

FILED

SAN DIEGO SUPERIOR COURT

APR - 5 2005

CLERK OF THE SUPERIOR COURT

BY T. ABAS



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**JUDICIAL COUNCIL
COORDINATED PROCEEDINGS**

Case No.: JCCP 4393 & 4394

KRYPTONITE LOCK CASES

**ELECTRONIC FILING
AND SERVICE ORDER**

i. GENERAL

A. APPLICATION OF ORDER.

The Court hereby designates the above action an Electronic Filing (EFile) case, as described and governed by this Order. This case is assigned to the electronic filing and service system as created by a Service Agreement executed on August 13, 1999, between LexisNexis fka CourtLink, fka JusticeLink, and the Superior Court of California, County of San Diego, (hereinafter referred to as "SDSC" or "Court"), or any successor system. All parties to the above case shall be deemed to consent to the entry of this Order and agree to be bound by its

Electronic Filing & Service Order

1 provisions by entering into an EFile Subscriber Agreement with LexisNexis or the
2 then-current vendor ("the Vendor").

3 **B. DEFINITIONS.**

4 The following terms in this Order shall be defined as follows pursuant to
5 California Rules of Court, Rule 2050:

6 1. EFile – Electronic transmission to a court of a document in
7 electronic form. The Court will utilize a third party vendor. An EFile
8 consists of either an EDocument, an Elmage, or both.

9 2. EService – Electronic transmission of a document to a party's
10 electronic notification address for the purpose of effecting service. The
11 Court will utilize a third party vendor. Upon completion of any
12 transmission to the Vendor's system, a certified receipt is issued to the
13 sender acknowledging receipt by the Vendor system. Once the Vendor
14 has served all recipients, proof of electronic service is returned to the
15 sender.

16 3. EDocument – A document is a pleading, a paper, a declaration, an
17 exhibit, or another filing submitted by a party or by an agent of a party on
18 the party's behalf.

19 4. Elmage – An electronic file of a document that has been scanned
20 or converted to a graphical or image format.

21 **C. ASSIGNMENT BY THE VENDOR OF PERSONAL IDENTIFICATION
22 NUMBERS.**

23 Upon receipt by the Vendor of a properly executed EFile Subscriber Agreement,
24 the Vendor shall assign to the party's designated representative(s) a confidential
25 Personal Identification Number (PIN) which must be used to electronically file,
serve, receive, review, and retrieve pleadings, orders, and other documents filed
in the assigned case. No PIN holder shall knowingly authorize or permit his/her

1 PIN to be utilized by anyone other than authorized attorneys or employees of the
2 attorneys' law firm, or designated co-counsel, unless it has been established in
3 writing, and furnished to LexisNexis, that designated counsel may file
4 documents on behalf of the assigning counsel.

5 **II. ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS.**

6 As of the filing of the initial complaint, except as expressly provided herein, or as
7 expressly authorized by the Court, all pleadings, motions, memoranda of law,
8 declarations, orders, or other documents filed in the above-entitled case shall be
9 filed electronically through the system. Documentary evidence produced during
10 discovery shall likewise be served electronically through LexisNexis, unless a
11 document depository is being utilized.

12 **A. SUBSEQUENT PLEADINGS.**

13 The clerk shall not accept or file any pleadings or instruments in paper form.
14 Parties must EFile a document either:

- 15 (1) Through the Vendor's system from the filing attorney's office; or
- 16 (2) In person, by electronically filing through the Public Access
17 Terminal located at the San Diego Superior Court, Hall of Justice,
18 Room 241. Parties filing in this manner shall be responsible for
19 furnishing the pleading or instrument on an IBM formatted 3 ½"
20 computer disk, CD ROM, or any other disk compatible with the
21 Superior Court's computer system to be uploaded in person; or
- 22 (3) By faxing all documents and attachments to Vendor. Vendor shall
23 then convert said documents and attachments to electronic form,
24 file them with the Court, and serve designated parties as provided
25 herein. Parties choosing to file via facsimile through Vendor shall
be charged fees reflecting Vendor's then-current published rates
for filing and service in this manner.

1 B. MAINTENANCE OF ORIGINAL DOCUMENTS.

2 An original of all documents filed electronically, including original signatures, shall
3 be maintained by the party filing the document pursuant to California Rules of
4 Court Rule 2057.

5 C. COURTESY COPIES.

6 Parties will be required to submit one courtesy hard copy of specific documents
7 requiring court review or action directly to the department. Refer to San Diego
8 Superior Court Best Practices page on the LexisNexis web site at
9 <http://www.lexisnexis.com/fileandserve/rules/#SanDiego>

10 D. TIME FOR FILING AND EFFECT OF USE OF EFILE.

11 Any pleading filed electronically shall be considered as filed with the Clerk of the
12 Superior Court when it is first transmitted to the Vendor and the transmission is
13 completed ("authorized date and time" received by filing party) except that any
14 document filed after 5:00 p.m. (Pacific Time) on a day the court is open for
15 business shall be deemed to have been filed on the next court day. Vendor is
16 hereby appointed the agent of the Clerk of the Superior Court as to the electronic
17 filing, receipt, service, and/or retrieval of any pleading or document in EFile.
18 Upon receipt and filing of a document the Vendor shall issue a confirmation that
19 the document has been received and filed. The confirmation shall serve as proof
20 the document has been filed.

21 E. SYSTEM OR USER FILING ERRORS.

22 If it is shown that the electronic filing is not filed with the court because of (1) an
23 error in the transmission of the document to the Vendor which was unknown to
24 the sending party, or (2) a failure to process the electronic filing when received by
25 the Vendor, the court may enter an order permitting the document to be filed
nunc pro tunc.

1 **III. FORM/FORMAT OF ELECTRONICALLY FILED DOCUMENTS.**

2 **A. FORMAT.**

3 All electronically filed documents shall, to the extent practicable, be formatted in
4 accordance with the applicable rules governing formatting of paper pleadings,
5 and in such other or further format as the Court may require from time to time.
6 Pleadings, briefs or other instruments may exceed page limitation rules to a
7 maximum of two (2) additional pages when the additional pages are attributable
8 to the electronic conversion or filing process. The date and time of the hearing or
9 trial in connection with which the document is submitted shall be designated on
10 the cover page of each document.

11 **B. REQUIREMENT FOR SIGNATURES ON DOCUMENTS**

12 Every pleading, document, and instrument filed in the EFile system shall be
13 deemed to have been signed by the attorney or declarant pursuant to California
14 Rules of Court Rule 2057. The typed name of a signing attorney should appear
15 under the signature line.

16 **C. ELECTRONIC TITLE OF PLEADINGS AND OTHER DOCUMENTS.**

17 The electronic title of each electronically filed pleading or other document shall
18 include:

- 19 (1) the case number,
- 20 (2) the party or parties filing the paper,
- 21 (3) the nature of the paper,
- 22 (4) the party or parties against whom relief, if any, is sought, and
- 23 (5) the nature of the relief sought (i.e., John Doe's Motion to Compel
24 Discovery from Jim Smith").

1 The electronic title shall be used for administrative purposes only. The caption
2 and signature page of any document filed shall comply with the California Rules
3 of Court.

4
5 **IV. ELECTRONIC SERVICE OF PLEADINGS AND OTHER DOCUMENTS.**

6 All parties shall make service upon other parties electronically through the EFiled
7 system. Parties, or their designated counsel, shall receive all documents EFiled
8 and EServed upon them via access to the Vendor's system. The exception to
9 this general order is a Motion for Determination of Good Faith Settlement. Said
10 motions shall be served pursuant to Code of Civil Procedure section 877.6(a)(2)
11 unless otherwise ordered by the Court.

12 **A. EFFECT OF ELECTRONIC SERVICE.**

13 The electronic service of a pleading or other document shall be considered as
14 valid and effective service on all participants and shall have the same legal effect
15 as an original paper document.

16 **B. SERVICE ON PARTIES; DESIGNATED ATTORNEY.**

17 An abbreviated service list will be used for all CourtLink filings and services.

18 Each firm shall designate to the Court the single attorney whose name will
19 appear on the abbreviated list. The designated "service" attorney will be
20 responsible for timely distribution of all EServed filings to co-counsel within their
21 own firms.

22 **C. SERVICE ON PARTIES; TIME TO RESPOND OR ACT.**

23 EService shall be deemed complete at the time a document has been received
24 by Vendor's system as reflected by the authorized date and time appearing on
25 the electronic transmittal. Notwithstanding any prior order of this Court, any
period of notice or any right or duty to do any act or make any response within
any period or on a date certain after the service of the document, which time

1 period or date is prescribed by statute or rule of court, shall be extended after
2 service by electronic transmission by two (2) court days in lieu of the 5 days for
3 mailing as set forth in Code of Civil Procedure Section 1013. This extension
4 shall not apply to extend the time for filing notice of intention to move for new
5 trial, or to move to vacate judgment pursuant to California Code of Civil
6 Procedure, section 663a, or notice of appeal. (California Rules of Court, Rule
7 2060)

8 C. SYSTEM OR USER SERVICE ERRORS.

9 If electronic service on a party does not occur because of (1) an error in the
10 transmission of the document to a party which error was unknown to the serving
11 party or Vendor, (2) a failure to process the electronic filing for service when
12 received by the Vendor, OR (3) the party was erroneously excluded from the
13 service list, the party to be served, in the absence of extraordinary
14 circumstances, shall be entitled to an order extending the date for any response
15 or the period within which any right, duty or other act must be performed.

16 V. CONVENTIONAL FILING OF DOCUMENTS.

17 Notwithstanding the foregoing, the following types of documents may be filed
18 conventionally and need not be filed electronically, unless expressly required by
19 the Court.

20 A. DOCUMENTS FILED UNDER SEAL

21 A motion to file documents under seal shall be filed and served electronically.
22 However, the documents to be filed under seal shall be filed in paper form.

23 B. EXHIBITS AND REAL OBJECTS.

24 Exhibits to declarations that are real objects, i.e., construction materials, core
25 samples, etc. or other documents, i.e, plans, manuals, etc, which otherwise may

1 not be comprehensibly viewed in an electronic format may be filed and served
2 conventionally, in paper form.

3 B. LODGMENTS.

4 Documents attached to a Notice of Lodgment may be lodged and served
5 conventionally in paper form. However, the actual document entitled "Notice of
6 Lodgment" shall be filed electronically.

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8 **VI. COLLECTION OF FEES.**

9 A. COURT FEES.

10 Statutory filing fees will be paid to LexisNexis for electronic transfer to the San
11 Diego Superior Court's bank account through the U.S. Federal Reserve Bank's
12 Automated Clearing House (ACH) payment system. Parties will be billed on a
13 monthly basis by LexisNexis. LexisNexis may terminate or suspend access
14 rights for users of the Service who fail to pay all amounts owed to LexisNexis in a
15 timely manner. LexisNexis will notify the Court of any non-paying users.

16 B. VENDOR FEES.

17 Fees charged by Vendor to parties or attorneys for access to and electronic
18 transmission of documents are solely the property of Vendor and are in addition
19 to any charges associated with statutory filing fees of the Superior Court.

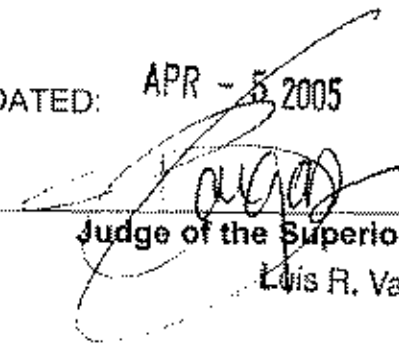
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21 **VII. SERVICE OF ELECTRONIC FILING ORDER ON NEW PARTIES.**

22 Any litigant filing a complaint or adding a party to this case by filing of an
23 amended complaint, cross-complaint, complaint in intervention,
24 interpleader or other initiating document shall be obligated to serve this
25 Electronic Filing Order at the same time the pleading is served.

1 **VIII. ELECTRONIC FILING AND SERVICE OF ORDERS AND OTHER PAPERS.**

2 The Court may issue, file, and serve notices, orders, and other documents
3 electronically, subject to the provisions of this Order.

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5 DATED: APR - 5 2005

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8 Judge of the Superior Court

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Luis R. Vargas, Judge