration Fee	2,500 00
Grand Total	USD 2,500 00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P O Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref 8ULNN8G9/1236 01/11/2005

LOM Securities (Cayman) Limited
Buckingham Square, Penthouse
P O Box 30997SMB
West Bay Road, SMB
Cayman Islands

Sunshine Ltd

Description	USD sum
Professional Fees 2006 Corporate Administration Fee	2,500 00
Grand Total	USD 2,500 00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

EXHIBIT D

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###1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THOMAS & WONG GENERAL CONTRACTOR, INC., Plaintiffs,

vs. CV No. 2005-051325

BLUME LAW FIRM, et al., Defendants.

February 6, 2008
Phoenix, Arizona

BEFORE THE HONORABLE: ROBERT C. HOUSER, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Jury Trial

Lisa H. Vitoff
Certified Court Reporter
CCR #50251

###2

A P P E A R A N C E S

FOR THE PLAINTIFFS:
MR. BRYAN F. MURPHY
Attorney at Law

FOR THE DEFENDANTS:
MS. CLAIR AMBROSIO
Attorney at Law

P R O C E E D I N G S

THE COURT: CV 2005-051325, Thomas and Wong Contractors,

Incorporated v Jan Wallace. This is the time set for continuation of trial. The record will show the presence of counsel, the parties, and members of the jury.
Good morning. You may proceed
MR. MURPHY: Plaintiff calls Gary Blume.
THE COURT: Well, all right. We were in the midst of reading some deposition testimony, I think, when we recessed last night. Are you going to interrupt that deposition testimony to call Mr. Blume and return to that?
MR. MURPHY: I would request we do so, since he's a live witness.

###3

THE COURT: All right, that's fine. Let's proceed.
Will you step forward and be sworn, please?
GARY R. BLUME,
having been duly sworn herein, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MURPHY:
Q Thank you, your Honor.
Your full name, please?
A Gary R. Blume.
Q You're an attorney licensed in this state, sir?
A Yes.
Q You have represented Jan Wallace since the, oh, mid 1990s, is that correct, in various matters?
A I don't specifically recall. I worked for her for a while.
Q Sir, let me show you what has been marked for identification as Exhibit 42. Do you recognize this as invoices, the first dated March 14, 2003, the second dated May 12, 2003, the third dated June 17, 2003, regarding service related to, oh, the transaction with BDV Investments and Thomas and Wong?
A I do recognize these. They are records that are kept in the ordinary course of my business. But they do not all relate to Thomas and Wong.

###4

Q Fair enough. But they are accurate recitations of the time billed on those matters?
A Yes.
MR. MURPHY: I would offer Exhibit 42 into evidence, your Honor.
MS. AMBROSIA: I have no objection.
THE COURT: 42 is admitted.
BY MR. MURPHY:
Q Sir, I'm going to go to the first page of this exhibit. There are time entries on your invoice of March 14, 2003, as follows: March 6, 2003, Gary R. Blume, meeting with Jan and clients regarding drafting of promissory note, security agreement and discussion, preparation for meeting with forms and discussion at meeting. Then March 8, 2003, Gary R. Blume, meeting with client. Both of those for two hours.
Do you have a recollection of those meetings, sir?
A Not specifically.
Q Do you recall who was present in your offices on March 6, 2003, with regard to that meeting listed on the invoice?
A March 6th? No, I don't.
Q Do you recall who was present on March 8, 2003?
A Not specifically.
Q Was Jan present -- pardon me, was Jan Wallace present at both meetings, to the best of your recollection?
A I believe so. I'm just unsure of the dates.

A During the time of -- you asked me where I was during the time of the wire transfer; is that right?
Q Yes.
A I was in -- I believe I was in Korea, not in Brunei.
Q Do you know when you went to Germany with John Beardmore?
A I believe I left Korea about in the last week of April, near the end of April.
Q So you made the wire transfer before you went to Germany?
A I think so.
Q So both wire transfers were made prior to you going to Germany?
A I think there was three. One was in the beginning of April, I remember that.
And I think there was two more after that. I have a record of it, if you want me to take a look.
Q Did you sue the Lake Bank?
A I did, yes.
Q Is that lawsuit still going on?
A I don't know what the status of it. The last I heard there was technicality that was preventing it from going forward.
They recited some statute, and I don't know what

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that statute really means. But right now it's not going forward. I think.
Q So you don't know if they've refiled against the Lake Bank?
A I don't know.
Q But you didn't get a judgment against them?
A No, I didn't.
Q And you haven't --
A It hasn't gone to court. I've been deposed in that lawsuit, but it hasn't gone to trial yet.
Q And again, what were your duties in regard to Jan Wallace?
A What does that mean?
Q Well, you testified that Jan Wallace had all these duties to you. She was the attorney, the --
A I was to supply the money, that's what I was there for, that's what I agreed to do.
Q But that was not -- you, you were not providing the money to Jan Wallace, you were providing the money to BDV?
A I think we've established that.
Q How much money did you pay Jan Wallace?
A I didn't pay her anything, but it looked like she paid herself a hell of a lot.
Q What do you mean by that comment?
A Well, you know, there is 50,000 bucks that went to

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her, that I didn't know about, that I found out about later.
That's one of the reasons I filed this lawsuit.
Q Where does it show that the $50,000 went to Jan Wallace?
A That was told to me by Billy Cortegiano in the spring of '05.
And I asked Jan Wallace about it. She said that she had received $50,000. I was pretty upset about that.
Q But you knew that Jan Wallace had a contract with BDV?
A No, I didn't know she had a contract with BDV.
Q But that's what you said in the Homeland Security

report?
A No, it isn't.
Q I discussed the loan with Jan Wallace and learned that the Lake Bank would be put into a public company shell that she owned and was listed on the stock exchange.
A Yeah, there was some general conversation about that. I don't know at what stage it is.
And there was about a two-minute conversation, I told her I wasn't interested in anything about that.
Q In the public company, you weren't interested?
A Yeah.
MS. AMBROSIO: I have no further questions.
THE COURT: Mr. Murphy.

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CROSS-EXAMINATION

BY MR. MURPHY:
Q Sir, I want to clarify, there's a date at the top of this document, which is Exhibit 69, the submission that you made at the request of Homeland Security of September 3.
Is that when you created that document?
A I created the document in February of '03.
Q Let me go through some of the issues that were raised on examination.
You were asked a question at Page 2 about I discussed the loan with Jan Wallace and that Lake Bank would be put into a public company.
A Yeah.
Q Did she tell you she had an outstanding contract to do that?
A No.
Q Did she tell you that she was owed money by Lake Bank for that?
A No.
Q And that's what you put there, is as much as you knew about it?
A Yeah. That was a -- that conversation lasted about two seconds -- about two minutes.
That's not what I do, public companies are not what I do.

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Q Now, March -- let me go to the next page of this document, I believe it's Page 3 of Exhibit 69.
It starts March 6 '03: Jan Wallace, Ed Tarapaski, and John Beardmore meet at the law office of Gary Blume and draft and sign a promissory note attesting to the terms of our agreement.
Now, that was what you worked from -- you were working from memory at the time?
A Yeah.
Q Do you believe that's an accurate statement, in every respect, as you look at it today?
A No, it's not accurate.
Q What is inaccurate about the statement?
A The agreement was reached on the 6th of --
Could you put it back, please?
Q I beg your pardon?
A The agreement, the terms of the promissory note, were agreed to on the 6th.
And that's when the drafting, as I understood it, was going to start, but it was signed on the 8th of March, not the 6th.
Q Very well.
A Again, they told me not go into a lot of detail,

just to give it to them.
Q Sir, next page: Jan thought of most of this and I

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think she did a good job of protecting our interest. I really believe that she put our well-being ahead of any financial gain on her part.
Was that your feeling at the time you wrote this in February of 2005?
A Mostly it was.
Q What changed your mind about that, sir?
A The biggest thing was the detectives at Homeland Security.
Q Describe why you say that.
A Well, in the, in the first meeting they asked me if I could give them any more specific information.
And I said, well, I'll try to. And -- but I said I think Jan Wallace could give you some pretty specific information as well. And so that, that meeting ended.
And then I went to my second meeting with the detectives, and they said, "Well, I thought you told us that this Jan Wallace was going to provide us with a lot of information."
They said, "We interviewed her and she was guarded, aggressive, and evasive."
And so then they had me telephone her from their office and they put me on a tape recorder and they told me to ask her about the disbursements from this Cane and Associates.
So I dialed her number, her hand phone number, but she didn't answer the phone.

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Q Was it Homeland Security that first alerted you to the possibility that she might have not done things right?
A Yeah. They really had some strong suspicions about her.
Q Now --
A There was other things besides that as well.
Q Now, sir, there were some questions about Thomas and Wong, some suggestions that they were involved in some improper conduct.
Did Homeland Security investigate Thomas and Wong?
A Yes, they investigated them. That was the first thing they did, is they said they were going to investigate us. I said that's fine.
Then they asked me for permission to investigate my bank accounts. I said that's okay.
And then they asked me for permission to investigate Thomas and Wong's bank accounts six months before this and six months after.
And I told them I would have to phone Charlene Wong. And I did and they gave them permission.
Q Did you hear anything further from the Homeland Security about a problem with Thomas and Wong?
A No, I did not.
Q Sir, I'm going to -- I believe Page 6, the statement that was put in front of you, all of the due diligence was

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complete except for the viewing of the gold.
A Yes.
Q Now, sir, at that time, had you investigated whether Jan Wallace had completed the due diligence?
A Well, I asked her on several occasions, yes.
Q What had she told you?
A She said she had.
Q Was that the basis of the information that you had

when you wrote this report to Homeland Security?
A No. I found out other things since then.
Q Subsequently. But at the time you send that to
Homeland Security, you were relying on the information that Jan
Wallace had given to you?
A I'm sorry, could you --
Q At the time you made this statement to Homeland
Security, you were operating on the information that had been
given to you by Jan Wallace?
A A lot of it.
Q Did you subsequently investigate whether those
conditions had been satisfied?
A Well, I found out other information, yeah.
Q For instance, did you ever find a certificate of
insurance in favor of Thomas and Wong?
A No.
Q Did you ever find a safekeeping receipt in favor of

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Thomas and Wong?
A No.
Q I'll rely on prior testimony to make sure that we
move down the path.
Sir, there were some suggestions made that you
drafted Exhibit 18, a promissory note of March 6, 2003 for
$275,000. I'll put that up here.
Why did you hire Gary Blume, sir?
A To look after doing the legal work.
Q Did you do the legal work on this in any way?
A Not likely.
Q Did you draft that document, sir?
A No, I did not draft that document.
Q Do you have a clue who did?
A I don't know, but I saw it for the first time at
Blume's office, so maybe he did.
Q Sir, let's go to the Homeland Security document,
Exhibit 69. I'll go to the eighth page entry, under May 10,
2003.
I quote, "Time passed, and I was told the money was
being held up in a Florida bank because the total melt was 12
million dollars and there was all kinds of paperwork to be
completed.
I asked Jan why the money was in Florida.
She said, 'That was how the deal was structured with

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the refinery and she was in direct contact with the bank and it
would be released soon.'
I told her we should not be concerned with the whole
12 million dollars and just get our share released, which was
only 1,875,000."
Also it continues -- I won't complete that
paragraph.
Is that the information Jan Wallace gave you?
A Yes, that's the information she gave me.
Q Is that what you reported to Homeland Security?
A Yes. I don't know why they would send the money off
shore, even though I know she's got bank accounts there. I have
no idea why.
Q Let me to go to Page 43 of your deposition. You
were asked some questions about that.
I'm going to try and squeeze this up a little bit.
I think it's legible.
Down at Line 18.
And the answer was given, again, Jan was looking

EXHIBIT “B”

WHISTLEBLOWER OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 16, 2012

Mark E. Phillips
[redacted]

Dear Mr. Phillips:

We received your Form 211 and it has been assigned the following claim numbers:

- 2012-002866 {Jardine}
- 2012-002867 {Lahka}
- 2012-002868 {Saucier}

The information you provided will be evaluated to determine if an investigation is warranted and an award is appropriate. Although we may need to contact you to discuss the information submitted, we can not tell you specific details about what actions we will be taking, if any, using the information you gave us. Internal Revenue Code Section 6103 protects the tax information of all taxpayers and prevents us from making these disclosures. At the conclusion of the review and investigation, we will only be able to tell you whether or not the information you provided met our criteria for paying an award.

Should you have any questions, Whistleblower Office analyst Cindy Stuart has been assigned to your claim and can be reached at (631) 447-4862.

Sincerely,

C. Arnold
Management and Program Analyst
Whistleblower Office

CC:
Cindy Stuart

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

WHISTLEBLOWER OFFICE

January 25, 2012

Mark Phillips
[redacted]

Re: Claim Number: 2010-006673 and 2010-006674

Dear Mr. Phillips:

I am responding to your correspondence dated December 22, 2011regarding the status of your claim.

The claim for award under Section 7623 is still open and under active consideration. We are unable to provide any specific information due to (Section 6103 of the Internal Revenue Code) Federal Disclosure and privacy laws that protect tax information for all taxpayers. There are a number of actions that must be completed before a determination is made.

We will notify you as soon as all actions relating to your claim have been completed. If you change your address, please let us know.

If you have any further questions in regards to this letter, please contact Cindy Stuart, Management Analyst at 631-447-4862.

Sincerely
CStuart

Cindy Stuart
Management Analyst
Office of Whistleblower Programs

STATEMENT OF FACTS

1. Kyleen Elisabeth Cane ("Cane"), formerly known as Michael Cane, was born October 22, 1954, with social security number 569-96-1463, is a partner with the law firm Cane Clark, LLP and owner of Cane Clark Productions, located at 3273 E. Warm Springs Road, Las Vegas, Nevada 89120. Her office phone is (702) 312-6255, her cellular phone is (702) 595-8005, her email address is kcane@caneclark.com and she resides in Calabasas, CA. Cane is an U.S. taxpayer.

2. Jaunita Mary Jardine ("Jardine"), also known as (aka) "Jan Mary Wallace", "Jardin Wallace", "Sarah Blair", "Joan Reardon" and other pseudonyms, uses social security numbers "000-99-000", "938-29-1149", "124-00-000", "765-14-7593", "449-03-3083", among others. Jardine has previously resided at 6929 E. Cheney Dr., Paradise Valley, Arizona. Jardine has dual citizenship in Canada and purportedly in the Cayman Islands. She has been working in the United States without a visa while representing that she is a resident alien and an U.S. taxpayer.

3. Jardine (under the pseudonym Jan Wallace) until recently, was the Chief Executive Officer, President and a Director of Davi Skin, Inc. ("Davi Skin"), formerly MW Medical, Inc. ("MW Medical"), a thinly-capitalized, publicly-traded cosmetics company located either in 11990 San Vicente Blvd., Suite 300, Los Angeles, CA 90049 or 4223 Glencoe Avenue, Suite 130, Marina Del Rey, California. Jardine (under the aforementioned pseudonym Wallace) is also president of Wallace Black Financial Services ("Wallace Black"), a consulting company that purportedly assists firms with raising equity capital. Until January 17, 2008, Jardine also served as President, CEO, and a Director of Securied Diversified Investments, Ltd. ("SDI"), a small publicly-traded company. Cane is the registered agent, corporate securities attorney, and at all times orchestrated and directed orders to Jardine during the events described herein.

4. Amin (aka "Andy") and Afshan Lahka ("Lahka") are partners and directors of Lahka Investments, LLC. Lahka Investments is located at 500 108th Avenue NE, Ste. 2050, Bellevue, WA 98004, office number (425) 454-3448. Lahka is also a member of Western Investment Partners, LLC, formed by Cane and Jardine. The Lahkas are residents of Bellevue, Washington, and their nationalities are unknown.

5. Robert B. Saucier ("Saucier") manages Carpathia Associates, LLC ("Carpathia"), Trifalger Investments, and Galaxy Gaming, Inc. ("Galaxy Gaming") all operating at 6980 W O'Bannon Dr., Las Vegas, Nevada 89117. According to the lawsuit "Sherron Associates Loan Fund v. Robert Saucier, et al.," Case No C06-226JLP (see Exhibit "A" 2006 U.S. Dist. LEXIS 34364) "the court concludes that Mr. Saucier is domiciled in Washington [State]." However, Saucier testified he had "no residential address," although admitting he is staying in Las Vegas and "live[s] somewhat of a vagabond life." Saucier has been attempting to gain Canadian citizenship. Saucier is a U.S. Citizen and U.S. taxpayer.

6. Cane, Jardine, Lahka and Saucier (the "Cane Group") use offshore bank and securities accounts, as well as several offshore corporate entities, to trade unregistered securities, conceal their true assets and to hide trading profits from "pump and dump" schemes and other questionable activities.

7. Although the exact amounts at issue are unknown, the Cane Group has made extensive sales of unregistered stocks and hidden substantial assets abroad, totaling in the millions of dollars. Upon information and belief, the Cane Group has not reported these assets or accounts to the Internal Revenue Service nor has it reported the income generated from these accounts and questionable activities.

8. Jardine has testified that she was "surprised" that the IRS has no record of her ever filing taxes, at least from the social security numbers she provided during interviews with IRS agents (see "United States v. Mark E. Phillips," Case No CR10-269-JCC, Trial Record herein referred to as TR, see Exhibit "B" TR 2/22/11 page 105-112). Jardine used social security number 449-03-3083 belonging to deceased individual Ron L. Scruggs to apply for credit at Bank of America and Saks Fifth Avenue in 2002. Jardine routinely uses the identities (including social security numbers, addresses, and online credentials) of living and deceased persons for her fraud schemes.

9. Based on a Davi Skin Active Shareholder Report dated July 13, 2007 (issued by Davi Skin's transfer agent, Pacific Stock Transfer Company) (see Exhibit "C"), the four largest unrestricted common stock positions in Davi Skin were held by Arch Ltd., Heburn Holdings Ltd., Sunshine Ltd., and The Chloe Group of Companies (Chloe is the name of Jardine's daughter) totalling 2,295,388 shares or 573,847 per account. All four of these companies are owned and/or controlled by the Cane Group and all four use the same address registration: The LOM Building, 27 Reid St., Hamilton, Bermuda. (Another large Davi Skin shareholder, Artist House Holdings, Inc., based in Japan, sued Davi Skin and its principals in 2006 for securities fraud. According to a Form 8-K filed with the SEC by Davi Skin on July 9, 2008 and signed by Ms. Wallace [Jardine], the lawsuit was settled for $650,000.)

10. Lahka owned at least 200,000 of Davi Skin stock in the Hepburn Holdings, Ltd. LOM account (see Exhibit "D").

11. In addition, Cane through Legal Access Technology, issued on August 31, 2004, 2,341,279 shares which represents approximately the amount of indirectly owned shares in Davi Skin through CEDE & CO, a Depository Trust Company (see Exhibit "E" section 2). Cane's Legal Access Technology shares held in CEDE & CO totalling 2,249,825 (see Exhibit "E" section 1) and the aforementioned LOM nominee companies total the vast majority of free trading stock in Davi Skin.

12. Cane was interviewed by Assistant United States Attorneys ("AUSAs") Matthew Diggs and Arvind Swaminathan, Internal Revenue Agent Benjamin George, United States Postal Inspection Services (USPIS) Inspector Amy Kerkof, and Special Agent Spencer Walker of the FBI. Agent Walker recorded:

"In 1989 Telelawyer was formed. Telelawyer went through a "reverse merger" with Dynamic Associates, which was a public company. After the reverse merger CANE became a director. CANE defined reverse merger as "when a private company takes over a public company." Dynamic Associates later changed its name to Legal Access Technologies. Legal Access Technologies was eventually taken over by public company [MW Medical]. As a result, CANE was removed as a director. Cane never sold any shares that she owned of Legal Access Technologies. CANE believes she still owns a small amount of stock in Legal Access Technologies (emphasis added)."

13. Cane's statement in her interview directly conflicts with the published statement of ownership with the SEC in 2004. Cane's registration stating she has a controlling ownership interest in Legal Access Technologies is far more than a "small amount of stock" and contradicts her statement to the investigators.

14. The LOM Building is owned and occupied by LOM Holdings, a Bermuda-based parent company of a group of financial services companies founded by brothers Brian Lines and Scott Lines. "LOM," or "Lines Overseas Management," the Lines brothers and LOM Holdings are currently being sued by the SEC for engaging in illegal "pump and dump" penny stock scams. The complaint against them was filed in 2007 in the U.S. District Court of New York. The recommendation for disgorgement and case summary are provided (see Exhibit "F" "SEC v. Lines et al.," 2011 U.S. Dist. LEXIS 91360). (Cane Clark LLP currently controls Sedona Software cited in "SEC v. Lines et al.," 2011 U.S. Dist. LEXIS 91354.) In addition to providing offshore brokerage services and administrative services for corporate nominees, the LOM group also provides offshore banking services (see http://www.lom.com).

15. Jardine routinely wired funds to LOM Securities in Bermuda and the Cayman Islands as payment for administration of her corporate entities Arch Ltd., Sunshine Ltd., Hepburn Holdings, Ltd., and The Chloe Group of Companies (see Exhibit "F"). Jardine has wired funds to LOM from accounts at JP Morgan Chase, and HSBC Bank USA, to accounts at The Bank of Bermuda, Limited (account number 1010-956504) and Bank of NT Butterfield (Bermuda)(account number 20.006.840.351501.100) (see Exhibit "G"). The Cane Group has also used and controlled a firm named Bridge Street Services and Stone Bridge Services, Limited to facilitate some of these transactions (see Exhibit "G").

16. Cane through Legal Access Technologies transferred 1,400,000 of its shares to Saucier and Carpathia Associates, LLC in April 2006.

17. The scheme of the Cane Group is quite simple. After materially false information touting the merger and prospects for the new company is disseminated to the investing public (the "pump" phase), the Cane Group then causes their offshore corporate entities (such as Arch Ltd., Hepburn Holdings Ltd., Sunshine Ltd., and The Chloe Group of Companies) to sell the unregistered free-trading shares of the new company at the artificially-

inflated price (the "dump" phase). The Cane Group pockets substantial profits on the sale of the stock, and in turn avoids paying capital gains on the sales as the shares that are sold by offshore entities with all proceeds being retained in offshore accounts. By using the offshore entities, the Cane Group is able to hide its true ownership interest and keep the number of unregistered stocks, and thereby the unreported profits, in excess of the levels allowed by law.

18. By her own admission under oath, Jardine (under the aforementioned alias Jan Wallace), has been sued at least six or seven times for fraud or similar malfeasance with respect to her roles in various public companies. In one such case, "Thomas & Wong General Contractor, Inc. v. Blume Law Firm, et al., Superior Court of Arizona (Maricopa County), CV No 2005-051325, Mr. Edward Tarapaski testified under oath that Wallace [Jardine] maintains offshore bank accounts. Cane was Jardine's attorney in that matter. Jardine, under oath, admitted to owning Hepburn Holdings Ltd. in Bermuda (see Exhibit "B" TR 2/22/11 page 113 line 11).

19. The Cane Group uses these offshore entities to acquire control of defunct, publicly-traded corporate shells. These shell entities are then sold to a private company that is the target acquisition. In what is termed as a "reverse merger," a stock swap allows the Cane Group, through the shell company, to control the target company. Jardine has a long-standing relationship with Cane and her law firm, which has handled a large number of corporate entity purchases and thinly-capitalized, reverse-merger transactions. Upon information and belief, Jardine, Cane, Lahka and Saucier have conspired with others in their "pump and dump" activities, including: Scott Doney, another partner at Cane Clark, LLP; Devi Johal, Kevin Gunther, employees of LOM Holdings; Mujit Johal and Grace Sims, chief finacial officers; Claire Ambrosia, Jardine's personal attorney and Chloe Jardine-Cutler, her daughter. These individuals may have additional offshore banking and brokerage arrangements similar to the Cane Group which would be used to conceal their activities.

20. Another such "pump and dump" scheme executed by the Cane Group involves a company called SDI. Cane and Jardine caused 15,000,000 shares of SDI stock to be issued to Iomega Investments, Wallace Black, LLC and Western Investment Partners in February 2006. The shares were issued and placed in an offshore brokerage account. Cane and Jardine bankrupted the SDI corporation by manipulating the stock and depleting the assets, leaving only the shell corporation. Then they need the shell corporation reverse merger to take over another corporation, Galaxy Gaming, by a reverse merger, leaving the new company controlled by Saucier.

21. At the same time, unregistered stock of Galaxy Gaming is being sold to the public by members of the Cane Group allowing the Cane Group to pocket substantial profits on the sale of stock, avoid paying capital gains on the sales as the shares which are sold by offshore entities, and retaining the proceeds in offshore accounts.

22. Mark Edward Phillips, the whistleblower in this action, discovered the above information by researching and examining public databases, using and designing processing software, and pursuing an investigation of the "fraud" associated with one of the companies controlled by Cane and Jardine as part of their "pump and dump" schemes.

LEGAL ANALYSIS

1. Based on the facts outlined above and upon information and belief, the Cane Group is in violation of two primary set of rules administered by the IRS with respect to assets and transactions in foreign jurisdictions: (1) the foreign bank account reporting regime under 31 U.S.C. § 5314 and the regulations promulgated thereunder (commonly referred to as the "FBAR" requirements), and (2) the anti-deferral regime of subpart F of the Internal Revenue Code. These violations have resulted and continue to result in the material underreporting and fraudulent concealment of the Cane Group's income and assets and render the Cane Group subject to civil penalties and interest, as described below.

2. Although Ms. Jardine is a citizen of Canada and possibly the Cayman Islands, she is a legal resident of the United States, and as such, is a "United States person" for federal income tax purposes and therefore subject to U.S. taxation on her worldwide income. Messrs. Cane, Lahka and Saucier are U.S. citizens and legal residents of the United States and also considered "United States person" for federal income tax purposes and also, subject to U.S. taxation on their worldwide income. See I.R.C. § 7701(a)(30).

3. Pursuant to 31 U.S.C. § 5314 and 31 C.F.R § 103.24, "[e]ach person subject to the jurisdiction of the United States...having a financial interest in, or signature authority or other authority over, a bank, securities or financial account in a foreign country shall report such relationship to the [IRS] for each year in which such relationship exists..." These provisions require that a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate balances of such foreign accounts exceed $10,000 at any time during the year. As the Cane Group is subject to the jurisdiction of the United States, and upon information and belief has not disclosed the existence of substantial assets held in accounts with Bermudan and Cayman Island banks, the Cane Group is in clear violation of 31 U.S.C. § 5134.

4. Accordingly, pursuant to 31 C.F.R. § 103.57(g)(2), Ms. Jardine and Mssrs. Cane, Lahka and Saucier are subject to a penalty of up to $100,000 for each violation (i.e., each failure to report a foreign account each year in which such account held more than $10,000 in assets).

5. Furthermore, I.R.C. § 951 requires that U.S. shareholders of controlled foreign corporations ("CFCs") include, on a current basis, their pro rata share of all subpart F income earned by the CFC in which they hold interest. A "U.S. shareholder" for purposes of subpart F is a 10% or greater stakeholder in a foreign company. A company is a CFC if it is held more than 50% by U.S. shareholders. Upon information and belief, the Cane Group corporate nominees managed by LOM Securities are held exclusively by Ms. Jardine, Mssrs. Cane, Lahka, and Saucier by themselves and their immediate family members, and as such qualify as CFCs. Under I.R.C. § 954(a)(1), includes all foreign personal holding company income. Section 954(c) defines foreign personal holding company income as, inter alia, dividends, interest,

and gains from the sale of property such as stock or other capital assets. Accordingly, subpart F requires that the Cane Group include in their gross income all investment income and capital gains earned by each offshore entities. Upon information and belief, their failure to do so constitutes a violation of subpart F and is evidence of a willful attempt to evade their U.S. federal income tax obligations.

6. As a consequence of the violations described above, the Cane Group is subject to penalties and interest, in addition to the taxes due and owing. At a minimum, the Cane Group is subject to the I.R.C. § 6662 penalty for negligence or disregard of rules and regulations and/or substantial understatement of income tax, which imposes a penalty of 20% of the understatement attributed to the penalized conduct. Furthermore, the Cane Group may be subject to the civil fraud penalty of section 6663, which imposes a penalty of 75% of the understatement of tax liability due to fraud. The section 6663 penalty requires a showing of intent "to evade taxes known to be due and owing by conduct intended to conceal, mislead, or otherwise [to] prevent the collection of taxes, [where] there is an underpayment of tax." Nelon v. Commissioner, T.C. Memo. 1997-49. The Cane Group's failure to disclose offshore accounts and the use of offshore entities to conceal their trading activities strongly suggests an intent on Ms. Jardine and Mssrs. Cane, Lahka and Saucier's part to defraud the IRS, in addition to concealing their illegal securities activities. Finally, the Cane Group is also subject to interest on back taxes and penalties at a rate of 3% plue the short-term federal rate. I.R.C. § 6621(a)(2). Interest began to accrue on the due dates of the returns for which there were understatements of tax liabilities. I.R.C. § 6601(e)(2)(B).

SHERRON ASSOCIATES LOAN FUND V, LLC, Plaintiff, v. ROBERT SAUCIER; GALAXY GAMING CORP.; GALAXY GAMING, LLC (NEVADA); GALAXY GAMING OF NEVADA, LLC; GALAXY GAMING, LLC (NEW MEXICO); GALAXY GAMING OF BRITISH COLUMBIA, LLC; GALAXY GAMING OF CALIFORNIA, LLC; GALAXY GAMING OF NEW MEXICO, LLC; GALAXY GAMING OF OREGON, LLC; GALAXY GAMING OF WASHINGTON, LLC, Defendants.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON
2006 U.S. Dist. LEXIS 34364
NO. C06-226JLR
April 12, 2006, Decided
April 12, 2006, Filed

Counsel For Sherron Associates Loan Fund V, a Washington limited liability company, Plaintiff: Britenae M.C. Pierce, Kevin Arnold Bay, RYAN SWANSON & CLEVELAND, SEATTLE, WA.

For **Galaxy Gaming** Corporation, a Washington Corporation, **Galaxy Gaming** LLC, a Nevada limited liabilty, **Galaxy Gaming** of Nevada LLC, a Nevada limited liability company, **Galaxy Gaming** LLC, a New Mexico limited liability company, **Galaxy Gaming** of British Columbia, LLC, a New Mexico limited liability company, **Galaxy Gaming** of California LLC, a New Mexico limited liability company, **Galaxy Gaming** of New Mexico LLC, a New Mexico limited liability company, **Galaxy Gaming** of Oregon LLC, a New Mexico limited liability company, **Galaxy Gaming** of Washington LLC, a New Mexico limited liability company, Defendant: Joan K Mell, MILLER QUINLAN & AUTER PS INC, FIRCREST, WA.

Judges: JAMES L. ROBART, United States District Judge.

Opinion

Opinion by: JAMES L. ROBART

Opinion

ORDER

I. INTRODUCTION

This matter comes before the court in the wake of Defendants' removal of this action from King County Superior Court. Plaintiff Sherron Associates Loan Fund V, LLC ("Sherron") moves to remand this action (Dkt. # 22). Defendants move to dismiss this action (Dkt. # 2), or in the alternative to transfer it to the United States District Court for the District of Nevada (Dkt. # 1). Having considered each motion, the parties' briefing, and their supporting documentation, the court GRANTS Sherron's motion to remand.

II. BACKGROUND

Sherron filed the underlying state court action to establish that the Defendant corporate entities were the alter ego of Defendant Robert Saucier. In 1998, the Spokane County Superior Court entered a judgment (the "Spokane judgment") for Sherron against Mr. Saucier. Sherron has been unable to collect the judgment, and contends that it should be able to pierce the corporate veil shrouding the entity Defendants in order to hold them jointly and severally liable under the Spokane judgment.

Unfortunately, the court cannot resolve the instant motions without reciting additional details. The court cautions the reader that the details resemble the prologue to a particularly sadistic civil procedure professor's final exam question, except that they are not hypothetical. The court will clarify the details as necessary in its later analysis.

Sherron, a non-existent Washington Plaintiff, sued **Galaxy Gaming** Corporation ("Galaxy of Washington"), a non-existent Washington defendant, in King County Superior Court. Preceding Galaxy of Washington in the galaxy of Defendants is Defendant Robert Saucier, a man who exists but does not live anywhere. Joining them is Defendant **Galaxy Gaming** Corporation of Washington, LLC, an entity incorporated in New Mexico (naturally). Defendants **Galaxy Gaming** Corporation of Oregon, LLC and **Galaxy Gaming** Corporation of California, LLC are also New Mexico entities. Defendant **Galaxy Gaming** Corporation of British Columbia, LLC gives the galaxy of Defendants an exotic flair, even though it is also a New Mexico entity. Defendant **Galaxy Gaming** Corporation of New Mexico, LLC is incorporated in New Mexico as well. **Galaxy Gaming** of Nevada, LLC has escaped New Mexico and is incorporated in Nevada along with **Galaxy Gaming**, LLC ("Galaxy of Nevada").

In the state court action, Sherron tried to serve its complaint on the whole galaxy of Defendants. It had no success using traditional methods of service, so it attempted to serve the Defendants by publication. Although the action was pending in Washington state court, it appears that Sherron did not follow Washington law in serving the Defendants by publication. It also appears that they did not serve Mr. Saucier by any means. Nevertheless, Sherron moved for a default judgment and the state court awarded one. Upon receiving notice of Sherron's writ of garnishment to collect on the default judgment, the entity Defendants filed a notice of removal, and now ask this court to void the default judgment, or, in the alternative, to transfer Sherron and the galaxy of Defendants to federal court in Nevada. Sherron contends that this court has no subject matter jurisdiction, and that Defendants removed too late. Defendants argue that this court has no personal jurisdiction over them, and that they removed in time.

III. ANALYSIS

Unfortunately, the events recited above did not happen a long time ago in a galaxy (or other forum) far, far, away. They happened in Washington, and it now falls to the court to decide whether the galaxy of Defendants can proceed in this federal forum.

The court begins by determining whether Defendants properly removed this action. With exceptions not applicable here, a defendant may remove any state court civil action that could have been brought in federal court. *See* 28 U.S.C. § 1441 . If the federal court lacks subject matter jurisdiction over the action, remand is mandatory. In addition to establishing federal jurisdiction, a defendant must comply with the procedure for removal set forth in 28 U.S.C. § 1446. In any event, a court must "strictly construe the removal statute against removal jurisdiction," and must reject jurisdiction "if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The defendant "always has the burden of establishing that removal is proper." *Id.* Where the plaintiff challenges removal, the defendant may not rest on the allegations of his notice of removal, and must meet his burden by a preponderance of evidence. *Id.* at 566-67; *see also Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (clarifying that the *Gaus* court imposed a preponderance of evidence standard).

A. Diversity Jurisdiction

Defendants concede that the only potential basis for this court's subject matter jurisdiction is diversity of citizenship. *See* 28 U.S.C. § 1332 . Defendants must therefore show that none of them is a citizen of the same state as Sherron. For purposes of diversity jurisdiction, a corporation is a citizen of any state where it is incorporated and any state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A limited liability company, however, is a citizen of every state of which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). An individual is a citizen of the state of her domicile, which is the state in which she has permanent home, where she resides with the intention to remain or to which she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

1. Citizenship of Plaintiff

Establishing the citizenship of Sherron and the Defendants is no simple matter. First, as Sherron admits, Sherron does not exist. In 2002, the Washington Secretary of State accepted a certificate of cancellation of the Sherron limited liability company. Sherron contends that the cancellation was improper, and that it is petitioning Washington officials to retroactively rescind the cancellation. Nonetheless, at present and at all times relevant to this action, Sherron, the sole Plaintiff, is and was a legal nullity. Sherron provides uncontroverted evidence, however, that if Sherron does not exist, then ownership of the judgment passed to Sherron Associates, Incorporated ("Sherron Associates"), a former member of the Sherron limited liability company. Armstrong Decl. P 7 & Ex. A. 1 Sherron Associates is apparently a going concern. *See id.* PP 1-8. Neither party, however, has bothered to reveal where Sherron Associates is incorporated, or where its principal place of business is. The court notes that the record contains a 2002 letter from Sherron Associates bearing Bellevue, Washington letterhead. *Id.* Ex. A. Both parties treat the Plaintiff in this case (whether it is Sherron, Sherron Associates, or some other person or entity with the right to enforce the Spokane judgment) as a citizen of Washington. The court will adopt the same approach. The court will therefore refer to the Plaintiff as Sherron and assume that Sherron is a citizen of Washington for purposes of determining diversity jurisdiction. The King County judgment belongs to whoever owns the Spokane judgment, and any error in naming the owner does not affect the court's jurisdictional analysis.

2. Citizenship of the Corporate Defendants

The parties concede that most of the Defendants are not citizens of Washington, but Sherron insists that Galaxy of Washington and Mr. Saucier are Washington citizens. Galaxy of Washington, however, does not exist. There is no evidence that it ever existed, at least as a Washington entity. Although Sherron brought this action against "**Galaxy Gaming** Corporation, a Washington corporation," it provides no evidence of the existence of such a corporation, and has remained suspiciously silent in response to Defendants' allegation that no such Washington entity exists. There is also no evidence that Galaxy of Washington's principal place of business is in Washington. For purposes of assessing diversity jurisdiction, therefore, the court assumes that Galaxy of Washington, if it exists at all, is not now and has never been a citizen of Washington.

3. Citizenship of Mr. Saucier

The parties concede that Mr. Saucier exists. 2 The court must now decide where he is domiciled. An individual's domicile is the state in which he is or was physically present, and in which he intends to remain or return. *Kanter*, 265 F.3d at 857. Mr. Saucier has not lived in Washington for seven years. Saucier Decl. P 13. It is undisputed, however, that in 1998 Mr. Saucier owned a home in Spokane and resided there. Saucier Depo. at 28:25-29:4. It seems unlikely that Mr. Saucier intends to return to Washington. Not only has he been absent for seven years, but he testified that at one point he was attempting to gain Canadian citizenship. Saucier Depo. at 17.

Because Mr. Saucier apparently does not seek to return to Washington, one might expect that he has acquired a new domicile. A person acquires a new domicile when he is simultaneously physically present in a state and intends to remain there indefinitely. *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Mr. Saucier does not contend that he has acquired a new domicile. In a declaration accompanying Defendants' notice of removal, he avers that he has not lived in Washington for seven years, but does not explain where he has lived over that period. Saucier Decl. P 13. In a July 2004 deposition, he testified that he had "no residential address," Saucier Depo. at 9:21, and that he does not consider any place to be his home. *Id.* at 27:25. He admitted to staying at a Las Vegas address when he was in that city, *id.* at 10:4-6, but he maintained that he "live[s] somewhat of a vagabond life." *Id.* at 57:11-12. He does not aver that he has lived in any place since 1998 with an intent to remain there.

The court's inquiry does not end with Mr. Saucier's failure to expressly contend that he has acquired a new domicile. A court may consider a number of factors in determining an individual's domicile, including his "current residence, voting registration and voting practices, location of personal and real property, location of brokerage and bank accounts, location of spouse and family, membership in unions and other organizations, place of employment or other business, driver's license and automobile registration, and payment of taxes." *Lew*, 797 F.2d at 750. To the extent that the record contains evidence relevant to these factors, it shows that Mr. Saucier has not acquired a new domicile since 1998. He is unmarried. Saucier Depo. at 29:21-24. He has no checking account or credit card. *Id.* at 57:8-9, 57:14. He has no accounts of any kind in the United States. *Id.* at 71:7-16, 72:17-24. He does not own a car. *Id.* at 59:11-23. As of 2004, his only income came from playing poker. *Id.* at 60:20-21.

On these facts, the court concludes that Mr. Saucier is domiciled in Washington. A person retains his previous domicile until he acquires a new one. *Lew*, 797 F.2d at 750. The record before the court does not permit the conclusion that Mr. Saucier has been physically present (after he left Spokane in 1998) in a state other than Washington with intent to remain there. Mr. Saucier bears the burden of proving that he is domiciled in a state other than Washington by a preponderance of evidence, and he has not done so.

Defendants have not established complete diversity between them and Sherron. The court therefore lacks subject matter jurisdiction over this action.

B. Sherron's Request for Attorneys' Fees

Under 28 U.S.C. § 1447(c), a court remanding an action to state court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." As the word "may" suggests, the court's decision to make such an award is discretionary. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 126 S. Ct. 704, 711, 163 L. Ed. 2d 547 (2005). Generally, a court "may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." *Id.* Here, the court finds that Defendants had no reasonable basis for seeking removal. Had they conducted reasonable legal research, they would have discovered that Mr. Saucier had an obligation to prove that he was domiciled outside Washington. Instead, they unreasonably relied on Mr. Saucier's evasive refusal to admit to being domiciled anywhere, which led to this court's decision to remand. Moreover, Defendants littered their responsive brief with unsupported accusations of Sherron's fraudulent conduct, and filed a motion to strike and a surreply that were improper under this court's local rules. Local Rules W.D. Wash. CR 7(g). Defendants used their surreply to misstate the court's local rules regarding briefing schedules, *see* Local Rules W.D. Wash CR 7(d), and to wrongly suggest that Ninth Circuit rules governing citation to its unpublished opinions somehow apply to "unpublished" district court orders.

The court could award fees to Sherron, but it declines to do so because it does not wish to reward Sherron's conduct in seeking remand. Sherron continued to call Galaxy of Washington a Washington defendant when it had no facts supporting that assertion. Sherron's briefing in support of its motion to remand failed to identify case law that would assist the court in determining Mr. Saucier's domicile. Finally, Sherron ignored this court's local rules by providing an improper surreply to Defendants' improper surreply to its motion to remand. Under these circumstances, the court finds an award of costs and fees inappropriate. *See Martin*, 126 S. Ct. at 711 (noting that "district courts retain discretion to consider whether unusual circumstances warrant" a denial of attorneys' fees). The court expects better advocacy from both parties.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Sherron's motion to remand (Dkt. # 22). The clerk shall remand this action to King County Superior Court.

The court's disposition of this matter makes it unnecessary to consider Sherron's contention that Defendants' notice of removal was untimely, as well as the Defendants' additional motions. If any Defendant attempts to remove the underlying action again, the Defendant must clearly designate the newly removed action as related to this one.

Dated this 12th day of April, 2006.

JAMES L. ROBART

United States District Judge

Footnotes

1

Defendants have moved to strike the declaration of Thomas Armstrong, an officer of Sherron Associates (Dkt. # 28). The court denies the motion because it violates the court's local rules regarding motions to strike. Local Rules W.D. Wash. CR 7(g). Even if the motion were proper, the court would not need to reach it. Defendants assert that the non-existence of Sherron is a sufficient basis to void the King County judgment. The court cannot reach that assertion, however, unless it has subject matter jurisdiction over this action.

2

That Defendants apparently never served Mr. Saucier in the underlying state court action is unimportant. A removing defendant must show that all defendants, served and unserved, are citizens of a different state than all plaintiffs. *Clarence E. Morris, Inc. v. Vitek*, 412 F.2d 1174, 1176 (9th Cir. 1969).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN SEATTLE

UNITED STATES OF AMERICA, Plaintiff,

vs.

MARK E. PHILLIPS, Defendant.

No. CR10-269JCC

TRIAL

BEFORE THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

February 22, 2011

APPEARANCES:

Aravind Swaminathan
Matthew Diggs
Assistant United States Attorneys
Representing the Plaintiff

Peter Mair
John Du Wors
Attorneys at Law
Representing the Defendant

A. Mark had asked me, yes.
Q. He was kind of wealthy, in your eyes, and very smart?
A. I felt that Mark Phillips had money, and I thought him to be smart, yes.
Q. And then you intended to move in with him at the Mosler condo?
A. That was Mark's idea. I never agreed to that.
Q. So you never told the FBI that you and he were intending to live together at the Mosler?
A. He wanted me to live with him at the Mosler. I didn't do that.
Q. I know you didn't do it, but you intended to do it at some point, didn't you?
A. If things had worked out, maybe we would have lived together. I don't know if that is the place I would have ended up picking.
Q. Could I have 270(B)? You were asked a series of questions about your personal bank account?
A. Yes.
Q. And they were shown how you expended money, et cetera, in these bank accounts?
A. Yes.
Q. Was that your only bank account at the time?
A. I believe so.
Q. Did you have offshore accounts, for example, in

Bermuda?
A. I had overseas management accounts, yes.
Q. And did you have offshore accounts in Bermuda?
A. Yes.
Q. So you had European accounts, and you had Bermuda accounts?
A. Overseas for me is considered I guess what you call offshore.
Q. And we haven't seen any of those account records in this trial?
A. No.
Q. What is your complete legal name at present?
A. Jan Mary Wallace.
Q. Do you ever go by Janet Wallace?
A. No.
Q. Do you ever go by Jan Michael Wallace?
A. No.
Q. What is the complete name on your birth certificate?
A. Jaunita Mary Jardine.
Q. Is that spelled J-U-A-N-I-T-A, your first name?
A. No.
Q. How do you spell your first name?
A. J-A-U-N-I-T-A.
Q. When did Jaunita become Jan?
A. When we came to Canada. There was a typo, and they

didn't recognize that for my name, Jaunita, so they wrote it as Jaunita.
Q. When did Juanita become Jan?
A. I think in the '60s.
Q. Was it a legal name change?
A. I'm sorry. I'm confused. Could you repeat the question?
Q. Yes. Did you legally change your birth name to Jan at some point in time?
A. No.
Q. You just adopted another name?
A. My father, because my name was Juanita, always referred to me as Jan.
Q. Now, you remember introducing yourself to attorney James Smyth as Joanne Reardon?
A. Could you say the question again?
Q. Yes. According to Mr. Smyth, when he first met you, you introduced yourself not as Jan Mary Wallace, or Jaunita, or Jan Jardine, or anything else, you introduced yourself as another person, Joanne Reardon.
A. I don't recall the name I used.
Q. Do you recall how you came up with a fictitious name?
A. No. No.
Q. You just grabbed one?
A. I might have had the TV on. I just remember that I

didn't want to leave a message with my name on it.
Q. So you gave a false name?
A. Yes.
Q. Do you remember introducing yourself as Sarah Blair to Adrien Linhart, a male owner of the PR firm that represented MOD?
A. Yes.
Q. So where did you come up with the name Sarah Blair?
A. It was an e-mail that Eric Lundvall had created for me on Mark Phillips' computer.
Q. So you walk up to a perfectly strange businesswoman, and a businessman, and you pretend to be Sarah Blair, am I right? I mean, you had a meeting with them?
A. I had a meeting with them, yes.
Q. And that whole meeting you referred to yourself as Sarah Blair? Not Jan Mary Wallace, not Jan Jardine, but Sarah Blair?
A. Yes.
Q. And you pretended to work for a local angel investment firm called The Chiefs; is that right?
A. That's incorrect.
Q. Who did you pretend to work for?
A. I didn't pretend for work for anybody. I was representing Michael Goolsby for a company called Luparu (Phonetic).

Q. And how many other occasions have you used a fictitious name in dealing with strangers?
A. It is not a habit.
Q. The question was, on how many other occasions have you done this?
A. I can't think of any.
Q. So you have done it twice in your life, and we just happened to find out about that?
A. Yes.
Q. Now, you were living during 2007/2008 in Arizona, and working in the United States, right?
A. Yes.
Q. And at that time you didn't have a work visa up in Canada?
A. Yes.
Q. So you could be deported. It doesn't matter, north or south of the border, you have to have a work visa?
A. Yes.
Q. So you are subject to deportation during those two years. And you have a United States Social Security number, right?
A. Yes.
Q. Did you ever use the United States Social Security number?
A. I believe my tax firm did.

Q. Well, your Canadian Social Security number looks remarkably like a United States Social Security number, because it has the same number of digits, right?
A. Yes.
Q. But that particular number, if you look up who is on the other end of that, that comes back to your birth name, doesn't it, Jaunita Mary Jardine?
A. I'm sorry. I am a little confused.
Q. The name that attaches to your Canadian Social Security number is your birth name, not your adult name?
A. The number on my social insurance number card is in my maiden name, yes.
Q. Did you ever tell the FBI it was your name on your birth certificate?
A. I'm sorry. Could you repeat that?
Q. Yes. Do you remember being interviewed by agents of the FBI, and members of the government attorneys here?
A. Yes.
Q. And you were interviewed first, I believe, on March 25th, 2010?
A. Yes.
Q. And then you were again extensively interviewed right before this trial, on February 13th, 2011?
A. Yes.
Q. And then you were interviewed during the course of the

trial for the third time, am I right?
A. Yes.
Q. And that was on the 15th --
A. Yes.
Q. -- of this month? So the question is, on the interview of February 13th of this year, at Page 19 of the interview, did you tell them that 449030383 is your Canadian social insurance number, is Canada's version of the American Social Security number, and that number would correspond to the name Jaunita Jardine in Canada?
A. Yes.
Q. Is that true?
A. Yes.
Q. So if you list that number at a Saks Fifth Avenue credit, and they had a problem, they would come back and they wouldn't find you, they would find Jaunita Jardine?
A. I don't know.
Q. And if they mistook that for a United States Social Security number, who knows who it would come back to, right?
A. I don't know.
Q. Why did you use the number with Saks Fifth Avenue?
A. Because I opened those accounts while I was in Canada.
Q. Now, you also used the number 938-29-1149, correct?
A. Yes.

Q. And you said that number, on every tax document you have ever filed, you use that as a tax identification number?
A. It appears on my Bank of America profile as a tax identification number, yes.
Q. And did you tell the government in an interview that that number is on every tax document you have ever filed?
A. It is on the documents from Bank of America that has to go with my tax filing.
Q. The simple question is, did you tell them that that tax ID number is on every tax document you have ever filed?
MR. SWAMINATHAN: Objection, your Honor. Asked and answered.
THE COURT: Overruled.
THE WITNESS: I think, yes, that document and that number is with every tax document I have filed.
BY MR. MAIR:
Q. Would it surprise you to know that the IRS has no record of this as a tax number?
A. I don't do my taxes. I don't know.
Q. According to the government, they have no record of this number.
A. Okay.
Q. And your accountants weren't filing tax returns during

these years because of records problems; is that right?
A. I'm sorry? Could you say that again?
Q. Your tax preparer wasn't filing income tax for you during this period of time we are talking about because you had some record problems, or he didn't have the records necessary, or something like that?
A. The firm, correct. The firm was not filing.
Q. And I believe that you have testified that you asked that the name on that individual services contract be changed to Jardine from Wallace? That was your request?
A. Could you say that again?
Q. Yes. On the Meteor contract, the individual services contract, you requested that the name be changed to Jardine from Wallace?
A. I don't recall exactly. I might have.
Q. Well, I thought you explained to the jury earlier that this was because of some family trusts in Europe, that's why you wanted it in the name of Jardine. In Europe, you can sign Jardine as your maiden name, et cetera?
A. Yes.
Q. Wasn't that your testimony earlier?
A. I'm sorry. I am getting confused. But, yes.
Q. Do you have an ownership interest in Stonebridge?
A. No.
Q. How about Bobbie Black?

A. No.
Q. Is that a name that you ever go by, your company?
A. No.
Q. Savannah Corporation?
A. I have a corporation called Savannah, yes.
Q. MW Fitness?
A. That is a defunct corporation.
Q. That was yours?
A. Yes.
Q. How about Hepburn Holdings?
A. That is a management account, yes.
Q. And where is that?
A. That's in Bermuda.
Q. Now, I believe you were asked and you gave testimony about the civil judgment that was looming around about the time of 2007, 2008?
A. Yes.
Q. When did that civil suit commence, do you know?
A. I can't recall the exact date.
Q. Year?
A. I believe it was '08, was the law case.
Q. And you went to trial on it?
A. Yes.
Q. And that was concerning a lien with Thomas & Wong?
A. Yes.

Q. And their United States rep was Edward Tarapaski?
A. Yes.
Q. And you met him when he was vacationing in Arizona; is that right?
A. Yes.
Q. And you were arranging for a bridge loan for another entity for about $1.5 million?
MR. SWAMINATHAN: Objection. Relevance.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MR. MAIR:
Q. And Ed Tarapaski said he could arrange for this bridge loan with Thomas & Wong, which is a Brunei corporation, as long as it was secured?
MR. SWAMINATHAN: Objection, your Honor. Hearsay and as to relevance.
THE COURT: The objection as to hearsay is sustained.
BY MR. MAIR:
Q. Did you make representations to Mr. Tarapaski that there would be adequate collateral to secure that loan?
A. No.
Q. Did you make representations to him that you would look at the collateral and make sure it was in place?
A. I had agreed for BDV to go to a location to look at

EXHIBIT "G" 5

2,297,

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER

Active Share Holders	565
Active Certificates	637
Free Trading Stock	5,926,598
Restricted Stock	8,684,610
Shares Outstanding	14,611,208

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
* ABERDEEN HOLDINGS LTD INC. THE LOM GROUP 27 REID ST HAMILTON, ON CANADA	08/22/2001	1960	33	R	08/22/2001	No
	Total Shares		33	Total Certificates		1
DENNIS ACKERMAN	02/25/1998	1345	1			No
	Total Shares		1	Total Certificates		1
ROBERT F. ACKERSON 60 KNOLLS CRESCENT AVE. BRONX, NY 10463-0000	02/25/1998	1074	1			No
	Total Shares		1	Total Certificates		1
WILLIAM ADAM 7584 BEL ARBOR TRL WEBSTER, NY 14580-9476	02/25/1998	1261	1			No
	Total Shares		1	Total Certificates		1
VMR AG C/O DEUTSCHE BANC ALEX BR 1635 MARKET ST 17TH FLOOR PHILADELPHIA, PA 19103	10/04/2000	1899	1,240	R		No
	Total Shares		1,240	Total Certificates		1
DONALD R AHO 1015 PINEWOOD DR PINECITY, NY 14571-0000	02/25/1998	1260	1			No
	Total Shares		1	Total Certificates		1
* BERNHARD ALTENDEITERING ORCHIDEANSTER NORDHORN, GERMANY 48529	11/03/1998	1508	5	R		No
	Total Shares		5	Total Certificates		1
BABETTE ALTMAN 4850 WINTER HAVEN WAY ROSEVILLE, CA 95747-8252	02/25/1998	1329	1			No
	Total Shares		1	Total Certificates		1
DAVID AMMERMAN 75 PENN EST EAST STROUDSBURG, PA 18301-9028	02/25/1998	1089	1			No
	Total Shares		1	Total Certificates		1
LINDA C ANDERSON	12/20/2005	5210	2,909	R	12/20/2005	No
	Total Shares		2,909	Total Certificates		1

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
ARCH LTD.	04/03/2007	5309	573,847			No
* THE LOM BUILDING 27 REID STREET	Total Shares		573,847	Total Certificates		1
HAMILTON, BERMUDA HM11						
PETER ARDITA	02/25/1998	1214	1			No
1119 SAVOY DR	Total Shares		1	Total Certificates		1
MELVILLE, NY 11747-5281						
ARTIST HOUSE HOLDINGS INC	04/04/2006	5231	566,667	S	04/04/2006	No
3F YUSHIN BLDG 3-27-11 SHIBUYA	Total Shares		566,667	Total Certificates		1
SHIBUYA-KU, TOKYO JAPAN						
SYLVIA ASCHER	02/25/1998	1057	1			No
58 E 83RD ST APT 2-A	Total Shares		1	Total Certificates		1
NEW YORK, NY 10028-0000						
ASLAN DEVELOPMENT	12/01/2006	5276	3,333	R	12/01/2006	No
C/O DWYER SMITH LAW FIRM 8712 W. DODGE RD #400	Total Shares		3,333	Total Certificates		1
OMAHA, NE 68114						
470842538						
ASLAN MORTGAGE	12/01/2006	5274	2,800	R	12/01/2006	No
2242 SO. 156 CIR	Total Shares		2,800	Total Certificates		1
OMAHA, NE 68130						
911749681						
GENEVIEVE F. AUBRY	02/25/1998	1092	1			No
16 EDGEWOOD RD	Total Shares		1	Total Certificates		1
PEEKSKILL, NY 10566-0000						
BANKHAUS H AUFHAEUSER	10/12/1999	1661	41			No
KAT KAPITALBERATUNG TOELZERSTRASSE 23	10/12/1999	1662	41			No
GENEVA, SWITZERLAND 82031	Total Shares		82	Total Certificates		2
CHRISTINE AZZARELLO	05/15/2006	5233	800			No
& GREGORY AZZARELLO JTTEN	Total Shares		800	Total Certificates		1
339 SOUTH HOWARD						
PLAINFIELD, IL 60544 325443210						
GEORGE BALOGH	02/25/1998	1140	1			No
17 SOUTH DR	Total Shares		1	Total Certificates		1
GREAT NECK, NY 11021-0000						

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
ANTHONY S. HARRISON 2900 OAKHILL LN MOUNT DORA, FL 32757-9525 202-10-4242	02/25/1998	1135	1			No
	Total Shares		1	Total Certificates		1
TRACEY HARROW 1 HERON TERRACE CAMDEN RD CARSHALTON VILLAGE SURREY, UK SM5 2NS	11/16/1999	1727	5			No
	Total Shares		5	Total Certificates		1
HELEN HARVARD 4020 PRATT AVE. BRONX, NY 10466-0000	02/25/1998	1077	1			No
	Total Shares		1	Total Certificates		1
WILLIAM M. HEALEY JR 255 SOUNDVIEW AVE. WHITE PLAINS, NY 10606-0000	02/25/1998	1107	1			No
	Total Shares		1	Total Certificates		1
FANNING M. HEARON, JR	02/25/1998	1353	1			No
	Total Shares		1	Total Certificates		1
RUDOLF HEINZ NIEDENAU 82 FRANKFURT AM, GERMANY 60325	02/03/2000	1817	100	R		No
	Total Shares		100	Total Certificates		1
JOSEPH HEJNA 254 PENNSYLVANIA ST. BUFFALO, NY 14201-0000	02/25/1998	1250	1			No
	Total Shares		1	Total Certificates		1
* HEPBURN HOLDINGS LTD. THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11	04/03/2007	5310	573,847			No
	Total Shares		573,847	Total Certificates		1
FRAN HERRIDGE BOB HERRIDGE 18 ORCHARD DR ARMONK, NY 10504-0000	02/25/1998	1079	1			No
	Total Shares		1	Total Certificates		1
MARGERY H. HERRMANN 2202 THEALL RD RYE, NY 10580-1423 70286516	02/25/1998	1095	1			No
	Total Shares		1	Total Certificates		1

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
STRATEGIC GROUP LTD	01/04/2000	1781	461			No
SUITE 41/42 VICTORIA HOUS 26 MAIN STREET PO BOX 743	Total Shares		461	Total Certificates		1
COLLEEN SULLIVAN	02/25/1998	1343	1			No
	Total Shares		1	Total Certificates		1
HENRY L SUMMERS	02/25/1998	1056	1			No
1840 7TH AVE #5C NEW YORK, NY 10026-0000	Total Shares		1	Total Certificates		1
HERMAN SUNA	02/25/1998	1360	1			No
75 NOBLE ST. LYNBROOK, NY 11563-0000	Total Shares		1	Total Certificates		1
* SUNSHINE LTD	04/03/2007	5312	573,847			No
THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11	Total Shares		573,847	Total Certificates		1
GEORGE M. SWEETMAN	02/25/1998	1108	1			No
34 MORSEMERE PLACE YONKERS, NY 10701-0000	Total Shares		1	Total Certificates		1
ANDREW TABBAT	02/25/1998	1122	1			No
2218 THEALL ROAD RYE, NY 10850	Total Shares		1	Total Certificates		1
GUS TAHMIN	02/25/1998	1113	1			No
48 FIELDCREST RD. CRESTWOOD, NY 10707-0000	Total Shares		1	Total Certificates		1
MERCIAN / MAKOTO TAKEUCHI	04/07/2005	5126	10,000	S	04/07/2005	No
	Total Shares		10,000	Total Certificates		1
PETER P. TALLARINE	02/25/1998	1203	1			No
2286 CUSTOM VLG CT BELLMORE, NY 11710-0000	Total Shares		1	Total Certificates		1

DAVI SKIN

Active Shareholder Report

Common Stock as of 7/13/2007

CUSIP NUMBER 238528 103

Stock Holder		Date Issued	Cert No	No of Shares	Status	Date Restr	Lost or Stolen
TAKAHIRO TASHIO		04/07/2005	5124	317,895	S	04/07/2005	No
		Total Shares		317,895	Total Certificates		1
MICHAEL TEDESCO 64 OLD TAPPAN RD. GLEN COVE, NY 11542-0000		02/25/1998	1186	1			No
		Total Shares		1	Total Certificates		1
NORMAN L TESSIER ROAD 1 BOX 185 SHAPON SPRINGS, NY 13459-0000		02/25/1998	1240	1			No
		Total Shares		1	Total Certificates		1
* THE CHLOE GROUP OF COMPANIES THE LOM BUILDING 27 REID STREET HAMILTON, BERMUDA HM11		04/03/2007	5311	573,847			No
		Total Shares		573,847	Total Certificates		1
JULIUS THELMO 62 LIVE OAK DR HOLBROOK, NY 11741-0000		02/25/1998	1210	1			No
		Total Shares		1	Total Certificates		1
A. THORSON 551 MAIN ST. #W201 NEW YORK, NY 10044-0000		02/25/1998	1062	1			No
		Total Shares		1	Total Certificates		1
MICHAEL TIGHE 333 URIBE ST LAS VEGAS, NV		05/16/2005	5150	200			No
		08/15/2005	5163	300	R	08/15/2005	No
		Total Shares		500	Total Certificates		2
DONALD A. TOY 45 SUTTON PLACE S APT 1414 NEW YORK, NY 10022-2444	069-28-5497	02/25/1998	1051	1			No
		Total Shares		1	Total Certificates		1
SARNA TRADING HOTTINGER STR 17 ZURICH, SWITZERLAND CH-8032		10/12/1999	1698	73			No
		Total Shares		73	Total Certificates		1
GEARY TRIGLETH 2001 HEARTHSTONE DRIVE CARROLLTON, TX 75101	447560247	08/03/2004	5047	125,000	R	08/03/2004	No
		Total Shares		125,000	Total Certificates		1

AGREEMENT FOR CONVERTIBLE NOTE

This Agreement for Convertible Debenture (this "Agreement") is made and entered this 14th day of Trcas, 2007, by and between Davi Skin, Inc., a Nevada corporation (together with its subsidiaries and affiliates, "Davi"), and Amin S. Lakha, a married man in his separate estate ("Lakha").

WHEREAS, Davi has requested, and Lakha is willing to provide, subject to the terms and conditions of this Agreement, certain financing for Davi's ongoing and proposed business operations and activities; and

WHEREAS, in consideration of such financing, Davi has proposed to give to Lakha a 9% Senior Secured Convertible Note in the stated principal amount of $2,200,000 in the form of Exhibit A attached hereto, the terms of which are incorporated herein by this reference (the "Note"), to be secured by an Assignment and Security Agreement in the form of Exhibit B hereto, the terms of which are incorporated herein by this reference (the "Assignment and Security Agreement"), which instruments and terms are acceptable to Lakha; and

4. Consideration for Initial Advance. In consideration of and subject to Lakha's delivering funds to Davi in the aggregate amount of the Initial Advance, Davi hereby agrees to provide each of the following to Lakha:

4.1 The Note (which in any event shall be delivered to Lakha in consideration of the Preliminary Advance);

4.2 Two Hundred Thousand (200,000) shares of the common voting stock of Davi, Inc., transferred without additional consideration to Lakha by Hepburn Group;

4.3 Invitation to become a member of the Board of Directors of Davi (i.e., Davi hereby represents and warrants to Lakha that, upon Lakha's delivery of the Initial Advance to Davi, and in consideration therefor, shareholders of Davi with shares sufficient to do so shall elect Lakha to the Board of Directors of Davi);

EXHIBIT "D"

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

[X] **Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the quarterly period ended June 30, 2008

[ ] **Transition Report pursuant to 13 or 15(d) of the Securities Exchange Act of 1934**
For the transition period __________ to __________

Commission File Number: 001-14297

Davi Skin, Inc.
(Exact name of small business issuer as specified in its charter)

Nevada	**86-0907471**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

11990 San Vicente Blvd, Suite 300, Los Angeles, California 90049
(Address of principal executive offices)

310-827-0800
(Issuer's telephone number)

4223 Glencoe Avenue, Suite 130, Marina Del Rey, California 90292
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. [x] Yes [ ] No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

Large accelerated filer [ ]	Accelerated filer [ ]
Non-accelerated filer [ ] (Do not check if a smaller reporting company)	Smaller reporting company [x]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). [ ] Yes [x] No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. The number of shares of common stock, no par value, outstanding at August 18, 2008, was 51,473,668 shares.

DAVI SKIN, INC
(Formerly MW Medical, Inc,)
(A Development Stage Company)
June 30, 2008
NOTES TO FINANCIAL STATEMENTS
(Unaudited)

In May, 2008, FASB issued SFAS No. 163, "*Accounting for Financial Guarantee Insurance Contracts—an interpretation of FASB Statement No. 60*". Diversity exists in practice in accounting for financial guarantee insurance contracts by insurance enterprises under FASB Statement No. 60, *Accounting and Reporting by Insurance Enterprises*. That diversity results in inconsistencies in the recognition and measurement of claim liabilities because of differing views about when a loss has been incurred under FASB Statement No. 5, *Accounting for Contingencies*. This Statement requires that an insurance enterprise recognize a claim liability prior to an event of default (insured event) when there is evidence that credit deterioration has occurred in an insured financial obligation. This Statement also clarifies how Statement 60 applies to financial guarantee insurance contracts, including the recognition and measurement to be used to account for premium revenue and claim liabilities. Those clarifications will increase comparability in financial reporting of financial guarantee insurance contracts by insurance enterprises. This Statement requires expanded disclosures about financial guarantee insurance contracts. The accounting and disclosure requirements of the Statement will improve the quality of information provided to users of financial statements. SFAS 163 will be effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years; disclosure requirements in paragraphs 30(g) and 31 are effective for the first period (including interim periods) beginning after May 23, 2008. We do not expect the adoption of SFAS 163 to have a significant impact on our consolidated financial statements.

4. RELATED PARTY TRANSACTIONS

We outsource a portion of our operational activities to companies with greater expertise in certain areas in order to keep our overhead expenditures to a minimum. Currently our payroll function is outsourced to an accounting firm with one of its partners being both a member of our Executive Advisory Board and a relative of an officer who is also a member of our Board of Directors. The Company was not required to make any payments for this service.

5. NOTES PAYABLE

On or about April 1, 2008, the Company entered into a First Amended and Restated Agreement for Convertible Note with Amin S. Lakha ("Lakha"). The basic terms of the agreement are: The Parties entered into an Amended and Restated Secured Convertible Promissory Note in the amount of $536,163 due and payable on May 15, 2010 ; The Parties entered into an Amended and Restated Security Agreement, whereby all sums due under the Letter Agreement between the Company and Constellation Wines, U.S., Inc. shall be assigned directly to Lakha until the Restated Convertible Note is fully extinguished and such funds shall be applied directly to the principal sum owe; In addition Ten Thousand Dollars ($10,000) shall be payable to Lakha as a full and complete release of any and all payments that may have been due to Lakha pursuant to the terms of the original Assignment Agreement; The Parties have entered into a restatement and replacement of the Stock Option Agreement and Stock Purchase Warrant Agreement, Company shall issue to Lakha 600,000 warrants to purchase shares of Common Stock at an exercise price of $0.20 with an expiration date of May 14, 2012 and 125,000 warrants to purchase shares of Common Stock at an exercise price of $0.25 with an expiration date of May 14, 2012 and the Parties entered into a Rescission of Assignment and Security Agreement for the Gilchrist & Soames Agreement.

On or about April 14, 2008 the Company entered into a First Amended and Restated Loan Agreement with Gisela Brinkhaus ("Brinkhaus") the terms of which are: The Parties entered into an Amended and Restated Convertible Promissory Note in the principal amount of $100,000 and interest of 13% per annum, due and payable on January 14, 2009 ; The Parties entered into a restatement and complete replacement of the Original Warrants, Company shall issue Restated Warrants up to 300,000 shares of common stock at an exercise price of $.35 per share which shall expire on November 14, 2010 . As consideration for the difference between the Debt and the principal amount of the Restated Convertible Note the Company shall issue Brinkhaus 2, 207,960 shares of common stock. Brinkhaus has released any and all collateral rights to Company's Inventory Collateral and the right to file any UCC-1 Financing Statement in connection with the Inventory Collateral. In the Original Agreement, the Company pledged as a security against default all payments that may become due and owing to the Company under the Memorandum of Understanding between the Company and deSter N.V., Brinkhaus shall retain these collateral rights and under acknowledges that at this time no final agreement has been executed between deSter and the Company.

On or about April 17, 2008 the Company entered into a Securities Purchase Agreement with Noctua Fund, LP ("Noctua"). Noctua purchased 250,000 shares of Series A Preferred Stock par value $.001 per share of the Company's Preferred Stock at a purchase price of $1.00 per share and Series A-1 Warrants to purchase common stock, par value $0.001 of the Company at an exercise price of $.15 per share. Company as part of the transaction delivered a Registration of Rights Agreement, Stock Escrow Agreement and a Certificate of Designation. The Company's management issued Irrevocable Voting Proxy and Trust Agreements. Noctua has the right but not the obligation to acquire an additional 350,000 shares of Preferred Stock at the Purchase Price listed above. Company granted a right of first offer and registration rights to Noctua with respect to all transactions consummated within 12 months of the Initial Closing of the sale of Preferred Stock.

For the three month period ended June 30, 2008, we reported a net loss of $371,429 or $0.01 per share compared to a net loss of $942,916 or $0.06 per share for three months ended June 30, 2007

Liquidity and Capital Resources

As of June 30, 2008, our total current assets of $585,460 consisted of $532,073 of inventory, $2,737 of accounts receivable, and $28,102 of prepaid expenses. As of June 30, 2008, our total current liabilities of $691,256 consisted of $512,452 in accounts payable and accrued expenses, interest payable of $59,004, and a note payable of $100,000. We thus had negative working capital of $105,796 at June 30, 2008.

Net cash used in operating activities was $258,815 for the six months ended June 30, 2008 compared to net cash used in operating activities of $841,424 for the six months ended June 30, 2007. Net cash flow provided by investing activities amounted to $7,342 for the six months ended June 30, 2008 compared to net cash provided by investing activities of $758,705 for the six months ended June 30, 2007. Net cash flow provided by financing activities amounted to $227,463 for the six month period ended June 30, 2008, compared to net cash used in financing activities of $117,281 for the six month period ended June 30, 2007.

We will be dependent, for the immediate future, upon additional investment capital to fund operating expenses.

In connection with our need for additional financing, we entered into an Agreement for Convertible Note with an unrelated third party, Mr. Amin S. Lakha, whereby Mr. Lakha is willing to provide, subject to the terms and conditions of the Agreement for Convertible Note and accompanying documents (the "Agreement"), certain financing for our ongoing and proposed business operations and activities. The Agreement provides for a 9% Senior Secured Convertible Note (the "Note") in the stated amount of $2,200,000. Interest is payable in six month intervals and the note matures on May 15, 2010. The Note allows Mr. Lakha to convert a part or all of the outstanding balance under the Note into shares of our common stock at a conversion price of $0.55 per share, which is subject to adjustment in the event of certain dilutive issuances, including stock dividends and reorganizations. As part of this agreement the Company received $500,000 during 2007.

On or about April 1, 2008, the Company entered into a First Amended and Restated Agreement for Convertible Note with Amin S. Lakha ("Lakha"). The basic terms of the agreement are: The Parties entered into an Amended and Restated Secured Convertible Promissory Note in the amount of $536,163 due and payable on May 15, 2010 ; The Parties entered into an Amended and Restated Security Agreement, whereby all sums due under the Letter Agreement between the Company and Constellation Wines, U.S., Inc. shall be assigned directly to Lakha until the Restated Convertible Note is fully extinguished and such funds shall be applied directly to the principal sum owed; In addition Ten Thousand Dollars ($10,000) shall be payable to Lakha as a full and complete release of any and all payments that may have been due to Lakha pursuant to the terms of the original Assignment Agreement; The Parties have entered into a restatement and replacement of the Stock Option Agreement and Stock Purchase Warrant Agreement, Company shall issue to Lakha 600,000 warrants to purchase shares of Common Stock at an exercise price of $0.20 with an expiration date of May 14, 2012 and 125,000 warrants to purchase shares of Common Stock at an exercise price of $0.25 with an expiration date of May 14, 2012 and the Parties entered into a Rescission of Assignment and Security Agreement for the Gilchrist & Soames Agreement.

SIGNATURES

In accordance with the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Davi Skin, Inc.

Dated: August 19, 2008

By: /s/ Jan Wallace
Jan Wallace
Chief Executive Officer and Director

Issued shares from DAVI prior to reverse merger – MW Medical accumulating to 2,249,825 (50% total volume) LOM Securities comprise of the other 50% free trading volume

DAVI SKIN
Active Shareholder Report
Common Stock as of 7/13/2007
CUSIP NUMBER: 236528 103

Stock Holder	Date Issued	Cert No	No of Shares	Status	Date Paid	Lock in Status
CEDE & CO PO BOX 222 BOWLING GREEN STATION NEW YORK, NY 10274-0028	01/25/2004	2029	10,000			[illegible]
	06/28/2004	2030	11,000			[illegible]
	12/17/2004	5098	50			[illegible]
	03/07/2005	3106	5,000			[illegible]
	03/29/2005	5107	125,000			[illegible]
	05/09/2005	5147	5,000			[illegible]
	06/08/2005	5158	15,000			[illegible]
	07/22/2005	5160	[illegible]			[illegible]
	[illegible]	[illegible]	[illegible]			[illegible]
	10/13/2005	5183	1			[illegible]
	11/10/2005	5188	10,000			[illegible]
	12/16/2005	5191	50,000			[illegible]
	02/24/2006	5228	49,970			[illegible]
	04/07/2006	5232	1			[illegible]
	06/08/2006	5237	11,000			[illegible]
	08/14/2006	5238	1			[illegible]
	08/17/2006	5240	100,000			[illegible]
	08/15/2006	5245	20,000			[illegible]
	08/31/2006	5257	20,000			[illegible]
	[illegible]	[illegible]	[illegible]			[illegible]
	09/21/2006	5281	40,000			[illegible]
	09/28/2006	5282	10,000			[illegible]
	10/16/2006	5285	30			[illegible]
	10/19/2006	5288	1			[illegible]
	11/01/2006	5297	3,636			[illegible]
	11/28/2006	5298	30,000			[illegible]
	01/24/2007	5300	25,000			[illegible]
	01/29/2007	5301	100,000			[illegible]
	02/23/2007	5303	200,000			[illegible]
	03/05/2007	5304	[illegible]			[illegible]
	03/15/2007	5305	49,970			[illegible]
	03/23/2007	5306	9,252			[illegible]
	05/02/2007	5314	[illegible]			[illegible]
	05/09/2007	5315	50,000			[illegible]
	05/23/2007	5317	49,976			[illegible]
	[illegible]	[illegible]	16,001			[illegible]
	Total Shares		2,249,825	Total Certificates		35

Cede & Co
2,249,825

Company: MW MEDICAL INC | Date: 1999-10-12 | Type: S-1/A | Keyword: cede
Name and address Amount of Percent Title of class of beneficial owner beneficial of class*
ownership - ———— ———— ——— ——— Common Stock Cede & Co. 9,165,046 47.96%
PO Box 222 Bowling Green Station New York, NY 10274-0000 Common Stock Jan Wallace 500,000
(1) 2.62% (Chairman) 6955 E. Caballo Dr. Paradise Valley, AZ 85253

①

LGAL beneficial owner, 2,341,051 shares

LEGAL ACCESS TECHNOLOGIES INC (0000878146)
SIC: 7389 - Services-Business Services, NEC
State location: NY | State of Inc.: NV | Fiscal Year End: 0430
formerly: DYNAMIC ASSOCIATES INC (until 2001-05-15)

Items 1 - 28 (Note: Second (grayed) row (except for Nature) is for derivative details.)

Date	Reporting Owner	Form	Trans.	Modes	Shares	Price	Owned	No.	Owner CIK	Security Name	Deemed
Exercise	Nature		Derivative		Underlying	Exercised	Underlying	Expires		Underlying	
D 2004-08-31	CANE KYLEEN E	5	G-Gift	-LD	10000.0000		2341051.0000	7	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	5	G-Gift	-LD	10000.0000		2351051.0000	6	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	5	G-Gift	-LD	10000.0000		2361051.0000	5	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	5	G-Gift	-LD	25000.0000		2371051.0000	4	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	5	G-Gift	-LD	25000.0000		2396051.0000	3	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	10000.0000		2341279.0000	7	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	10000.0000		2341279.0000	6	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	10000.0000		2341279.0000	5	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	25000.0000		2341279.0000	4	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	25000.0000		2341279.0000	3	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	300000.0000		2341279.0000	2	0001144030	COMMON STOCK	
D 2004-08-31	CANE KYLEEN E	4	G-Gift	-D	100000.0000		2341279.0000	1	0001144030	COMMON STOCK	

②

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- BRIAN N. LINES, et al., Defendants,
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
2011 U.S. Dist. LEXIS 91360
07 Civ. 11387 (DLC)(DF)
June 7, 2011, Decided
June 7, 2011, Filed

Editorial Information: Subsequent History

Adopted by, in part SEC v. Lines, 2011 U.S. Dist. LEXIS 91354 (S.D.N.Y., Aug. 16, 2011)

Editorial Information: Prior History

SEC v. Lines, 2010 U.S. Dist. LEXIS 75091 (S.D.N.Y., July 26, 2010)

Counsel For Securities and Exchange Commission, Plaintiff: A. David Williams, LEAD ATTORNEY, Justin Chretien, LEAD ATTORNEY, PRO HAC VICE, Securities and Exchange Commission (DC), Washington, DC.

For **Brian N. Lines**, Defendant: Philip Morgan Smith, LEAD ATTORNEY, Winston & Strawn LLP (NY), New York, NY; Kate Suzanna Woodall, Patton Boggs LLP(NY), New York, NY; Scott Michael Kessler, Akerman Senterfitt, LLP, New York, NY.

For Scott G.S. Lines, Defendant: Stephen J. Crimmins, LEAD ATTORNEY, K&L Gates (DC), Washington, DC; Lisa Michele Richman, PRO HAC VICE, K&L Gates LLP, Washington, DC; Rebecca A. Beynon, PRO HAC VICE, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC.

For Lom (Holdings) Ltd., Lines Overseas Management Ltd., LOM Capital Ltd., Lom Securities (Bermuda) Ltd., Lom Securities (Cayman) Ltd., Lom Securities (Bahamas) Ltd., Defendants: Reid Mason Figel, LEAD ATTORNEY, Derek Tam Ho, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC (DC), Washington, DC.

For Anthony W. Wile, Defendant: Jeremy Adam Shure, Ackerman Senterfitt, New York, NY; Scott Michael Kessler, Akerman Senterfitt, LLP, New York, NY.

For Wayne E. Wile, Defendant: Mario Aieta, LEAD ATTORNEY, Jonathan Scott Lawson, Satterlee Stephens Burke & Burke LLP, New York, NY.

Judges: DEBRA FREEMAN, United States Magistrate Judge. HONORABLE DENISE L. COTE, United States District Judge.

Opinion

Opinion by: DEBRA FREEMAN

Opinion

REPORT AND RECOMMENDATION

TO THE HONORABLE DENISE L. COTE, U.S.D.J.:

In this case, plaintiff Securities and Exchange Commission ("SEC") has asserted claims for securities violations against defendants Brian M. Lines, Scott G.S. Lines, LOM (Holdings) Ltd., Lines Overseas Management, Ltd., LOM Capital Ltd., LOM Securities (Bermuda) Ltd., LOM Securities (Cayman) Ltd., LOM Securities (Bahamas) Ltd., Anthony W. Wile, Wayne E. Wile, Phillip James Curtis ("Curtis), William Todd Peever ("Peever"), Robert J. Chapman ("Chapman"), and Ryan Leeds (collectively, "Defendants"). On August 28, 2008, the Court entered consent judgments against Curtis and Peever, requiring these defendants to pay disgorgement, prejudgment interest, and civil penalties in an amount to be determined upon motion of the SEC. (Dkts. 33, 34.) After Chapman failed to answer or otherwise respond to the Complaint, the Court entered a default judgment against him on June 18, 2010, requiring Chapman, as well, to pay disgorgement, prejudgment interest, and civil penalties in an amount to be determined upon motion of the SEC. (Dkt. 193.) 1

On January 14, 2011, the SEC moved for an order imposing specific disgorgement, prejudgment interest, and civil penalties against Curtis and Peever, and specific civil penalties against Chapman. (Dkt. 231.) The Court then referred the motion to me for a report and recommendation. (Dkt. 235.) On February 4, 2011, I ordered the SEC to serve on Curtis, Peever, and Chapman a copy of its filings in support of its pending motion. *(See* Dkt. 236.) Although service was apparently made on these defendants *(see* Certificate of Service, dated Feb. 9, 2011 (Dkt. 237)), to date, none has filed a response to any of the SEC's submissions or contacted my chambers to request a hearing.

For the reasons that follow, I recommend that (1) Curtis and Peever be ordered to disgorge their ill-gotten gains in the amount of $2,480,072.40, plus pre-judgment interest, on a joint and several basis; and (2) civil penalties be imposed against Curtis, Peever, and Chapman in the amount of $120,000 each.

BACKGROUND

In the Complaint, the SEC claims that Curtis, Peever, and Chapman committed violations of the registration, beneficial ownership report, and antifraud provisions of the federal securities laws, including violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, and that Curtis and Peever committed violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) promulgated thereunder. (*See* Complaint, dated Dec. 19, 2007 (Dkt. 1) ("Complaint" or "Compl.").) 2 In particular, the SEC alleges two separate - but similar - fraudulent schemes, both occurring between 2002 and mid-2003, to manipulate the stock prices of SHEP Technologies, Inc. ("SHEP") and Sedona Sofware Solutions, Inc. ("Sedona"), two publicly traded companies quoted on the Over-the-Counter Bulletin Board. (*Id.* at ¶ 1.)

A. Manipulation of SHEP Stock by Curtis and Peever

The SEC alleges that Curtis and Peever participated in a fraudulent scheme to manipulate that stock price of SHEP. According to the SEC, in January 2002, Curtis and Peever, using nominee companies and signature directors, secretly acquired a majority of the outstanding shares of Inside Holdings Inc. ("IHI"), a publicly traded entity. (*Id.* at ¶¶ 145-53.) The SEC alleges that Curtis and Peever each paid half of the approximately $400,000 purchase price. (*Id.* at ¶ 149.) The SEC further alleges that Curtis and Peever concealed their purchases of IHI shares, causing IHI to file several materially false and misleading reports with the SEC. (*Id.* at ¶¶ 154-55.) Those reports allegedly created the false impression that Curtis and Peever's purchases were made by several independent entities and, thus, that no shareholder or group of shareholders had the power to control the company. (*Id.*)

In early 2002, SHEP - a private company that owned patents in the automotive field - was allegedly looking to acquire a publicly-traded shell company. (*Id.* at ¶ 156.) The SEC alleges that an affiliate of SHEP was introduced to Curtis and Peever. (*Id.*) The SEC further alleges that Curtis and Peever informed the SHEP affiliate about IHI, but concealed the fact that they controlled IHI, instead representing that they were third-party intermediaries between IHI and its owners. (*Id.* at ¶ 157.) According to the SEC, in May 2002, IHI agreed to enter into a reverse merger agreement with SHEP. (*Id.* at ¶ 158.) Curtis and Peever then allegedly convinced IHI to use the services of certain newsletters to tout the merger. (*Id.* at ¶ 159-60.) The IHI/SHEP reverse merger closed in September 2002. (*Id.* at ¶ 162.)

According to the SEC, by late December 2002, Curtis, Peever and co-defendants Brian and Scott Lines, who had both assisted Curtis and Peever with the purchase of SHEP, collectively (and secretly) owned about 80 percent of SHEP's tradeable shares. (*Id.* at ¶ 165.) The SEC alleges that, by early 2003, Peever and Curtis had negotiated with two publications to print bullish SHEP recommendations on numerous occasions, in exchange for monetary compensation and SHEP stock. (*Id.* at ¶¶ 167-68.) The SEC further alleges the publications failed to disclose that SHEP's controlling shareholders were paying for the reports. (*Id.* at ¶¶ 169-74.) The SEC contends that these reports initially led to so-called "naked" short selling, 3 which drove down the price and volume of sales of SHEP stock, but that Peever and Scott Lines successfully counteracted this, by buying up a number of shares, leaving the short sellers without sufficient shares to cover their sales. (*Id.* at ¶¶ 174-77.)

The SEC claims that, between February and June 2003, Curtis and Peever sold almost three million shares of SHEP, yielding illegal proceeds of more than $3.1 million. (*See* Memorandum of Law in Support of Plaintiff Securities Exchange Commission's Motion for Supplemental Order Imposing Disgorgement, Prejudgment Interest and Civil Penalties Against Defendants Phillip James Curtis, William Todd Peever, and Robert J. Chapman, dated Jan. 14, 2011 (Dkt. 232) ("SEC Mem."), at 16.) Curtis and Peever allegedly failed to report their SHEP stock purchases and sales in SEC filings, as required by law. (Compl., at ¶ 11.)

B. Chapman's Involvement in the Manipulation of Sedona Stock

In a scheme involving the manipulation of the stock price for Sedona, the SEC alleges that certain of the Defendants facilitated a promotional campaign creating the false and misleading impression that Renaissance Mining Corporation ("Renaissance"), a newly-formed private company owned by defendant Anthony W. Wile, had already acquired three Central American gold mines and was the "leading gold producer in Latin America." (*Id.* at ¶ 3.) The conspirators allegedly acquired Sedona, a publicly traded shell company, in the names of offshore nominees, and merged Sedona with Renaissance. (*Id.*) The SEC claims that the conspirators then sold over 140,000 shares of Sedona/Renaissance stock at artificially inflated prices of between $9 and $10 per share. (*Id.* at ¶ 6.)

According to the SEC, Chapman, the publisher of *The International Forecaster*, an online investment newsletter, disseminated false and misleading information, while secretly owning Renaissance shares. (*Id.* at ¶¶ 83-84.) The SEC alleges that, as of October 2002, Chapman had purchased almost nine percent of Renaissance's outstanding stock at prices ranging from 25 cents to $1 per share. (*Id.* at ¶ 82.) The SEC alleges that, in November 2002, Chapman initiated coverage of Renaissance, describing Renaissance as "an incredible opportunity that could be the largest public offering in the United States for a mining company this year," but did not disclose his own financial interest in Renaissance. (*Id.* at ¶ 85.) The SEC further alleges that, on January 19, 2003, Chapman distributed a report, which falsely claimed that (1) the then-current price of Sedona stock was $10, when the stock had actually last traded at three cents; (2) Renaissance had acquired Central American mining assets; (3) Renaissance stock was publicly available for purchase; and (4) Renaissance stock could eventually reach $62 per share. (*Id.* at ¶¶ 88-89.) The SEC asserts that, in the report, Chapman falsely claimed to be an "independent mining analyst," and yet again failed to disclose his ownership interest in Renaissance. (*Id.* at ¶ 89.)

According to the SEC, on January 21, 2003, the Sedona stock opened at $8.10 per share and closed at over $9 per share, with over 300,000 shares sold. (*Id.* at ¶ 117.) At that time, Sedona allegedly had no assets, revenues or operations. (*Id.*) On January 29, 2003, the SEC suspended trading in Sedona's stock. (*Id.*, ¶ 129.) The SEC contends that, because of the trading suspension, Chapman was unable to convert his Renaissance holdings into publicly-traded shares and, therefore, did not earn any illegal proceeds from his participation in the Sedona scheme. (SEC Mem., at 4.)

DISCUSSION

I. APPLICABLE LEGAL STANDARDS

In conducting an inquest, the Court accepts as true all of the factual allegations of the Complaint, except those relating to damages. *Au Bon Pain Corp. v. Artect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981). A plaintiff must therefore substantiate a claim with evidence to prove the extent of damages. *See Trehan v. Von Tarkanyi*, 63 B.R. 1001, 1008 n.12 (S.D.N.Y. 1986) (plaintiff must introduce evidence to prove damages suffered and the court will then determine whether the relief flows from the facts) (citing *Flaks v. Koegel*, 504 F.2d 702, 707 (2d Cir. 1974)). Where a defaulting defendant has not made any submission on a damages inquest, the Court must assess whether the plaintiff has provided a sufficient basis for the Court to determine damages. *See Transatl. Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997) (noting that the Court "should take the necessary steps to establish damages with reasonable certainty").

Although the Court may hold a hearing to assess the amount of damages (or disgorgement and civil penalties) that should be awarded on a default, *see* Fed. R. Civ. P. 55(b)(2) (court may conduct hearings on damages as necessary), the Second Circuit has consistently held that "[b]y its terms, [Rule] 55(b)(2) leaves the decision of whether a hearing is necessary to the discretion of the district court," *Fustok v. Conticommodity Servs., Inc.*, 873 F.2d 38, 40 (2d Cir. 1989); *accord Tamarin v. Adam Caterers, Inc.*, 13 F.3d 51, 54 (2d Cir. 1993) (judges are given much discretion to determine whether an inquest need be held); *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) (Fed. R. Civ. P. 55(b)(2) "allows but does not require . . . a hearing"). Here, a hearing is unnecessary, as the documents before the Court provide a "sufficient basis from which to evaluate the fairness" of the disgorgement and civil penalties sought by the SEC, *Fustok v. ContiCommodity Servs. Inc.*, 873 F.2d 38, 40 (2d Cir. 1989); *see also Marc Rich & Co.*, 951 F.2d at 508, and as Curtis, Peever, and Chapman have submitted nothing in response to the SEC's submissions, nor requested a hearing.

II. DISGORGEMENT AWARD AGAINST CURTIS AND PEEVER

The SEC seeks disgorgement from Curtis and Peever, on a joint and several basis, of $2,894,537.48 in ill-gotten funds from their involvement in the SHEP scheme. (SEC Mem., at 16.) Disgorgement is an equitable remedy for violations of the federal securities laws, aimed at "forcing a defendant to give up the amount by which he was unjustly enriched." *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987). The Court has broad discretion in calculating the amount to be disgorged. *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996). Although the disgorged amount must be "causally connected to the violation," *id.* at 1475, the SEC "is not required to trace every dollar of proceedings" or "to identify misappropriated monies which have been commingled." *SEC v. Anticevic*, No. 05 Civ. 6991(KMW), 2010 U.S. Dist. LEXIS 83538, 2010 WL 3239421, at *5 (S.D.N.Y. Aug. 16, 2010) (internal quotation omitted). After the SEC makes a showing of the disgorgement figure, the burden shifts to the defendant to demonstrate that the disgorgement figure is not a reasonable approximation. *Id.* In formulating a disgorgement remedy, the district court has discretion to impose "joint and several liability for combined profits on collaborating or closely related parties," so long as the total disgorgement amount does not exceed the total combined profits. *S.E.C. v. AbsoluteFuture.com*, 393 F.3d 94, 97 (2d Cir. 2004). Additionally, the court can award prejudgment interest on the amount awarded as disgorgement, in order to deprive the defendant of the time-value of the money. *SEC v. Warde*, 151 F.3d 42, 50 (2d Cir. 1998). In SEC injunctive actions, prejudgment interest should be calculated by applying the Internal Revenue Service tax underpayment rate ("IRS rate"), as set forth in 26 U.S.C. § 6621(a)(2). *See First Jersey Secs.*, 101 F.3d at 1476-77.

In support of the requested disgorgement of funds from Curtis and Peever, the SEC has submitted a declaration by Robert W. Nesbitt ("Nesbit"), a Market Surveillance Specialist in the Office of Market Surveillance, Division of Enforcement of the SEC, setting forth in detail the SEC's calculation of the ill-gotten gains of Curtis and Peever, and providing documents underlying those calculations. (Declaration of Robert W. Nesbitt, dated Jan. 13, 2011 (Dkt. 233) ("Nesbit Decl.").) As to Curtis, Nesbit states that, based on a tabulation of sales of SHEP shares in four accounts owned or controlled by Curtis - an account opened in Curtis's name (Ex. 3), an account in the name of the Curtis Family Trust, of which Curtis was the authorized trustee (Ex. 5), and two accounts that designated Curtis as the authorized signatory (Ex. 7, 9) - Curtis sold 1,638,450 shares of SHEP and generated $1,636,503.28 in proceeds between August 29, 2002 and June 10, 2003. (Nesbit Decl., at ¶¶ 7-12.) Nesbit also states that the cost basis for those shares was $78,645.60. (*Id.* at ¶ 13.) To calculate the overall cost basis, Nesbit tabulated the dollar amounts paid by Curtis in purchasing the SHEP shares traded in those four accounts, while assuming that the cost basis was zero for those SHEP shares for which there was no evidence of such payment by Curtis. (*See id.* at ¶¶ 13-23 (relying on attached account records and acquisition agreements).) By subtracting the cost basis from the proceeds, Nesbit concludes that Curtis's ill-gotten gains from the scheme totaled $1,557,857.68. (*Id.* at ¶ 24.)

With respect to Peever, Nesbit calculates that, between September 3, 2002 and June 18, 2003, Peever sold 1,327,350 shares of SHEP and obtained proceeds of $1,490,652.40, based on records from two brokerage accounts (an account opened in Peever's name (Ex. 17), and an account that designated Peever as the authorized signatory (Ex. 19)). (Nesbit Decl., at ¶¶ 25-28.) Using the same methodology as described above with respect to Curtis, Nesbit calculated a cost basis of $153,972.60 for the SHEP shares sold by Peever. (*See id.* at ¶¶ 29-37 (relying on attached account records and acquisition agreements).) Based on his calculations, Nesbit states that Peever's ill-gotten gains from the scheme totaled $1,336,679.80. (*Id.* at ¶ 38.) Thus, taken together, Curtis and Peever's total gains from the scheme were $2,894,537.48.

Having reviewed the SEC's submitted records, this Court finds that they support Nesbitt's calculations. Moreover, the Court finds that joint and several liability for Curtis and Peever's joint profits is appropriate, as, based on the allegations in the Complaint as set forth above (*see supra* at 3-5), Curtis and Peever collaborated to manipulate the price of SHEP stock. *See AbsoluteFuture.com*, 393 F.3d at 97. Accordingly, I recommend that the SEC be awarded disgorgement from Curtis and Peever of $2,894,537.48 in ill-gotten funds, plus prejudgment interest from June 23, 2003 based on the IRS rate, on a joint and several basis.

III. <u>CIVIL PENALTIES AGAINST CURTIS, PEEVER, AND CHAPMAN</u>

The SEC also seeks civil penalties against Curtis and Peever, for their involvement in the SHEP scheme, and against Chapman, for his involvement in the Sedona scheme. Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act permit a court to impose, upon a proper showing, a civil penalty that falls under one of three "tiers," the third tier being for the most serious violations. To determine whether to impose a civil penalty and the amount of any penalty, the Court looks to a number of factors, including: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *SEC v. Aragon Capital Mgmt., LLC*, 672 F. Supp. 2d 421, 447 (S.D.N.Y.2009) (quoting *SEC v. Haligiannis*, 470 F.Supp.2d 373, 386 (S.D.N.Y. 2007) (citation omitted)).

The SEC requests the imposition of third-tier penalties on Curtis, Peever, and Chapman of $120,000 each. (SEC Mem., at 18-20.) Third-tier penalties are appropriate where the court finds both that the defendant's actions involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and that the violations "resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. § 78u(d)(3)(B)(iii). As the SEC explains, for violations of the securities laws committed during the time period at issue here (between 2002 and mid-2003), the maximum third-tier penalties against an individual defendant should not exceed the greater of $120,000 per violation, or the gross amount of the defendant's pecuniary gain. (*See* SEC Mem., at 20 (citing 17 C.F.R. §§ 201.1001, 201.1003, 201.1004 (providing for inflation-based adjustment to the statutory maximum amount of civil penalties under the Securities Act and the Exchange Act)).)

Accepting as established the SEC's allegations as set forth above, Curtis and Peever actively participated in an eight-month scheme to manipulate a publicly-traded stock. Among other misconduct, Curtis and Peaver intentionally concealed their ownership interest in SHEP. As a result of their repeated material misrepresentations and omissions, innocent purchasers of SHEP stock suffered material losses. Likewise, over the course of several months, Chapman knowingly (or, at the least, recklessly) made numerous misrepresentations and omissions in touting the value of Sedona stock, while consistently concealing his own financial interest in Renaissance. These misleading reports drove investor demand and artificially inflated trading of Sedona shares on January 23, 2003, to the benefit of other co-defendants and the detriment of unwitting purchasers of Sedona stock. Finally, this Court is not aware of any basis, arising from the financial condition of Curtis, Peaver or Chapman, to reduce the penalty against any of these defendants. For these reasons, I recommend that the Court grant the SEC's request to impose third-tier penalties against Curtis, Peever, and Chapman of $120,000 each.

CONCLUSION

Based on the foregoing, I respectfully recommend that SEC's motion (Dkt. 232) for a supplemental order imposing disgorgement, prejudgment interest and civil penalties against Curtis, Peever, and Chapman be granted. In particular, I recommend that the SEC be awarded (1) disgorgement from Curtis and Peever, on a joint and several basis, in the amount of $2,894,537.48, plus prejudgment interest from June 23, 2003 based on the IRS rate, as set out in 26 U.S.C. § 6621(a)(2); and (2) civil penalties against Curtis, Peever, and Chapman of $120,000 each.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Denise L. Cote, United States Courthouse, 500 Pearl Street, Room 1040, New York, New York 10007, and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, Room 525, New York, New York, 10007.

Any requests for an extension of time for filing objections must be directed to Judge Cote. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York

June 7, 2011

Respectfully submitted,

/s/ Debra Freeman

DEBRA FREEMAN

United States Magistrate Judge

Footnotes

1

The Court entered final judgments against the other defendants on October 14, 2010. (Dkts. 216-25.)

2

"To state a claim under [Section] 10(b) and the corresponding Rule 10b-5[b], a plaintiff must plead that the defendant, in connection with the purchase or sale of securities, made a materially false statement or omitted a material fact, with scienter, and that the plaintiff's reliance on the defendant's action caused injury to the plaintiff." *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 161 (2d Cir. 2000). The same elements required to establish a section 10(b) and a Rule 10b-5 violation suffice to establish a violation under sections 17(a)(1)-(3), with the exception that scienter is not required for the SEC to enjoin violations under subsections (a)(2) or (a)(3). *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999).

Section 5 of the Securities Act requires that all non-exempt securities offered for sale to the public be registered with the Commission prior to the offer or sale of such securities. *See* 15 U.S.C. § 77e; *see also SEC v. Cavanagh*, 445 F.3d 105, 111 (2d Cir.2006). To state a claim under Section 5, the SEC must show "(1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale." *Id.* at 111 n. 13 (internal quotation marks and citation omitted). Scienter is not an element of a section 5 violation. *See SEC v. Universal Exp., Inc.*, 475 F. Supp. 2d 412, 422 (S.D.N.Y. 2007); *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 859-60 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998). A defendant may rebut the SEC's *prima facie* case for a Section 5 violation by proving the applicability of an exemption from registration. *See Cavanagh*, 445 F.3d at 111 n. 13; *Universal Exp.*, 475 F. Supp. 2d at 422.

3

"Executing a short sale in a security without first borrowing that security is known as 'naked' short selling." *S.E.C. v. Lyon*, 529 F. Supp. 2d 444, 448 n.1 (S.D.N.Y. 2008).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BRIAN N. LINES; SCOTT G. S. LINES; LOM (HOLDINGS) LTD.; LINES OVERSEAS MANAGEMENT LTD.; LOM CAPITAL LTD.; LOM SECURITIES (BERMUDA) LTD.; LOM SECURITIES (CAYMAN) LTD.; LOM SECURITIES (BAHAMAS) LTD.; ANTHONY W. WILE; WAYNE E. WILE; ROBERT J. CHAPMAN; WILLIAM TODD PEEVER; PHILLIP JAMES CURTIS; AND RYAN G. LEEDS, Defendants.	Civil Action No.____________

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF ALLEGATIONS

1. This action concerns two separate, but similar, fraudulent schemes to manipulate the stock prices of two microcap companies, Sedona Software Solutions, Inc. ("Sedona") and SHEP Technologies, Inc. ("SHEP"). During the relevant periods, Sedona and SHEP shares were quoted and traded on the Over-the-Counter Bulletin Board ("OTCBB"). The schemes took place in 2002 and 2003, and involved the substantial participation of a Bermuda-based securities firm,

defendant LOM (Holdings) Ltd. ("LOM Holdings"), two of its managing principals, defendants Brian N. Lines and Scott G. Lines, and several of its subsidiaries: Lines Overseas Management Ltd. ("LOM Ltd."), LOM Capital Ltd. ("LOM Capital"), LOM Securities (Bermuda) Ltd. ("LOM Bermuda"), LOM Securities (Bahamas) Ltd. ("LOM Bahamas"), and LOM Securities (Cayman) Ltd. ("LOM Cayman") (collectively referenced herein as "LOM" or the "LOM Entities").

2. Both the Sedona and SHEP fraudulent schemes involved the undisclosed acquisition of publicly-traded shell companies, the use of LOM-controlled nominees to conceal beneficial ownership and control over Sedona and SHEP, the use of paid touters to promote Sedona and SHEP stock, and significant trading through the U.S. market in those stocks by defendants Brian Lines and Scott Lines, who are brothers. In the Sedona scheme, the Lines brothers' trading yielded approximately $1.5 million in illegal proceeds. In the SHEP scheme, trading by the Lines brothers and two of their customers, defendants W. Todd Peever and P. James Curtis, yielded approximately $4.3 million in illegal proceeds.

3. In the Sedona fraudulent scheme, defendant Anthony W. Wile ("Wile" or "Tony Wile"), a Canadian stock promoter, issued deceptive press releases and other promotional materials in early 2003 to create the misleading impression that his newly-formed private company, Renaissance Mining Corporation, Inc. ("Renaissance"), had acquired certain Central American gold mines and was a leading gold producer. At the same time, as part of the scheme, defendants Brian and Scott Lines had secretly acquired over ninety-nine percent of Sedona's outstanding shares through offshore nominees in order to merge the publicly-traded Sedona shell with Renaissance. Defendants Brian and Scott Lines also agreed to raise $6 million for Renaissance through a private placement of Renaissance stock through LOM's investment

banking arm to enable Renaissance to acquire the mines that it publicly claimed it already owned.

4. Defendant Wile then primed the market for Renaissance and Sedona shares by disseminating materially false and misleading information and orchestrating touting by defendant Robert J. Chapman, a newsletter writer who also secretly owned Renaissance shares. Between January 17 and January 21, 2003, at Wile's direction, Renaissance issued press releases announcing a merger of the two companies, when no such merger had taken place. During the same period, defendant Wile coordinated the issuance of reports by various newsletter writers touting the merger and telling the public that shares of Sedona would open around $10 per share on January 21. The purpose of this materially false and misleading information was to convince potential investors that Renaissance had already acquired the Central American mines, that the mines were fully operational, and that a lucrative investment in *Renaissance* could be made by purchasing *Sedona's* shares on the OTCBB – even though Renaissance was not an operating mining company, owned no mines, and no merger with Sedona had taken place.

5. On the morning of January 21, defendants Brian Lines, Scott Lines, Tony Wile, and defendant Wayne E. Wile ("Wayne Wile," Tony Wile's uncle) orchestrated a manipulative stock transaction over the OTCBB in which defendants Brian and Scott Lines sold, and defendant Wayne Wile purchased, 5,000 Sedona shares at $8.25 per share. At the time these orders were placed, Sedona stock had last traded at $0.03 per share seven months earlier, in May 2002.

6. Between January 21 and January 27, 2003, defendants Brian and Scott Lines sold or caused the sale of 159,300 shares of Sedona on the open market at between approximately $9 and $10 per share, yielding $1.5 million in illegal proceeds. These sales were made without a registration statement in effect, and with no valid exemptions from registration.

7. Defendant Ryan Leeds was the broker on the LOM Ltd. account at the U.S. broker-dealer through which defendants Brian Lines, Scott Lines, and LOM sold Sedona stock unlawfully into the U.S. market. Despite the existence of several red flags, Leeds failed to conduct a reasonable inquiry to determine whether LOM and the Lines brothers were engaged in an illegal distribution of Sedona stock.

8. The Sedona scheme collapsed on January 29, 2003 when the Commission suspended trading in Sedona securities.

9. In the separate, but similar, SHEP scheme, beginning in early 2002, defendants Brian Lines, Scott Lines, and LOM, along with defendants Peever and Curtis, collaborated to secretly obtain control of a publicly-traded shell company, Inside Holdings Inc. ("IHI"), through the use of LOM-controlled nominees. The scheme involved merging IHI with a private company, SHEP Ltd., paying touters to promote the new IHI/SHEP stock, and later selling their IHI/SHEP stock into the ensuing demand.

10. Unlike the Sedona scheme, the SHEP scheme came to nearly complete fruition. Throughout the first half of 2003, defendants Peever, Curtis, Brian Lines, and Scott Lines collectively sold over three million shares of IHI/SHEP into the public demand created by the paid touters, generating approximately $4.3 million in illegal proceeds. These sales were made without a registration statement in effect, and with no valid exemptions from registration.

11. Defendants Peever, Curtis, Brian Lines, and Scott Lines failed to report their IHI/SHEP purchases and sales in Commission filings, as they were required to do, and defendant Brian Lines caused several false and misleading reports to be filed with the Commission in an attempt to conceal that defendants Peever, Curtis, Brian Lines, and Scott Lines owned, and had been selling, their IHI/SHEP stock.

12. As in the Sedona scheme, defendant Leeds was the broker on the LOM account at the U.S. broker-dealer through which defendants Brian Lines, Scott Lines, and LOM sold SHEP shares unlawfully into the U.S. market. Leeds failed to conduct a reasonable inquiry to determine whether LOM and the Lines brothers were engaged in an illegal distribution of SHEP securities.

13. The Commission seeks a judgment from the Court: (a) enjoining each defendant from engaging in the transactions, acts, practices, and courses of conduct alleged in this Complaint and transactions, acts, practices, and courses of conduct of similar purport and object; (b) requiring defendants to disgorge, with prejudgment interest, the illegal profits and proceeds obtained as a result of their actions alleged herein; (c) requiring defendants to pay appropriate civil money penalties; (d) prohibiting defendants Brian Lines, Scott Lines, LOM, Wile, Wayne Wile, Peever, Curtis, and Chapman from participating in penny stock offerings; (e) prohibiting Tony Wile from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and (f) granting such other relief as this Court may deem just and appropriate.

JURISDICTION AND VENUE

14. This Court has jurisdiction of this action pursuant to Sections 20 and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t, 77v(a)], and Sections 20, 21(d), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78t, 78u(d), and 78aa].

15. The defendants made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein.

16. This Court properly has venue over this action pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa] because certain of the conduct at issue occurred in the Southern District of New York.

THE PARTIES

17. The plaintiff is the **Securities and Exchange Commission**, which brings this civil action pursuant to authority conferred on it by Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act [15 U.S.C. §§ 77t(b) and 78u(d)(1)].

18. Defendant **Brian N. Lines**, age 45, is a citizen and resident of the overseas territory of Bermuda of the United Kingdom. Brian Lines was the president and a director of LOM Holdings and its defendant subsidiaries until his resignation on July 1, 2005.

19. Defendant **Scott G. S. Lines**, age 43, is a citizen and resident of the overseas territory of Bermuda of the United Kingdom. Scott Lines is currently the president and chief executive officer of LOM Holdings and its defendant subsidiaries. During the relevant period, he held the title of Managing Director of LOM Holdings and its defendant subsidiaries. In his testimony before the Commission staff, Scott Lines asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

20. Defendant **LOM Holdings** is the Bermuda-based parent of a group of financial services companies founded by defendants Brian and Scott Lines and their father, Donald Lines. LOM Holdings is majority-owned and controlled by Scott Lines, Donald Lines, and the Lines family, and its stock is publicly traded on the Bermuda Stock Exchange. LOM Holdings and its subsidiaries are collectively referred to herein as "LOM" or the "LOM Entities."

21. The following defendants are wholly-owned subsidiaries of LOM Holdings: **LOM Capital**, LOM's investment banking arm; **LOM Bermuda**, LOM's Bermuda-based broker-

dealer; **LOM Bahamas**, LOM's Bahamas-based broker-dealer; **LOM Cayman**, LOM's Cayman Islands-based broker-dealer; and **LOM Ltd.**, LOM's administrative, financial, and clearing operations.

22. Defendant **Anthony W. Wile**, age 39, is a Canadian citizen who resides in Boca Raton, Florida. Wile was Renaissance's founder, chairman, and largest shareholder. In his testimony before the Commission staff, Tony Wile asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

23. Defendant **Wayne E. Wile**, age 63, is a Canadian citizen and a resident of the Cayman Islands, who also maintains a home in Scottsdale, Arizona. Wayne Wile is Tony Wile's uncle. In his testimony before the Commission staff, Wayne Wile asserted the Fifth Amendment privilege against self-incrimination as to all substantive questions.

24. Defendant **Robert J. Chapman**, age 72, resided in Punta Gorda, Florida during the relevant period. Chapman publishes *The International Forecaster*, a subscription-based newsletter. Upon information and belief, he currently resides in Mexico and continues to publish his newsletter through his website, www.theinternationalforecaster.com.

25. Defendant **William Todd Peever**, age 48, resides in Vancouver, British Columbia and is a Canadian citizen and LOM client.

26. Defendant **Phillip James Curtis**, age 47, resides in Vancouver, British Columbia and is a Canadian citizen and LOM client.

27. Defendant **Ryan G. Leeds**, age 35, resides in Boca Raton, Florida. Leeds was a registered representative with a U.S. broker-dealer through which LOM Ltd. traded Sedona and SHEP securities during the relevant periods. Leeds was LOM Ltd.'s account representative at that broker-dealer.

OTHER RELEVANT ENTITIES

28. **Sedona Software Solutions, Inc.** was, at all relevant times, a Nevada corporation based in Vancouver, British Columbia, Canada. During the relevant period, Sedona's stock was registered with the Commission and was traded and quoted on the OTCBB under the ticker symbol "SSSI." On January 29, 2003, the Commission suspended trading in Sedona securities for ten days. On June 30, 2006, Sedona filed a Form 15 with the Commission to terminate its registration.

29. **Renaissance Mining Corporation, Inc.** was a privately-held Delaware corporation with its headquarters in Boulder, Colorado during the relevant period.

30. **SHEP Technologies Inc.** is a public company with its headquarters in Vancouver, British Columbia, that owned intellectual property for a vehicle braking technology. SHEP was formed in September 2002 through the reverse merger of the privately-held SHEP Ltd. and Inside Holdings, Inc., a public shell company secretly controlled by Peever and Curtis. SHEP's stock is registered with the Commission and is quoted in the Pink Sheets under the symbol "STLOF." SHEP's stock was quoted on the OTCBB during the relevant period.

FACTUAL ALLEGATIONS

I. THE LOM ENTITIES

31. During the relevant period of mid-2002 through mid-2003, the LOM Entities, Brian Lines, and Scott Lines conducted extensive, regular, and continuous securities-related business in the U.S., and in the Southern District of New York, through U.S. and New York-based brokerage, clearing, and trust companies with which LOM maintained accounts or conducted business.

EXHIBIT "G"

HEPBURN HOLDINGS LTD.
Mareva House, 4 George Street
P.O. Box N3937, Nassau, Bahamas

USD UNITED STATES DOLLARS – WIRE INSTRUCTIONS

Bank Details:	JP Morgan Chase 4 Chase Metrotech Center New York, NY U.S.A.
ABA Number:	021 000 021
SWIFT:	CHAS US 33
Account Name:	Bank of Butterfield
Account Number:	0011067808

Beneficiary Bank:	Bank of NT Butterfield Hamilton Bermuda
SWIFT:	BNTB BM HM
Account Name:	LOM Client Funds
Account Number:	20.006.840.351501.100
Reference:	1001790 – Hepburn Holdings Ltd.

M

BRIDGE STREET SERVICES LIMITED

USD WIRE TRANSFER INSTRUCTIONS

Correspondent Bank:	HSBC Bank USA 452 Fifth Avenue New York, NY 10018 U.S.A.
	SWIFT Code: MRMDUS33 FED ABA: 021001088 CHIPS ABA: 0108
Beneficiary Bank:	The Bank of Bermuda Limited 6 Front Street Hamilton HM 11 Bermuda
	SWIFT Code: BBDA BMHM
Beneficiary Account Number:	1010-956504
Beneficiary Account Name:	Bridge Street Services Limited Reference: Client and/or Company Name

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P.O. Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref: 8ULNN8G9/1236 01/11/2005

LOM Securities (Cayman) Limited
Buckingham Square, Penthouse
P.O. Box 30997SMB
West Bay Road, SMB
Cayman Islands

Sunshine Ltd

Description	USD sum
Professional Fees: 2006 Corporate Administration Fee	2,500.00
Grand Total:	USD 2,500.00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

Bridge Street Services Limited

Marquee Place, Suite 300
430 West Bay Road
P.O. Box 30691 SMB
Grand Cayman
Cayman Islands, BWI

INVOICE

Our ref: 8UML06T4/1374 01/11/2005

Ms. Devi JOHAL
LOM Securities (Bermuda) Limited
The LOM Building
27 Reid Street
Hamilton HM 11
Bermuda

Arch Ltd

Description	USD sum
Professional Fees:	
2006 Corporate Administration Fee	2,500.00
Grand Total:	USD 2,500.00

Invoice is payable upon receipt
Please ensure prompt payment on or before January 31, 2006
to avoid penalty fees

EXHIBIT "C"

VOTING TRUST AGREEMENT

This VOTING TRUST AGREEMENT (this "Agreement"), dated March 27, 2009, is between MOD Systems Incorporated ("the Company"), an Washington corporation, Mark E. Phillips ("Shareholder") and Kyleen Cane ("Trustee").

RECITALS

A. Shareholder owns 18,901,196 common shares of the Company. Pursuant to a Transition Agreement between the Company and Shareholder, Shareholder has agreed to subject Shareholder's shares to a voting trust in accordance with the terms and conditions set forth in this Agreement.

B. Shareholder has the right to vote 875,000 common shares of the Company owned by Anthony Bay ("Bay") pursuant to a Voting Agreement effective September 2008 between Shareholder and Bay (the "Voting Agreement") and an Irrevocable Proxy dated September 2008 (the "Bay Proxy") and has agreed to assign his rights under the Voting Agreement and the Bay Proxy to the Trustee of this voting trust in accordance with the terms and conditions set forth in this Agreement.

C. Shareholder and the Company agree to designate Kyleen Cane, as the initial Trustee of the voting trust, subject to the terms and conditions set forth in this Agreement.

D. At the request of the Company, Kyleen Cane has consented to act as Trustee of the voting trust and be bound by the terms and conditions set forth in this Agreement.

AGREEMENT

The parties agree as follows:

SECTION 1. DEFINITIONS

In this Agreement, the following terms have the following meanings:

1.1 "Shares" means: (a) the 18,901,196 common shares of the Company owned by Shareholder; (b) any other securities of the Company (including shares, options, and warrants) that are issued or transferred hereafter to Shareholder with respect to the Shares (for example, as a result of any additional issuance, exchange, or reclassification of the Shares, or any corporate reorganization, recapitalization, consolidation, merger, share split, or share dividend) and that either: (i) have voting rights with respect to any matter that may be voted on at a meeting of the shareholders of the Company, or (ii) are or may be convertible into, exchangeable for, or exercisable for shares of the Company that have such voting rights; and (c) any shares of Company common stock hereafter required by Shareholder including by exercise of existing warrants.

1.2 "Trustee" means Kyleen Cane and any successor Trustee of the voting trust hereunder.

SECTION 2. TRANSFER OF SHARES TO TRUSTEE

2.1 Delivery of Share Certificate. Shareholder hereby transfers the Shares to Trustee subject to the provisions of this Agreement. To effect this transfer, Shareholder hereby delivers to Trustee share certificate(s), representing the Shares, properly endorsed, or accompanied by any instruments of transfer that Trustee considers appropriate.

2.2 Registration. Trustee will surrender the foregoing certificate(s) representing the Shares to the Company for cancellation, and Trustee will request the Company to issue a new share certificate representing the Shares ("Trustee's Share Certificate") to Trustee. Trustee's Share Certificate will be registered as follows: Kyleen Cane, as Trustee of the Voting Trust Agreement dated March 27, 2009. The Company will place substantially the following legend on Trustee' Share Certificate:

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TERMS, CONDITIONS, AND RESTRICTIONS CONTAINED IN A VOTING TRUST AGREEMENT AMONG THE CORPORATION, THE TRUSTEE OF THE VOTING TRUST AGREEMENT, AND CERTAIN OTHER SHAREHOLDERS OF THE CORPORATION. A COPY OF THE VOTING TRUST AGREEMENT IS ON FILE AT THE OFFICE OF THE CORPORATION.

2.3 Trustee to Hold Share Certificate and Shares. On the issuance of Trustee's Share Certificate, Trustee will hold it and the Shares represented thereby, subject to this Agreement.

2.4 Interim Release of Shares. All or part of the Shares represented by a voting trust certificate may be released from this Voting Trust with the written consent of the Company and the registered holder of that voting trust certificate (a "Release Consent"). Upon receipt by Trustee of a duly executed Release Consent, accompanied by the surrender of the applicable voting trust certificate, properly endorsed to the Trustee, the Trustee shall promptly transfer to the registered holder of that voting trust certificate the number of Shares to be released as provided in the Release Consent and shall issue to such holder a new voting trust certificate for the remaining Shares represented by the surrendered voting trust certificate.

2.5 Bay Proxy. Shareholder has pursuant to an Assignment of Irrevocable Proxy dated the date hereof assigned all his rights under the Voting Agreement and the Bay Proxy to Trustee. Trustee shall vote all shares of common stock subject to the Bay Proxy in the same manner as Trustee votes the Shares, and in the case of a merger, or sale or other disposition of all or substantially all the Company's assets, in the same manner as the Trustee votes the 70% portion of the Shares provided in Section 5.1. The Voting Agreement and Bay Proxy shall terminate without further action by any party in accordance with their terms.

SECTION 3. VOTING TRUST CERTIFICATES

3.1 Form of Voting Trust Certificate. On the issuance of Trustee's Share Certificate, Trustee will issue and deliver to Shareholder a voting trust certificate representing

Shareholder's interest in the Shares. Voting trust certificates issued by Trustee will be substantially in the form set forth in Exhibit A.

3.2 Transfer of Voting Trust Certificates. A voting trust certificate is transferable only on the books of Trustee, by its registered holder, either in person or by a duly authorized attorney-in-fact, on surrender of the voting trust certificate, properly endorsed, or accompanied by any instruments of transfer that Trustee considers appropriate. Trustee shall treat the registered holder of a voting trust certificate as the owner of the voting trust certificate for all purposes. Trustee shall recognize any transfer of a voting trust certificate that is made in accordance with the provisions of this Section 3.2 so long as the person claiming ownership provides: (a) evidence of ownership satisfactory to Trustee, and (b) any indemnity that Trustee, in its sole discretion, may require. Voting trust certificates shall be subject to the same restrictions on transfer that would otherwise apply to Shareholder or to the Shares under existing agreements, including without limitation that certain Right of First Refusal and Co-Sale Agreement dated October 17, 2008 among Shareholder and others. Furthermore, Trustee will not recognize any transfer of a voting trust certificate unless the Company notifies Trustee that the Company has received an opinion of Company counsel reasonably satisfactory to the Company that the transfer complies with the transfer restrictions under the agreements referenced above or the Company otherwise certifies to the Trustee that the transfer complies with such transfer restrictions. Subject to the terms and restrictions set forth herein, Shareholder shall have the right to pledge to a third party the beneficial equity ownership in up to fifty percent (50%) of the Shares then represented by voting trust certificates, with any such pledge subject to: (a) the terms of this Agreement, (b) the same restrictions that would otherwise apply with respect to the Shareholder or the Shares associated with such beneficial interest under existing agreements, and (c) the terms of a stock pledge agreement in a form satisfactory to the Company, whose consent shall not be unreasonably withheld.

3.3 Lost, Stolen, or Destroyed Voting Trust Certificates. If a voting trust certificate is lost, stolen, mutilated, or destroyed, Trustee, in its sole discretion, may issue a new voting trust certificate after receiving: (a) an affidavit, satisfactory to Trustee, by the holder of the voting trust certificate, to the effect that the voting trust certificate has been lost, stolen, mutilated, or destroyed, and (b) such indemnity as Trustee, in its sole discretion, may require.

SECTION 4. TRUSTEE

4.1 Number of Trustee. During the term of this Agreement, there will be one Trustee of the voting trust.

4.2 Initial Trustee. The initial Trustee of the voting trust is Kyleen Cane.

4.3 Power to Select and Remove Trustee. The Company may select and remove the Trustee.

4.4 Notices Regarding Removal, Resignation, Death, or Incapacity of Trustee.

4.4.1 Removal. If a Trustee is removed in accordance with Section 4.3, then the Company must give written notice of that event to the Trustee, the registered holder(s) of voting trust certificates, Shareholder and the Company.

4.4.2 Resignation. The Trustee may resign at any time by giving written notice of resignation to the Company, the registered holder(s) of voting trust certificates, and Shareholder. The resignation is effective on the date that the notice is given to the required recipients unless the notice sets forth a later effective date.

4.4.3 Death. If a Trustee dies, then the personal representative of the deceased Trustee's estate or any other party to this Agreement who is aware of the Trustee's death must give written notice of that event the registered holders of voting trust certificates, Shareholder and the Company.

4.4.4 Incapacity. If a court of competent jurisdiction enters a judgment adjudicating a Trustee incompetent to manage Trustee's person or estate, then the conservator or other legal representative of the incompetent Trustee must give written notice of this event to the registered holders of voting trust certificates, Shareholder and the Company.

4.5 Selection of Successor Trustee. Promptly after the removal, resignation, death, or adjudication of incapacity of a Trustee, the Company shall promptly select a successor Trustee pursuant to Section 4.3, and deliver written notice of the selection to the registered holders of voting trust certificates, Shareholder and the Company. Any successor Trustee selected in accordance with Section 4.3 must execute a counterpart copy of this Agreement, pursuant to which the successor Trustee agrees to be bound by this Agreement.

4.6 Compensation and Reimbursement of Trustee.

4.6.1 Compensation. Trustee will serve without compensation.

4.6.2 Reimbursement of Expenses. The Company will reimburse Trustee for reasonable expenses incurred or paid by Trustee in furtherance of its obligations under this Agreement; however, Trustee will not be reimbursed for office rent, employee salaries, telephone expenses, costs of supplies, or other overhead expenses paid or incurred in the discharge of their obligations under this Agreement.

4.7 Registration of Trustee's Share Certificate. On the selection of a successor Trustee, Trustee must transfer the Shares subject to the voting trust to the new Trustee (i.e., the successor Trustee), and request that a new Trustee's Share Certificate be registered in the names of the new Trustee in the manner set forth in Section 2. On the issuance of the new Trustee's Share Certificate, Trustee will hold it, and the Shares it represents, subject to this Agreement.

SECTION 5. AUTHORITY OF TRUSTEE

5.1 Voting Rights. During the term of this Agreement, Trustee shall have the right and obligation, subject to the provisions of this Section 5, to exercise, in person or by proxy, all shareholders' voting rights and powers with respect to the Shares, and to take part in or consent to any corporate or shareholder action of any kind whatsoever. The right to exercise all shareholder voting rights with respect to the Shares includes, without limitation, the right to vote for the election of directors, and the right to vote in favor of or against any resolution or proposed action that may be presented at any meeting of the shareholders or that may require the consent or approval of the shareholders of the Company. The Trustee shall vote, or cause to be voted, in each and every instance or action set forth above (other than in the case of a merger, or sale or other disposition of all or substantially all of the Company's assets), all Shares as follows: in precisely the same proportion as the totality of all outstanding Company shares, voted in that particular instance or action that are not included in this Voting Trust or represented by the Bay Proxy, with all fractions rounded in favor of the majority of shares not included in this Voting Trust or represented by the Bay Proxy. In the case of a merger, or sale or other disposition of all or substantially all the Company's assets, the Trustee shall vote 70% of the Shares and all the shares subject to the Bay Proxy as provided in the foregoing sentence and 30% of the Shares as directed by the registered holders of the voting trust certificates with respect to their respective portions of the Shares that can be directed. For the avoidance of doubt, the Shares and the shares represented by the Bay Proxy are not intended to be included in calculating the proportion of outstanding shares that determine the manner in which the Shares and the Bay Proxy will be voted hereunder. If Trustee receives notice of a proposal involving a merger, or a sale or other disposition of all or substantially all the Company's assets, then Trustee shall promptly give written notice to the registered holders of the voting trust certificates and must follow the directions of the registered holders of the voting trust certificates with respect to their respective portions of the Shares that can be directed. To the extent Trustee does not receive such direction, the Trustee shall vote all Shares for which instructions are not so received in the manner set forth above for each and every instance or action other than a merger, or sale or other disposition of all or substantially all of the Company assets. The Trustee shall have no discretion to vote the Shares in any manner other than as explicitly set forth in this Section 5.1. In connection with any vote, consent, or approval, Trustee may instruct the Company Secretary that all the Shares are to be voted in precisely the manner set forth in this Section 5.1. Notwithstanding the Voting Rights granted to the Trustee, Shareholder shall retain the rights to notice of any Shareholder Meeting and the right to attend any and all Shareholder Meetings and shall have the right to receive a copy of all Shareholder resolutions, ratifications or consent to corporate action documents and all supporting documentation.

5.2 Exculpation. Trustee will not be liable to the holders of voting trust certificates or to Shareholder or to the Company for action or inaction taken in good faith, with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances, and reasonably believed to be in the best interests of the holders of voting trust certificates unless the action or inaction constitutes fraud or willful misconduct.

5.3 Indemnification. The Company agree to defend, indemnify, and hold the Trustee harmless from and against any and all losses, costs, damages, expenses, and liabilities (including reasonable attorneys' fees) reasonably incurred by it in connection with, or arising out of the performance of its duties under, this Agreement, and the Trustee shall be entitled from time to time to seek reimbursement from the Company for such losses, costs, damages, expenses and liabilities.

SECTION 6. TERMINATION

6.1 Term. The voting trust commences as of the date of this Agreement and will continue in effect until March 26, 2014, unless terminated on an earlier date pursuant to Section 6.2.

6.2 Events of Termination. The voting trust will terminate on the occurrence of any one of the following events:

6.2.1 The agreement of the Company and the registered holders of voting trust certificates representing a majority of the Shares subject to the voting trust to terminate the voting trust;

6.2.2 The Company makes an assignment for the benefit of creditors; files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of the foregoing nature; or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of itself or of all or any substantial part of its properties;

6.2.3 The dissolution of the Company; and

6.2.4. Immediately following consummation of a sale or other disposition of all or substantially all of the Company's assets or a merger, in which the shareholders of the Company immediately prior to such merger or sale do not own a majority of the voting power of the surviving entity or its parent company in the case of a merger or the acquirer in the case of an asset sale or other disposition, other than (i) a merger effected exclusively to change the domicile of the Company, (ii) a merger or consolidation with a wholly owned subsidiary of the Company, or (iii) an equity financing in which the Company is the surviving corporation.

6.3 Termination Procedure.

6.3.1 Notice. On the termination of the voting trust, Trustee must promptly give written notice of termination to the registered holders of the voting trust certificates. After Trustee gives this notice, the holders of the voting trust certificates will have no further rights under this Agreement except: (a) to receive share certificates for the Shares represented by such voting trust certificates, and any cash, securities, or other property distributable under the provisions of this Agreement, and (b) any rights, claims, or causes of action that may have accrued before the giving of the notice.

6.3.2 Share Certificates. After the termination of the voting trust, the registered holders of voting trust certificates must surrender their voting trust certificates, properly endorsed, to Trustee. On this surrender, Trustee must promptly transfer to the registered holder of the voting trust certificate the number of the Shares represented by the surrendered voting trust certificate.

6.3.3 Bay Proxy. Upon termination of the voting trust, the Trustee shall promptly and irrevocably assign all of its rights under the Bay Proxy and the Voting Agreement to the Shareholder unless the Bay Proxy and the Voting Agreement have earlier terminated in accordance with their terms.

SECTION 7. DIVIDENDS AND OTHER DISTRIBUTIONS

7.1 Cash, Nonvoting Securities, and Other Property. If the Company distributes with respect to the Shares any cash, securities (except for the securities described in Section 7.2), or other property, Trustee, on receipt of this property, must distribute it as soon as practicable to the registered holders of the voting trust certificates as of the date of the distribution by the Company, ratably in accordance with the number of the Shares represented by their respective voting trust certificates. In lieu of receiving this property and distributing it to the registered holders of voting trust certificates, Trustee may instruct the Company in writing to distribute the property directly to the registered holders of voting trust certificates.

7.2 Voting Shares or Securities Convertible into Voting Shares. If the Company distributes with respect to the Shares any other securities of the Company (including shares, options, and warrants) that either: (a) have voting rights with respect to any matter that may be voted on at a meeting of the shareholders of the Company, or (b) are or may be convertible into, exchangeable for, or exercisable for shares of the Company that have such voting rights, then Trustee will receive and hold all such securities as Shares, subject to the terms of this Agreement. Trustee must issue and deliver appropriate voting trust certificates with respect to such securities to the registered holders of voting trust certificates as of the date of the distribution by the Company.

SECTION 8. MERGER, ETC.

In the event of a share exchange, reorganization, recapitalization, consolidation, merger, share split, share dividend, or related transaction involving the Company, then the definition of the term "Company" will include any successor corporation (as appropriate), and the definition of the term "Shares" will include the voting shares of any such successor corporation that may be received by Trustee on the surrender of or in lieu of all or any part of the Shares. With respect to voting trust certificates issued and outstanding under this Agreement at the time of such transaction, Trustee will substitute appropriate new voting trust certificates.

SECTION 9. COMPLIANCE WITH STATUTORY REQUIREMENTS

Shareholder, Trustee and the Company agree to perform all acts necessary for the voting trust to be and remain valid under Washington law, including, without limitation, compliance with RCW 23B.07.300 as amended from time to time. The Trustee shall prepare, pursuant to RCW 23B.07.300, a list with the name and address of the Shareholder, together with the number and class of the Shares transferred to the Trustee pursuant to this Agreement, and shall deliver copies of the list and this Agreement to the Company's principal office. In addition, the Trustee shall maintain the list and this Agreement at its principal office. The list and this Agreement shall be available for inspection during normal business hours at the principal office of the Company and the principal office of the Trustee by any shareholders of the Company.

SECTION 10. MISCELLANEOUS PROVISIONS

10.1 Entire Agreement; Modifications. The terms of this Agreement constitute the entire agreement between the parties regarding the subject matter described herein. No amendment to this Agreement shall be binding unless in writing and signed by the Company and registered holders of voting trust certificates representing a majority of the Shares subject to the Voting Trust. If an amendment to this Agreement is approved, a certificate to that effect shall be made by the Trustee, and such certificate, together with a copy of the amended Agreement shall be filed in the principal office of the Company. The Trustee shall also maintain a copy of the certificate and the amended Agreement at its principal office.

10.2 Severability. If any provision of this Agreement shall be held illegal or invalid by any court, this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein and this Agreement shall be deemed an agreement of the parties hereto to the full extent permitted by law. If any provision shall be declared invalid or unenforceable because of its breadth, scope or duration, such provision shall be deemed modified to the extent necessary to make it valid and enforceable and shall remain in full force and effect as so modified, or if not so modified, shall be severable from the rest of this Agreement.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington, and venue shall be King County, Washington.

10.4 Attorneys' Fees. In the event of any action, suit, or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorneys' fees.

10.5 Counterparts. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

VOTING TRUST AGREEMENT
- SIGNATURE PAGE -

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

COMPANY:

MOD Systems Incorporated

By: ______________________
Its ______________________

SHAREHOLDER:

mark phillips
____
Mark E. Phillips

TRUSTEE:

____
Kyleen Cane

VOTING TRUST AGREEMENT
- SIGNATURE PAGE -

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

COMPANY:

MOD Systems Incorporated

By: ______________________
Its ______________________

SHAREHOLDER:

____
Mark E. Phillips

TRUSTEE:

____
Kyleen Cane

VOTING TRUST AGREEMENT
- SIGNATURE PAGE -

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

COMPANY:

MOD Systems Incorporated

By: ___________________________
Its ______________________

SHAREHOLDER:

____
Mark E. Phillips

TRUSTEE:

____
Kyleen Cane

EXHIBIT A
TO VOTING TRUST AGREEMENT
VOTING TRUST CERTIFICATE

MOD Systems, Incorporated,
a Washington corporation

No. _______________

This certifies that _______________, or registered assign, is entitled to all the rights and benefits arising from the deposit of ________ common shares of MOD Systems, Incorporated (the "Company"), a Washington corporation, with the undersigned Trustee pursuant to a Voting Trust Agreement (the "Voting Trust Agreement") dated March 27, 2009, by and among Mark E. Phillips, the Company, and Trustee. A copy of the Voting Trust Agreement is on file in the principal office of the Company.

The Voting Trust Agreement is effective until March 26, 2014, unless earlier terminated as provided in the Voting Trust Agreement.

During the term of the Voting Trust Agreement, the Trustee possesses and is entitled and obligated to exercise all voting rights with respect to the shares represented by this Voting Trust Certificate. This Voting Trust Certificate is issued, received and held under, and the rights of the holder are subject to, the terms and provisions of the Voting Trust Agreement.

This Voting Trust Certificate is transferable on the books of the Trustee by the registered holder, either in person or by a duly authorized attorney, on surrender of this Voting Trust Certificate properly endorsed. Until this Voting Trust Certificate is transferred on the books of the Trustee, the Trustee may consider the registered holder as the absolute owner of this Voting Trust Certificate.

The Trustee executes this Voting Trust Certificate as of the date first written above.

TRUSTEE

____

_______________________, Trustee

[*The reverse side of the voting trust certificate should contain the following*]:

For value received, ________________ hereby sells, assigns, and transfers unto ___________ this Voting Trust Certificate, and all rights and benefits represented by this Voting Trust Certificate, and appoints _________________ attorney to transfer this Voting Trust Certificate on the books of the Trustee with full power of substitution.

DATED:________________________________

NOTE: The signature or signatures on this assignment must correspond with the name or names written on the face of this certificate, in every particular, without alteration, enlargement, or any change whatever.

TO: THE BOARD OF DIRECTORS OF MOD SYSTEMS INCORPORATED

RESIGNATION

I, Mark Phillips, hereby resign as Chief Executive Officer and as Director of MOD Systems Incorporated, effective immediately.

DATED: March 27, 2009

mark phillips

Mark Phillips

ADDENDUM TO EXECUTIVE EMPLOYMENT AGREEMENT

THIS ADDENDUM TO THE EARLIER EXECUTED EXECUTIVE EMPLOYMENT AGREEMENT ("Addendum") is made effective as of March 27, 2009, by and between Mark E. Phillips, an individual ("Employee") and MOD Systems Incorporated, a Washington corporation (the "Company").

RECITALS

A. Employee and the Company are parties to certain written agreements, including but not limited to an Executive Employment Agreement (the "Employment Agreement"), dated October 17, 2009.

B. Pursuant to the Employment Agreement, Employee is currently employed by the Company in the capacities of Chief Executive Officer ("CEO") and Chief Technology Officer ("CTO").

C. Employee and Company have entered into a Transition Agreement, the provisions of which require, among other performances, that Employee resign as CEO and be reassigned to the sole capacity as CTO.

D. Employee and the Company are entering into this Addendum to provide for the modification of Employee's duties and compensation under the Employment Agreement as called for by the Transition Agreement.

AGREEMENTS

In consideration of the mutual covenants contained herein and in the Transition Agreement, and other good and valuable consideration, Employee and the Company hereby agree to the following amendments to the Employment Agreement:

1. Section 3 "<u>Duties</u>" is deleted in its entirety and amended as follows:

Employee is employed in the capacity of "Chief Technology Officer". In this capacity, Employee shall have such responsibility and duties as shall be assigned to him by the Chief Executive Officer of the Company ("CEO"). Employee shall report directly to, and take direction from, the CEO. Subject to the provisions of this Agreement, Employee's precise duties may be changed, extended or curtailed, from time to time, at the CEO or Board's direction, and Employee shall assume and perform the further reasonable responsibilities and duties that the CEO or the Board may assign from time to time. Employee shall have no authority to expend or to approve the expenditure of Company funds or resources; nor to bind the Company contractually in any manner; nor shall Employee have or play any role in corporate governance matters.

2. Commensurate with and in consideration of his more limited capacities and duties, the CEO and the Board, at their reasonable discretion, will further amend Employee's Employment Agreement, including but not limited to Sections 6, 7, and 11 regarding Employee's compensation and benefits, once Employee's long-term employment situation and responsibilities have been determined so long as compensation and benefits are reasonable for the services provided, and the further amendment does not then violate or breach any agreement of the Company with the holders of the Company's Series A Preferred stock. Employee acknowledges and agrees that such further amendment does not constitute any breach or violation of his rights under the Employment Agreement or any other agreement with the Company. Employee further acknowledges and agrees that such further amendment to his Employment Agreement does not constitute "Good Reason" for him to terminate his employment with the Company pursuant to Section 8.d. of the Employment Agreement. Employee hereby waives and releases any and all claims against the Company arising from or related to any such further amendment to his Employment Agreement contemplated in this Section 2 and to its implementation by the Company.

3. Nothing in this Addendum shall constitute a waiver of the Company's right to proceed as it deems to be in the Company's best interests with regard to the issues of Employee's expenses and certain transactions, which are currently being investigated by the Demand Review Committee. The Company reserves all of its rights with regard to Employee's future employment status, including its rights under Section 8.b. of the Employment Agreement to terminate Employee for cause arising from or related to the matters currently being investigated by the Demand Review Committee.

4. Employee acknowledges and agrees that this Addendum does not constitute any breach or violation of his rights under the Employment Agreement or any other agreement with the Company. Employee further acknowledges and agrees that this Addendum does not constitute "Good Reason" for him to terminate his employment with the Company pursuant to Section 8.d. of the Employment Agreement. Employee hereby waives and releases any and all claims against the Company arising from or related to the provisions of this Addendum and to their proper implementation by the Company.

5. Other than as modified by this Addendum, the provisions of the Employment Agreement continue in full force and effect.

[SIGNATURE PAGE FOLLOWS]

ADDENDUM TO EXECUTIVE EMPLOYMENT AGREEMENT
- SIGNATURE PAGE -

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Executive Employment Agreement as of the date first written above.

EMPLOYEE:

mark phillips
Mark E. Phillips

COMPANY:

MOD SYSTEMS INCORPORATED

By________________________________

Its________________________________

ADDENDUM TO EXECUTIVE EMPLOYMENT AGREEMENT
- SIGNATURE PAGE -

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Executive Employment Agreement as of the date first written above.

EMPLOYEE:

____
Mark E. Phillips

COMPANY:

MOD SYSTEMS INCORPORATED

By_______________________________
Its_______________________________

ASSIGNMENT OF IRREVOCABLE PROXY

This Assignment of Irrevocable Proxy is made by Mark E. Phillips ("Phillips") pursuant to that certain Transition Agreement (the "Transition Agreement") between Phillips and MOD Systems, Incorporated, a Washington corporation (the "Company") dated March 27, 2009.

RECITALS

Pursuant to that certain Voting Agreement between Phillips and Anthony Bay, effective September, 2008 (the "Voting Agreement"), Bay has granted Phillips an Irrevocable Proxy to vote 875,000 shares of Bay's capital stock of the Company (the "Bay Proxy");

Pursuant to the terms of the Transition Agreement, Phillips is required to irrevocably assign the Bay Proxy and the Voting Agreement to the trustee under the Voting Trust Agreement dated March 27, 2009 among Phillips, the Company and Kyleen Cane (the "Voting Trust Agreement").

AGREEMENT

Phillips hereby irrevocably assigns to Kyleen Cane, as trustee under the Voting Trust Agreement, and to any and all successor trustees of the voting trust created thereunder (the "Trustee"), the Bay Proxy, and appoints the Trustee as Phillips substitute to exclusively exercise all voting and other rights granted by the Bay Proxy, and to vote all shares subject to the Bay Proxy pursuant to and in accordance with the applicable terms of the Voting Trust Agreement. This proxy assignment is coupled with an interest and is irrevocable.

Phillips hereby assigns to the Trustee all of his rights under the Voting Agreement, and the Trustee shall have the exclusive right to exercise such rights.

The Voting Agreement and the Bay Proxy shall terminate without further action by any party in accordance with their terms. Upon termination of the voting trust created under the Voting Trust Agreement the Trustee shall promptly irrevocably reassign to Phillips the Trustee's rights under the Bay Proxy and the Voting Agreement as provided in Section 6.3.3 of the Voting Trust Agreement unless the Bay Proxy and the Voting Agreement have earlier terminated in accordance with their terms.

EXECUTED AS OF March 27, 2009.

mark phillips

Mark E. Phillips

STOCK POWER

The undersigned hereby assigns and transfers 18,901,196 shares of common stock of MOD Systems Incorporated (the "Company") represented by Certificate(s) No. ___________ standing in the name of the undersigned on the books of said Company to Kyleen Cane, as Trustee of the Voting Trust Agreement, dated March 27, 2009, and does hereby irrevocably constitute and appoint Lane Powell PC, as attorney to transfer said stock on the books of MOD Systems Incorporated with full power of substitution.

Dated: March 27, 2009.

mark phillips

Mark E. Phillips

STOCK POWER

The undersigned hereby assigns and transfers 18,901,196 shares of common stock of MOD Systems Incorporated (the "Company") standing in the name of the undersigned on the books of said Company to Kyleen Cane, as Trustee of the Voting Trust Agreement, dated March 27, 2009, and does hereby irrevocably constitute and appoint Lane Powell PC, as attorney to transfer said stock on the books of MOD Systems Incorporated with full power of substitution.

Dated: March 27, 2009.

mark phillips

Mark E. Phillips

NUMBER
CS-013

SHARES
18,901,196

INCORPORATED UNDER THE LAWS OF THE STATE OF WASHINGTON

Common Stock

MOD SYSTEMS INCORPORATED

The Corporation is Authorized to Issue 61,900,000 Shares of Stock consisting of 50,000,000 Shares of Common Stock and 11,900,000 Shares of Preferred Stock

This Certifies that MARK E. PHILLIPS *is the owner of* Eighteen Million Nine Hundred One Thousand One Hundred Ninety-Six *fully paid and non-assessable Shares of the above Corporation transferable only on the books of the Corporation by the holder hereof in person or by a duly authorized Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation.

Dated April 2, 2009

Kenn A. Gordon, Vice President and COO

Derek de Bakker, Secretary

SEE RESTRICTIVE LEGEND(S) ON REVERSE

EXHIBIT “D”

DHILLON & SMITH LLP

HARMEET@DHILLONSMITH.COM

March 4, 2010

VIA FEDEX and EMAIL

Fujii Yoshihide, Chairman
Toshiba Corporation America
1-1-1 Shibaura, Minato-Ku
Tokyo 105-8001, Japan

William Nuti, Chairman and CEO
Elise Kirban, General Counsel
NCR Corporation
1700 S. Patterson Blvd.
Dayton, Ohio 45479

Scott R. Ehrlich
Executive Vice President & General Counsel
Deluxe Entertainment Services Group Inc.
1377 North Serrano Avenue
Hollywood, CA 90027

Re: Imminent Litigation Against MOD and Affiliated Persons and Entities Concerning Corporate Governance, Fraud and Securities Violations

Dear MOD Series A Shareholders:

This law firm has been retained by current and former employees, officers, directors and affiliates of MOD Systems, Inc. ("MOD") in connection with grave securities, corporate governance, employee retaliation and financial fraud matters affecting MOD and soon to affect all shareholders. We will be filing legal claims in the immediate future concerning many of the matters described below, which are a mere subset of the statutory and contractual violations occurring at MOD since the ouster of its founding development team. We write to draw your attention to these matters as Series A shareholders whose rights and duties are affected by the occurrences at MOD over the past year. You may also need to make certain disclosures to your shareholders concerning these matters, and thus this information is provided as a courtesy in order to assist you in analyzing potential liability and, if you deem fit, demanding action from present company management in order to halt further harm to MOD and your interests, as your shareholders rights agreements allow. This letter also serves as notice that litigation is imminent concerning MOD's corporate governance affairs and retaliation against employees, and that you should take all steps necessary to place a litigation hold on the destruction of all documents and/or data pertaining to MOD.

On behalf of current and former MOD employees, we ask that you take immediate action as board observers to halt MOD's spiral into corporate waste, breach of contract, intellectual property infringement, insolvency, fraudulent share issuances, hostile takeover and exploitation for asset laundering purposes that the same group of individuals now manipulating MOD has instituted at several previous companies. The consequences of inaction for the Series A shareholders may include, at a minimum, becoming defendants in shareholder lawsuits and becoming involved in government investigations of a fraudulent scheme.

We are aware that certain individuals may be filing federal False Claims Act complaints regarding the conduct of a MOD director and that individual's long-standing business associates, including the individual who instigated Robert Arnold's lawsuit presently pending against MOD's former Chief Executive Officer and founder, Mark Phillips, and related actions. MOD's current management, including its in-house counsel and board members, have caused $5 million in cash to be removed from MOD's main bank account in recent weeks, and at least one of the two recipient banks has been informed (falsely, we believe) that the Series A shareholders *specifically* approved of these transfers. Before her constructive discharge from MOD, MOD's controller was instructed to transfer another million dollars to the transferred funds accounts and set up an "indemnification trust" to indemnify MOD's current officers and directors (and their long time associates) for the inevitable consequences of their grossly inappropriate and bad faith misconduct in collaborating with individuals seeking to divert MOD's cash and convert the company to their own ends. The controller resigned as a result of this and other onerous and outrageous demands and conditions at MOD. These large fund transfers are utterly *ultra vires* and augur MOD's demise.

I. Background of MOD Control Group's Fraud

A. MOD's Current Control Group Involvement With Previous Financial Misconduct

The individuals who presently control MOD have been sued repeatedly in various jurisdictions or have been involved in lawsuits concerning securities fraud, fraud, breach of contract, breach of fiduciary duty, accounting violations, and other very serious financial misconduct. This control group includes MOD financial consultant Jan Wallace and her long-time attorney of choice, Kyleen Cane. Their associates include Robert Arnold's financial advisor, Julia de Haan, who was fully aware of the falsity of the allegations in legal pleadings she approved on Arnold's behalf. They also include Anthony Bay, MOD's acting CEO; MOD's general counsel, Derek De Bakker; and NCR board observer, Justin Hotard. Bay and Cane have already *explicitly been ruled unfit* to manage MOD's litigation affairs by a Washington court, yet inexplicably MOD's Series A shareholders are content to let them drive the company into the ground. MOD's interested parties can no longer witness this destruction without taking action.

It is our opinion, after reviewing a large volume of publicly available documents and certain private documents, that MOD has been taken over by a closely-knit group of operators whose *modus operandi* in over a decade of working together to is to size up companies, target those with fundraising needs, gain access to founders or senior management through social connections and often under false pretenses, cause securities to be issued by a company in favor of the operators or their associates for alleged fundraising or legal services, make false claims of financial and personal misconduct against the targeted executives, take over company management after displacing founders through false "whistleblower" claims, loot all assets into offshore accounts, and move on to the next target company. The scheme includes issuance of millions of shares of unregistered securities which are then traded on a manipulated market as if they had been registered. The same group of individuals that has taken over MOD has carried out a very similar scheme in several previous companies, resulting in an accumulation of looted securities and laundered funds in offshore accounts. The information concerning the racketeering scheme described below is derived largely from the painstaking collation of publicly available but obscure and fragmented information.[1]

B. Wallace and Cane Have Worked Together for More Than a Decade

Kyleen Elisabeth Cane is a corporate securities attorney based in Nevada. Cane, now a woman in her mid-50s, was a man known as Michael Cane and before that Michael Eiselman. In 2002 Cane/Eiselman had a legal name change. Cane is believed to be the kingpin of the securities manipulation scheme, and she works in direct concert with Jan Mary Wallace, also a woman in her 50s. Cane and Wallace have a long history of working together dating back at least a decade. In one of the numerous cases in

[1] This law firm has reviewed thousands of pages of publicly and privately available information and securities records to document the allegations in this letter and the allegations that will be made in court.

which Wallace has been sued for fraud, breach of contract, and other financial misdeeds, Cane testified under oath that she[2] has served as legal counsel to at least five different companies in which Wallace has been an officer (not including MOD). In each of these companies, Wallace and/or Cane, backed by a shifting ring of accomplices, have sown disorder with questionable documents and hyperbolic "whistleblower" claims, destroyed the company, reaped substantial profits in cash and securities funneled offshore into nominee accounts (often used in market manipulation schemes), taken over the target company or "mark," and then moved on to attack the next target company using the fruits of the most recent stock manipulation and offshore account schemes. MOD is the most recent victim of a scheme that has been brought to fruition of which we are aware.

We cannot overstate the seriousness of the threat to MOD and the Series A funds. The fraud ring is extremely sophisticated, always staying one or two steps ahead of the law and using several shell companies, nominee bank accounts at suspect offshore depositories, false or misleading statements to securities regulators, electronic and wire stalking conduct, and other sophisticated means. We have learned that the Securities and Exchange Commission in late 2007 filed a civil injunctive action in New York against a group of corporations and individuals closely affiliated with both Jan Wallace (the instigator of the lawsuit by Robert Arnold) and Kyleen Cane. Cane's law firm is the majority owner of shell company Sedona Software Solutions, Inc., which was the subject of the SEC's 2007 lawsuit. Her firm took over the company's ownership well before the SEC lawsuit, and installed Cane's partner Bryan Clark's brother, David Clark, as its CEO after the takeover. The lawsuit alleges that various individuals, including the owners of LOM Securities holding corporations in Bermuda and the Cayman Islands, manipulated the share price of two companies, including Sedona Software Solutions. LOM Securities serves as the repository of numerous nominee accounts beneficially controlled by Jan Wallace, the instigator of the MOD litigation. These accounts at various times have held securities used in securities manipulation and corporate governance schemes engineered by Wallace and/or Cane and their associates. Details of these fraud schemes are publicly available, and some of the details have emerged from previous litigation pleadings and SEC filings.

[2] Then known as Michael Cane.

C. SDI: A Classic Wallace/Cane Scheme

As but a single example of many of the fraud schemes perpetrated by the current MOD control group, including "whistleblower" Jan Wallace and her legal counsel of choice, is the story of Secure Diversified Investments Ltd. ("SDI"), a publicly traded company managing a real estate portfolio. We share the outlines of this scheme because it shares several elements with the scheme at MOD by the same ringleaders, and is very similar to schemes involving the same individuals at a company called Davi Skin and other companies. The repeated pattern of conduct by the same actors using the same tools for the same ends transfers a one-time fraud scheme into a racketeering business.

In 2006 Cane, Wallace, and associates Grace Sim[3] and Amin Lakha[4] incorporated Secure Diversified Lending LLC ("SDL") as a vehicle for lending funds to SDI. Wallace also served as a consultant to SDI. Coinciding with the formation of SDL, Wallace "blew the whistle" on alleged improprieties by SDI CEO Clifford Strand, accusing him of a range of wrongdoing including nepotism, mismanagement, and accounting irregularities. Wallace caused SDI to form an accounting committee comprised of herself, Cane and their associate Munjit Johal, an accountant.[5]

It now appears that Ms. Wallace engineered many of the so-called irregularities that she identified for herself and partner Cane and associate Johal to "investigate." We have reviewed information that implicates Ms. Wallace in a mortgage fraud scheme whereby in 2006 she and her associates working under her direction caused a short term transfer of $250,000 from an entity controlled by the group into SDI for purposes

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[3] Sim is also a player in a scheme involving a note issued by another public company, Davi Skin, now run by Wallace and represented by Cane; the note served as a ticking time bomb used ultimately by Wallace to take over the company that she sold, with Cane's legal assistance, to the skincare company's management.

[4] Lakha is also a player in the Davi Skin fraud scheme, and is the beneficial owner of securities deposited in offshore accounts at Wallace's favored LOM Securities in Bermuda and the Cayman Islands. Lakha also figures in the MOD fraud scheme, having hosted a party at which Wallace met Phillips and began promising to raise money for MOD.

[5] Johal is also a player in Wallace's other schemes, including serving as the CFO of Davi Skin after Wallace ejected the company's CEO, wrought havoc on the board and management teams, and took over the company through the use of unethical and illegal tactics.

of an audit, and then caused its transfer in 2006 to SDL for another audit, and then shifted the money back into SDI. This shell game constitutes fraud in the form of false SEC filings, credit applications, mortgage and other lending services backed by government and private guarantees. Ms. Wallace's manipulations at SDI catapulted her from a paid advisor and fundraiser for the company into its *de facto* owner. After bankruptcy, the fraud ring caused the company to be sold to a gambling enterprise, again with Cane's assistance.

The same pattern of conduct as in the SDI scheme has been perpetrated on several companies, now including MOD. Wallace and/or Cane appear on the scene through introductions by their associates. They offer to raise money for an expanding company or to sell an affiliated shell company for instant public status. They make false accusations of inaccurate record-keeping, sexual improprieties, mismanagement and misconduct against the company's existing CEO and affiliated officers. They take over the company through a series of debt and/or equity transactions, often including the issuance of new securities by the beleaguered company and/or the sale or issuance of such securities to third parties suspected to have money laundering needs. They often co-opt witting accomplices or unwitting dupes at the target companies into their schemes, as they have done at MOD. They take the money, and they move on, leaving a wake of destruction behind them.

II. Wallace, Cane & Co. Actions At MOD

You are aware of many of the following facts as a result of your board observer's participation in board meetings discussing certain aspects of the dispute concerning corporate governance. All of the actions at MOD that will be the subject of the pending shareholder lawsuit were taken while Series A board observers should have been performing a meaningful role in guiding the company.

A. Mark Phillips Removed as CEO/Chairman of MOD

Mr. Phillips, who owns the majority of the intellectual property that MOD seeks to exploit and a majority of the company's shares, ran MOD until March, 2009, when he was forced by board member Kyleen Cane to step down from the Chairmanship and Chief Executive Officer positions based upon accusations of mismanagement and conflict of interest by a minority shareholder, Robert M. Arnold, in Arnold's February, 2009 lawsuit against MOD. Arnold's advisor and attorney in fact, Julia de Haan, worked hand-in-hand with Cane and Wallace to engineer the lawsuit. Cane coerced

Phillips into placing his majority shareholdings in a voting trust controlled by Cane as the sole trustee. NCR board advisor Justin Hotard played a key role in forcing the voting trust, by calling Mr. Phillips and demanding that he capitulate. A witness to the call will testify that Mr. Hotard expressly stated that he "did not care whether the allegations" by Arnold were true or not – Phillips had to put his shares in Cane's control. Throughout this debacle, Series A shareholder representatives either actively instigated or passively enabled the result that individuals adverse to MOD's interests now control it.

Days after Cane and Hotard forced Phillips to step aside as CEO/Chairman and retain only his Chief Technology Officer role, Phillips was placed on unpaid administrative leave. Mr. Phillips has been locked out of MOD, the company he and his colleagues founded, and has been denied access to corporate books and records required to defend the lawsuit against him and pursue his own claims against Arnold and the racketeers. Mr. Phillips was summarily terminated by the company (controlled by Bay, Cane and Hotard with Arnold's support) in December, 2009. Witnesses will testify that Bay and De Bakker have openly joked about the fact that MOD no longer "needs" Phillips and his team because they have taken Phillips' intellectual property. This fallacy will be proven false in the litigation already pending between MOD and Phillips.

Mr. Phillips' removal as an officer and director of MOD violated Section 2.7 of the Shareholders Agreement signed by Toshiba and NCR as part of the Series A financing documents. Section 2.7 requires prior written approval by Toshiba and NCR for any change in management of the company and appointment or dismissal of the CEO. To date, such prior written approval documentation has not been identified. MOD's Series A shareholders, well aware that the Shareholders Agreement was violated, did nothing to stop this catastrophic step, but rather continued by their silence to endorse it. As a result of their inaction, MOD has been hamstrung, utterly unable to make any progress in developing and exploiting the intellectual property that the Series A shareholders believed they were investing in. MOD's current management has even failed to pursue pending patent applications, letting them lapse while they are distracted by looting the company.

B. MOD Management Upheaval Caused by Wallace and Cane

Bay, Cane, Wallace and Hotard, together with MOD General Counsel Derek De Bakker, orchestrated the firing or resignation of several officers and key employees of the company. Witnesses have testified that throughout 2009, Wallace, who instigated the actions at MOD, behaved in a bizarre stalker-like manner, calling MOD, Phillips, Bay and Phillips' assistant repeatedly, sometimes dozens of times in a day. Many of these individuals (who are prepared to testify in the imminent litigation) are shareholders or option holders of MOD. In several instances, option holders' attempts to exercise their options have been ignored or delayed by De Bakker, giving rise to securities claims against MOD. The same individuals blocking shareholders' attempts to redeem their rights are feathering their exit nest with the "indemnification trust" they are creating *this week* to cushion their landing when they parachute out of MOD with its remaining assets.

C. Arnold/MOD/Phillips Litigation

As you are aware, MOD President Anthony Bay, then MOD's paid consultant (not a full-time employee), took over as acting CEO of the company following Mr. Phillips' resignation. Bay and Cane formed a Demand Review Committee ("DRC") to review the allegations by Mr. Arnold. Although Mr. Bay, as a founder and officer of MOD, was himself implicated in Mr. Arnold's allegations and was a defendant in Arnold's lawsuit, he and Cane surprisingly determined that Bay labored under no conflict for purposes of reviewing Mr. Phillips' conduct.

The DRC, at the behest of Cane and Bay, retained law firms and "experts" at a cost of millions of dollars, and embarked upon a campaign to purge Mr. Phillips and his associates. The DRC determined that MOD should take over the prosecution of Arnold's derivative claims against Phillips. The DRC and/or the full Board of Directors indemnified Ms. Wallace for her false statements to Mr. Arnold and others to instigate the lawsuit, and are believed to have indemnified other scheme participants. As described below, Wallace and Cane have partnered in previous schemes to loot other companies and oust their management.

During the course of its "investigation," Cane attempted to pressure Phillips into transferring the entirety of his share holdings to Arnold in order to settle the lawsuit (and Arnold's shares, in turn, were in the control of Julia de Haan, who worked hand in hand with Wallace and Cane to engineer the lawsuit). Cane's pressure tactics *directly* conflicted with her status as Mr. Phillips' trustee for the voting trust. Mr. Phillips refused to accede to her pressure. Summary judgment proceedings brought by Mr. Phillips presently are stayed pending the outcome of an arbitration.

D. MOD Litigation Setbacks

MOD has suffered setback after setback in the ill-advised litigation that Wallace, Cane, Arnold, Hotard and their accomplices instigated with the assistance of Bay and De Bakker, costing the company millions of dollars in attorney and expert fees as well as executive time. MOD has raised no new money, developed no new products, made no significant progress on existing development projects, and has, in fact, done nothing other than engage in wasteful litigation and chaos for the past year – again, with the complicity of the Series A shareholders.

1. Cane and Bay Removed from Demand Review Committee

Phillips moved to have Cane and Bay removed from the DRC because of their gross conflicts of interest and unsuitability. His motion was supported in part by the detailed declaration of Washington corporate law expert, Professor Charles R.T. O'Kelley. Professor O'Kelley's description of the sham investigation conducted by Bay and Cane concludes, in part, that **"the 'DRC Final Report' by Cane and Bay is a truly stunning example of obfuscation and misdirection, a document devoid of meaningful content, and one that masquerades as a product of good faith and reasonable investigation of the claims asserted in the Arnold lawsuit. At the very least, it is the product of a special committee whose two members were laboring under serious conflicts of interest."** O'Kelley also testified that "[t]he DRC Final Report that Cane and Bay produced... is remarkable for its patent insufficiency. *I have never seen anything remotely like it.*" (Emphases added).

Judge John P. Erlick of the King County Superior Court, agreeing with Professor O'Kelley, ordered on November 12, 2009 that Cane and Bay be removed from the Demand Review Committee. Inexplicably, although deemed unfit by the Court, Cane and Bay continued to serve on MOD's board and directed its conduct on a day to day basis without objection from the Series A shareholders. Cane left MOD's board last week, but is believed to continue to control events at MOD through her designees.

2. Cane Deemed Unfit to Administer Voting Trust

Phillips, upon being fired by MOD and realizing that he had been duped into placing his shares in a voting trust under Cane's control (and particularly in light of Cane's bad faith attempts to coerce Phillips into giving the shares in Cane's trust directly to Arnold), moved to revoke the trust. Again, MOD opposed the motion, claiming weakly that the voting trust was part of an agreement by Mr. Arnold to drop his derivative claims (in the face of a motion by Phillips to dismiss the derivative claims as improperly joined with direct claims). Again, Professor O'Kelley's declaration supported the conclusion that Cane is grossly unsuitable to serve as Phillips' trustee for any purpose. Again, last month Judge Erlick agreed, and ruled that Mr. Phillips should be allowed to select a different trustee for his shares. While Mr. Phillips is in the process of selecting a different trustee, the speed with which the Cane/Wallace/Bay/Hotard team is moving MOD toward liquidation (described below) may well make the change moot.

E. Corporate Waste

In a desperate attempt to cover up their destructive, faithless and nefarious conduct the group of individuals controlling MOD has most recently on February 25 caused its lawyers to file a frivolous and costly motion in court seeking to force Mr. Phillips to give up information in his possession that he is entitled to retain. This motion serves no corporate purpose other than to increase legal costs and distract attention from the misconduct of the malefactors. MOD's present management has embarked upon a remarkable hiring spree, hiring over a dozen new and unnecessary employees (given the lack of meaningful business development) in the past several weeks at grossly inflated salaries with generous severance packages of up to six months each. Coupled with the looting of MOD's bank accounts to the tune of $6 million for "indemnification" and other bad faith actions on the part of management, this increased "burn rate" of the company's cash ensures that MOD will be bankrupt within a few weeks, with disastrous consequences to the future of the development programs for which the Series A funds were intended.

Other markers of widespread corporate waste and abuse at MOD include Anthony Bay treating himself as an employee with benefits rather than a contractor for the past several months, and Mr. Bay's extraordinary conduct in hiring a bodyguard for himself at the company's expense. MOD's General Counsel has neglected to pursue patent applications for intellectual property that MOD claims to control. The fraud team's machinations have forced MOD's controller to resign, leaving one less roadblock between MOD's bank accounts and the fraud ring's pockets.

F. Securities Violations

MOD, under the control of Cane and Bay, has committed several violations of contractual securities obligations as well as statutory violations that give rise to potential company liability. For example, as discussed above, Cane and Bay's removal of Phillips without prior written authorization violates the Series A Shareholders Agreement. This is but one of several examples of breaches of the shareholder agreements and governing corporate documents.

Several former MOD officers and employees are also option holders of the company pursuant to their employment agreements. In several known instances General Counsel Derek De Bakker has ignored or refused to honor efforts by terminated officers and employees to exercise their options. In one recent instance, after several inquiries and excuses, De Bakker informed one former MOD officer that he would be allowed to exercise his options at the strike price in his option agreement, but that the company would immediately buy the shares back for less than half their value. De Bakker's bad faith statements to this former officer and others may expose MOD to claims by option holders for state securities violations. Indeed, the distorted prices at which MOD's current management purports to buy back converted options may well be an attempt by MOD's current management to artificially lower the value of the company (and the value of the Series A investments) anticipating the company's bankruptcy and the predictable picking-over of the assets by scavengers (who will include the fraud ring itself, if prior history is any example). Again, MOD's Series A board observers have stood idly by while these actions take place before them, exposing the company and perhaps the Series A investors to liability.

III. Action Items

As noted at the outset of this letter, litigation is imminent, and will involve the Series A shareholders. The net result of such litigation is likely to be that the gross mismanagement at MOD that the Series A shareholders have witnessed and indeed enabled, will yield liability for the wrongdoers and for MOD. The company will ultimately have to answer to *all of* its shareholders for ousting Phillips, firing key management and employees, and allowing a ring of fraud artists to take over the company and cause a tremendous waste of resources and destruction of numerous careers, reputations, and company value. The Series A shareholders will find themselves, together with MOD's current management, in the position of explaining their complicity with a ring of confidence artists tied to SEC money laundering investigations and numerous fraud lawsuits, and of explaining how they allowed the opportunity to exploit extremely valuable intellectual property to dissipate before their eyes. Series A board observers who directly participated in the scheme to oust MOD's core management team in favor of a team controlled by the fraud ring will personally be named in the litigation. We have shared all of the above-mentioned information with you in an effort to give the Series A shareholders a final chance to take action before these facts become public.

On behalf of the current and former MOD employees, officers, directors and their affiliates who seek a return to the company's status before the ouster of Mr. Phillips, in order to limit the ongoing damage to MOD we demand that the Series A shareholders cause the following actions at MOD:

1. Enjoin Bay, De Bakker and Cane's establishment of an "indemnification trust" of over $5 million of MOD funds that have been funneled out of MOD's bank account into other accounts;
2. Terminate employees, consultants and advisors to MOD who have participated in the company's destruction over the past year;
3. Replace their board observers with competent and responsible observers who understand the meaning of fiduciary obligations;
4. Pursue legal action against Arnold, Cane, Wallace, Bay, Hotard, De Bakker and their accomplices and affiliates for the full amount of damages caused to MOD and MOD's ousted officers and directors;
5. Cause the replenishment of funds drained from MOD's accounts by the actions of recent management;
6. Re-hire all ousted, fired, or constructively discharged employees of MOD who seek their jobs back;
7. Order that MOD honor its option and shareholder agreements, including the issuance of shares to option holders who elect issuance; and
8. Take all other steps necessary to return MOD to its position prior to Arnold's illegitimate lawsuit and subsequent corporate waste.

We seek a meeting to discuss the concerns raised in this letter and soon to be raised in court no later than March 12, 2010. If we do not receive a response to this

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letter, we will assume that the Series A shareholders are content to let litigation proceed, and will act accordingly.

Best regards,

Harmeet K. Dhillon

Harmeet K. Dhillon

EXHIBIT "E"

HONORABLE JOHN P. ERLICK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MOD SYSTEMS INCORPORATED, and ROBERT M. ARNOLD, individually and derivatively on behalf of BANANA CORPORATION, Plaintiffs, v. MARK PHILLIPS, KENNETH GORDON, JANE DOE GORDON, and the marital community composed thereof; and BANANA CORPORATION, Defendants.	NO. 09-2-07963-3 SEA ORDER GRANTING DEFENDANT PHILLIPS' MOTION TO REMOVE KYLEEN CANE AND ANTHONY BAY FROM DEMAND REVIEW COMMITTEE

THIS MATTER having come before the undersigned judge of the above-entitled court on Defendant Mark Phillips' Motion to Terminate Voting Trust and to Remove Kyleen Cane and Anthony Bay from the Demand Review Committee, and the Court having read and considered the records and files herein including:

1. Defendant Phillips' Motion to Remove Kyleen Cane and Anthony Bay as Members of MOD System, Inc.'s Demand Review Committee;
2. Declaration of Mark Phillips (with exhibits);

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2505 Second Avenue, Suite 500
Seattle, WA 98121
(t) 206.386.5566 (f) 206.682.0675

3. Declaration of Dennis M. Mandell (with exhibits);

4. Supplemental Declaration of Dennis M. Mandell (with exhibits);

5. Declaration of Charles R. T. O'Kelley (with exhibits);

6. Declaration of Parrish Medley (with exhibits);

7. Custodial Declaration of Donovan Flora (with exhibits);

8. Plaintiff Arnold's Response to Motion to Terminate Voting Trust;

9. Declaration of Julia de Haan;

10. Declaration of Jeff Smyth (with exhibits);

11. Plaintiff MOD Systems Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC;

12. Decl. of Anthony Bay in Support of MOD System Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC (with exhibits);

13. Def. Phillips' Reply in Support of Motion to Terminate Voting Trust and to Remove Cane and Bay from Demand Review Committee;

14. Custodial Decl. of Mark Johnson in Support of Reply to Phillips' Motion to Terminate Voting Trust;

15. Supplemental Declaration of Mark Phillips; and

The Court having heard argument of counsel and being otherwise fully advised, it is now, hereby, ORDERED that Defendant Mark Phillips' Motion to Remove Kyleen Cane and Anthony Bay from the Demand Review Committee is GRANTED and they shall take no further action as members of said Committee.

JOHNSON | FLORA

2505 Second Avenue, Suite 500
Seattle, WA 98121
(t) 206.386.5566 (f) 206.682.0675

DATED this 12th day of November, 2009.

HONORABLE JOHN P. ERLICK

Presented by:

JOHNSON | FLORA, PLLC

By

Mark Johnson, WSBA #8463
Donovan Flora, WSBA #5624
Attorneys for Defendant Mark Phillips

Approved as to form, notice of presentation waived:

SMYTH & MASON, PLLC

By

for Jeff Smyth, WSBA #6291 per e-mail auth 11/12/09
Attorneys for Plaintiff Robert Arnold

SMITH & HENNESSEY, PLLC

By

James A. Smith, Jr., WSBA #5444
for Geoffrey P. Knudsen, WSBA #1324 per tel. auth 11/12/09
Attorneys for Banana Corporation

LEEN & O'SULLIVAN, PLLC

for By per e-mail auth 11/12/09

David Leen, WSBA # 3516
Attorneys for Defendants Gordon

FENWICK & WEST, LLP

By

Brian Buckley, WSBA #26423
Attorneys for Plaintiff MOD Systems, Inc.

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THE HONORABLE JOHN P. ERLICK

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

MOD SYSTEMS INCORPORATED, and ROBERT M. ARNOLD, individually and derivatively on behalf of BANANA CORPORATION, Plaintiffs, v. MARK PHILLIPS, KENNETH GORDON, JANE DOE GORDON, and the marital community composed thereof; ANTHONY BAY, JANE DOE BAY, and the marital community composed thereof; and BANANA CORPORATION, Defendants.	No. 09-2-07963-3 SEA **ORDER DENYING DEFENDANT PHILLIPS'S MOTION TO TERMINATE VOTING TRUST**

THIS MATTER having come before the undersigned judge of the above-entitled court on Defendant Mark Phillips's Motion to Terminate Voting Trust and to Remove Kyleen Cane and Anthony Bay from the Demand Review Committee, the Court having read and considered the records and files herein including:

1. Defendant Phillips' Motion to Terminate Voting Trust;
2. Motion to Remove Kyleen Cane and Anthony Bay from the Board of Directors of MOD and as Members of the DRC;
3. Declaration of Mark Phillips (with exhibits);
4. Declaration of Dennis M. Mandell (with exhibits);

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5. Supplemental Declaration of Dennis M. Mandell (with exhibits);

6. Declaration of Charles R. T. O'Kelley (with exhibits);

7. Declaration of Parrish Medley (with exhibits);

8. Custodial Declaration of Donovan Flora (with exhibits);

9. Plaintiff Arnold's Response to Motion to Terminate Voting Trust;

10. Declaration of Julia de Haan;

11. Declaration of Jeff Smyth (with exhibits);

12. Plaintiff MOD Systems Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC;

13. Decl. of Anthony Bay in Support of MOD System Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC (with exhibits);

14. Def. Phillips' Reply in Support of Motion to Terminate Voting Trust and to Remove Cane and Bay from Demand Review Committee;

15. Custodial Decl. of Mark Johnson in Support of Reply to Phillips' Motion to Terminate Voting Trust; and

16. Supplemental Declaration of Mark Phillips; and

The Court having heard argument of counsel and being otherwise fully advised, it is now hereby ORDERED that Defendant Mark Phillips's Motion to Terminate Voting Trust is DENIED, and Mr. Phillips may designate an individual to replace Kyleen Cane as Trustee under the March 27, 2009 Voting Trust Agreement between MOD Systems Incorporated and Mark Phillips (the "Voting Trust Agreement"). Ms. Cane shall continue to perform all functions of the Trustee under the Voting Trust Agreement, until such time as Mr. Phillips designates a replacement Trustee and that replacement Trustee is authorized to perform all functions of the Trustee under the Voting Trust Agreement.

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DATED this 12 day of November, 2009.

HONORABLE JOHN P. ERLICK

Presented by:

JOHNSON | FLORA, PLLC

By
Mark Johnson, WSBA #8463
Donovan Flora, WSBA #5624
Attorneys for Defendant Mark Phillips

Approved as to form, notice of presentation waived:

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By
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