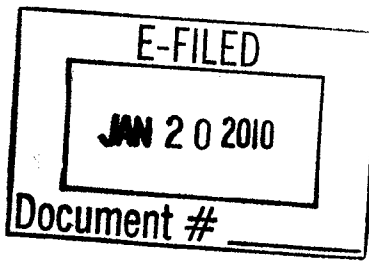


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CITY OF COLTON,  
Plaintiff,  
v.  
AMERICAN PROMOTIONAL  
EVENTS, INC., *et al.*,  
Defendants.

Case No. ED CV 09-01864 PSG (SSx)  
[Consolidated with Case Nos. CV 09-  
6630 PSG (SSx), CV 09-06632 PSG  
(SSx), CV 09-07501 PSG (SSx), and CV  
09-07508 PSG (SSx)]

~~PROPOSED~~ ORDER

**ORDER**

The Court having considered the Stipulation of the parties in this and Case Nos. CV 09-6630 PSG (SSx), CV 09-06632 PSG (SSx), CV 09-07501 PSG (SSx), and CV 09-07508 PSG (SSx), filed on January 15, 2010, and good cause appearing,

IT IS HEREBY ORDERED:

**Consolidation**

1. The following actions pending in this Court shall be consolidated for all purposes, except for trial: *City of Colton v. American Promotional Events, Inc., et al.*, Case No. ED CV 09-01864 PSG (SSx), filed October 6, 2009; *City of Rialto et al v. United States Department of Defense, et al.*, Case No. CV 09-07501 PSG

1 (SSx), filed October 15, 2009; *Goodrich Corporation v. Chung Ming Wong, et al.*,  
2 Case No. CV 09-6630 PSG (SSx), filed October 6, 2009; *County of San*  
3 *Bernardino, et al. v. Tung Chun Co., et al.*, Case No. CV 09-06632 PSG (SSx),  
4 filed October 6, 2009; and *Emhart Industries, Inc. v. American Promotional Events,*  
5 *Inc.-West, et al.*, Case No. CV 09-07508 PSG (SSx), filed October 15, 2009.

6 (Hereinafter, these actions are collectively referred to as the "Consolidated Actions"  
7 and the parties to the Consolidated Actions are collectively referred to as the  
8 "Parties.") The Court may determine at a later date whether to consolidate one or  
9 more of the Consolidated Actions for trial.

10 2. All responsive pleadings to the complaints, cross-claims, counter-  
11 claims, and third-party claims shall be filed only in the action in which the  
12 responding party is named. Once the pleadings in each separate action are settled,  
13 all future filings in the Consolidated Actions shall be made in *City of Colton v.*  
14 *American Promotional Events, Inc., et al.*, Case No. ED CV 09-01864 PSG (SSx),  
15 with the following case reference: "Case No. ED CV 09-01864 PSG (SSx)  
16 [Consolidated with Case Nos. CV 09-6630 PSG (SSx), CV 09-06632 PSG (SSx),  
17 CV 09-07501 PSG (SSx), and CV 09-07508 PSG (SSx)]."

18 3. To the extent any pleading or document filed with the Court is  
19 applicable to one or more, but not all, of the Consolidated Actions, the first  
20 paragraph of that pleading or document filed with the Court shall state which of the  
21 Consolidated Actions that pleading or document relates or is directed.

### 22 **Deemed Cross-claims, Counter-claims, and Affirmative Defenses**

23 4. Except as otherwise provided in Paragraphs 6 and 7 herein, the answer  
24 of each Party to any complaint, cross-claim, counter-claim, or third-party claim  
25 filed in the action in which they have been named shall be deemed to include cross-  
26 claims, counter-claims, and/or third-party claims for contribution under CERCLA §  
27 113(f), 42 U.S.C. § 9613(f), and declaratory relief under CERCLA § 113(g), 42  
28 U.S.C. § 9613(g), against all other in pro per or separately represented Parties,

1 including any in pro per or separately represented parties brought into any of the  
2 Consolidated Actions at a later date. All deemed claims under this Paragraph 4  
3 shall require no response by the Parties and shall be deemed denied by the Parties  
4 upon filing of an answer.

5 5. Except as otherwise provided in Paragraphs 6 and 7 herein, the answer  
6 of each Party, other than the United States, to any complaint, cross-claim, counter-  
7 claim, or third-party claim filed in the action in which they have been named shall  
8 be deemed to include cross-claims, counter-claims, and/or third-party claims for  
9 contribution pursuant to state law, equitable indemnification pursuant to state law,  
10 and related declaratory relief under California Code of Civil Procedure section 1060  
11 against all other in pro per or separately represented Parties, other than the United  
12 States, including any in pro per or separately represented parties brought into any of  
13 the Consolidated Actions at a later date. All deemed claims under this Paragraph 5  
14 shall require no responses by the Parties and shall be deemed denied by the Parties  
15 upon filing of an answer.

16 6. Only the following parties shall be deemed to have filed cross-claims,  
17 counter-claims, and/or third-party claims against the City of Rialto and Rialto  
18 Utility Authority (collectively referred to herein as "Rialto") under the provisions of  
19 Paragraphs 4 and 5 above:

20 Goodrich Corporation; Emhart Industries, Inc.; Kwikset Locks, Inc.;  
21 Black & Decker Inc; Kwikset Corporation; APE-West; American  
22 Promotional Events, Inc.; Pyro Spectaculars, Inc.; Astro Pyrotechnics,  
23 Inc.; Trojan Fireworks; Zambelli Fireworks Company; Zambelli  
24 Fireworks Internationale; Raytheon Company; General Dynamics  
25 Corporation; Hughes Aircraft Company; The Ensign-Bickford  
26 Company; Whittaker Corporation; County of San Bernardino;  
27 Robertson's Ready Mix, Inc.; Thomas O. Peters, 1996 Thomas O.  
28 Peters and Kathleen S. Peters Revocable Trust, and Stonehurst Site,  
LLC; Harry Hescox; Ken Thompson, Inc.; Rialto Concrete Products,  
Inc.; Mildred Wilkins; Fred Skovgard; Environmental Enterprises,  
Inc.; Schulz Parties; Edward Stout; Elizabeth Rodriguez; John Callagy

1 (individually and as Trustee of the Frederiksen Children's Trust under  
2 Trust Agreement Dated February 20, 1985); Linda Frederiksen  
3 (individually, as Trustee of the Walter M. Pointon Trust Dated  
4 November 19, 1991, and as Trustee of the Michelle Ann Pointon Trust  
5 under Trust Agreement Date February 15, 1985); Mary Callagy  
6 (formerly known as Mary Mitchell); Jeanine Elzie; and Stephen  
7 Callagy); the United States of America; and the United States  
8 Department of Defense.

7 These deemed claims shall require no response by Rialto and shall be deemed  
8 denied by Rialto upon filing of an answer, and Rialto shall be deemed to have filed  
9 cross-claims, counter-claims and/or third-party claims against each of the parties  
10 listed in this paragraph under the provisions of Paragraph 4 and 5 above.

11 7. Notwithstanding Paragraphs 4 and 5 above, the following parties shall  
12 not be deemed to have filed any cross-claims, counter-claims, or third-party claims  
13 among, between, or against any other party listed below in this Paragraph 7:  
14

15 County of San Bernardino; Robertson's Ready Mix, Inc.; Edward Stout  
16 (individually and as trustee of the Stout-Rodriguez Trust otherwise  
17 known as the E.F. Schulz Trust Following 1984); Elizabeth Rodriguez;  
18 John Callagy (individually and as Trustee of the Frederiksen Children's  
19 Trust under Trust Agreement Dated February 20, 1985, and as trustee  
20 of the E.F. Schulz Trust); Zambelli Fireworks Company; Zambelli  
21 Fireworks Internationale; Linda Frederiksen (individually, as trustee of  
22 the E.F. Schulz Trust, as Trustee of the Walter M. Pointon Trust Dated  
23 November 19, 1991, and as Trustee of the Michelle Ann Pointon Trust  
24 under Trust Agreement Date February 15, 1985); Mary Callagy  
25 (formerly known as Mary Mitchell); Jeanine Elzie; and Stephen  
26 Callagy.

27 8. A party named as a defendant in a complaint, a cross-defendant in a  
28 cross-claim or a third-party defendant in a third-party complaint in any Action, shall  
file an answer to the complaint or if not named in the complaint, an answer to any  
one cross-claim or third-party complaint that names the party. Provided that a party  
has at least one answer on file in a particular Action, that party shall be deemed to  
have answered, and denied all material allegations in, any and all (express or

1 deemed) claims asserted in that Action against that party.

2 9. The Parties' answers (express or deemed) to any complaint, cross-  
3 claim (deemed or express), counter-claim (deemed or express), or third-party claim  
4 (deemed or express) filed in the Action in which they have been named shall be  
5 deemed to include the affirmative defenses set forth in Exhibit "A" hereto.

6 10. Nothing in this Order shall preclude or limit the Parties' right to file or  
7 dismiss cross-claims (express or deemed), counter-claims (express or deemed),  
8 and/or third-party claims (express or deemed) or to file answer(s) to cross-claims,  
9 counter-claims, third-party claims, or affirmative defenses. Any Party may file a  
10 separate document entitled "Additional Affirmative Defenses to Deemed Claims" to  
11 assert additional affirmative defenses against any deemed cross-claim, counter-  
12 claim, and/or third-party claim. Those additional affirmative defenses shall apply  
13 to all of the claims deemed denied by that Party pursuant to this Order. In the event  
14 of any inconsistency between such claims or defenses filed by the Parties and  
15 deemed claims and defenses as provided for in this Order, the Parties' filed claims  
16 or defenses shall govern.

17 11. The responsive pleadings by the "United States of America" and/or the  
18 "United States Department of Defense" to the initial express complaints, cross  
19 claims, or third-party complaints that were filed and served in the above-named  
20 actions prior to December 21, 2009 shall be filed on or before February 4, 2010.

21 12. Any party may file an answer to any claim or to correct or amend an  
22 answer and/or claim that has been filed or attempted to be filed on or before  
23 February 26, 2010, or pursuant to the Federal Rules of Civil Procedure, whichever  
24 is later. Except as otherwise specified in this Order, the deadline to file any  
25 pleading or motion pursuant to Rules 12, 13, 14 or 15 of the Federal Rules of Civil  
26 Procedure, or to file additional affirmative defenses as set forth above, is 30 days  
27 after the date of the Scheduling Conference as set below.

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**Electronic Service Of Documents.**

13. In order to facilitate case management, document retrieval, and case organization, the Parties shall use the services of LexisNexis and its litigation system File & Serve (“LNFS”) for providing electronic service correspondence and other discovery-related documents (excluding the production of documents) through a secure website to facilitate expeditious, efficient, and economical communication by and among counsel, as set forth in Exhibit “B” hereto. All court filings shall be made by Electronic Court Filing pursuant to L.R. 5 and General Order 80-02 and are not required to be posted to the LNFS.

**Discovery In Prior Actions**

14. All discovery taken in the following actions, which were voluntarily dismissed by the Parties in June 2008, shall be deemed to have been taken and thus may be used in the Consolidated Actions: (1) *City of Rialto, et al. v. Department of Defense, et al.*, Case No. CV 04-00079 PSG (SSx); (2) *Goodrich Corporation v. Emhart, et al.*, Case No. CV 04-00759 PSG (SSx); (3) *City of Colton v. American Promotional Events, Inc.-West, et al.*, Case No. CV 05-01479 JFW (SSx); and (4) *City of Colton v. American Promotional Events, Inc.-West, et al.*, Case No. CV 06-01319 PSG (SSx).

**Scheduling Conference**

15. A Scheduling Conference is set for April 26, 2010, at 3:30 p.m. p.m. in Department 790.

DATED: January <sup>20</sup>2010

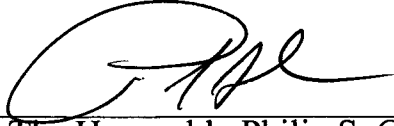
  
The Honorable Philip S. Gutierrez  
United States District Judge

Exhibit "A"

## **EXHIBIT "A" TO STIPULATION AND [PROPOSED] ORDER**

### **AFFIRMATIVE DEFENSES**

The term "plaintiff" as used below shall include plaintiffs, cross-claimants, counter-claimants, and third-party claimants. The term "defendant" as used below shall include defendants, cross-defendants, counter-defendants and third-party defendants. The term "Complaint" as used below shall include any complaints, cross-complaints (express or deemed), counter-complaints (express or deemed), and third-party complaints (express or deemed).

#### **AFFIRMATIVE DEFENSE NO. 1 (Failure to State a Claim for Relief)**

Plaintiff fails to state facts sufficient to constitute a claim upon which relief can be granted against defendant. Plaintiff also seeks relief against defendant that is not properly recoverable by plaintiff, and plaintiff is therefore barred from any recovery against defendant.

#### **AFFIRMATIVE DEFENSE NO. 2 (Act of God)**

Defendant is not liable to plaintiff because the alleged release or threat of release of a hazardous substance and the alleged damages resulting therefrom were caused solely by an act of God, pursuant to CERCLA § 107(b)(1), 42 U.S.C. §9607(b)(1).

#### **AFFIRMATIVE DEFENSE NO. 3 (Act of War)**

Defendant is not liable to plaintiff because the alleged release or threat of release of a hazardous substance and the alleged damages resulting therefrom were caused solely by an act of war, pursuant to CERCLA § 107(b)(2), 42 U.S.C. §9607(b)(2).

#### **AFFIRMATIVE DEFENSE NO. 4 (Act of Third Party)**

Defendant is not liable to plaintiff because the alleged release or threat of release of a hazardous substance and the alleged damages resulting therefrom were caused solely by an act or omission of a third party, pursuant to CERCLA §107(b)(3), 42 U.S.C. §9607(b)(3).

#### **AFFIRMATIVE DEFENSE NO. 5 (Innocent Landowner)**

Defendant is not liable to plaintiff because defendant is an innocent landowner and meets the statutory criteria set forth in CERCLA § 101(35), 42 U.S.C. §9601(35).



**AFFIRMATIVE DEFENSE NO. 6  
(Bona Fide Prospective Purchaser)**

Defendant is not liable to plaintiff because defendant is a “bona fide prospective purchaser” as defined in CERCLA § 101(40), 42 U.S.C. § 9601(40).

**AFFIRMATIVE DEFENSE NO. 7  
(Contiguous Property)**

Defendant is not liable to plaintiff because the real property at issue is a “contiguous property” and defendant meets the statutory criteria set forth CERCLA § 107(q), 42 U.S.C. § 9607(q).

**AFFIRMATIVE DEFENSE NO. 8  
(Fiduciary Liability)**

Pursuant to CERCLA § 107(n), 42 U.S.C. § 9607(n), the liability of defendant shall not exceed the assets held in the fiduciary capacity.

**AFFIRMATIVE DEFENSE NO. 9  
(Lack of Capacity to Sue)**

Defendant is not liable to plaintiff because plaintiff lacks the capacity to sue.

**AFFIRMATIVE DEFENSE NO. 10  
(Lack of Capacity to Be Sued)**

Defendant is not liable to plaintiff because defendant lacks the capacity to be sued.

**AFFIRMATIVE DEFENSE NO. 11  
(Res Judicata/Claim Preclusion)**

Defendant is not subject to liability under CERCLA Section 107(a), 42 U.S.C. §9607(a), because the claims asserted are barred by the doctrine of Res Judicata/Claim Preclusion.

**AFFIRMATIVE DEFENSE NO. 12  
(Collateral Estoppel/Issue Preclusion)**

Defendant is not subject to liability under CERCLA Section 107(a), 42 U.S.C. §9607(a) because the claims asserted are barred by the doctrine of Collateral Estoppel/Issue Preclusion.

**AFFIRMATIVE DEFENSE NO. 13**  
**(Reasonable Divisibility)**

Defendant is not liable, joint and severally or otherwise, to plaintiff because defendant's alleged contribution to the alleged contamination and/or harm, if any, is reasonably divisible from that of the other parties in this action and/or third parties.

**AFFIRMATIVE DEFENSE NO. 14**  
**(Ripeness/No Injury or Damages)**

Because plaintiff presently has not suffered any cognizable harm or presently incurred any damages, there is no current case or controversy. Plaintiff's claims accordingly are not ripe for adjudication since plaintiff has suffered no injury or damages cognizable under any State or Federal laws.

**AFFIRMATIVE DEFENSE NO. 15**  
**(Assumption of Risk)**

Plaintiff had knowledge of the risks necessarily incident to matters alleged in the Complaint, and thus if plaintiff has suffered injuries or is entitled to any damages as alleged in the Complaint, which is expressly denied, those injuries and/or damages arose from and were caused by said risks knowingly and voluntarily assumed by plaintiff.

**AFFIRMATIVE DEFENSE NO. 16**  
**(Preemption)**

The Complaint, and each claim therein, is barred, in whole or in part, by Federal and/or State law.

**AFFIRMATIVE DEFENSE NO. 17**  
**(Superseding/Intervening Acts)**

Any damage allegedly sustained by plaintiff was caused, in whole or in part, by the superseding and intervening acts and omissions of persons or entities for whose conduct defendant is not responsible.

**AFFIRMATIVE DEFENSE NO. 18**  
**(Contributory and Comparative Negligence)**

Any and all injury or damages were caused, in whole or in part, by the negligence, carelessness, lack of due care and fault, of plaintiff and/or third parties.

**AFFIRMATIVE DEFENSE NO. 19**  
**(Failure to Join Necessary or Indispensable Parties)**

Defendant is informed and believes, and on that basis alleges, that plaintiff has failed to join necessary and/or indispensable parties. These necessary and/or indispensable parties claim an interest, and/or are liable for alleged damages/injury, relating to the subject matter of this action. Thus, such indispensable parties are so situated that the disposition of this action in their absence may both impair or impede their ability to protect that interest and expose defendant to a substantial risk of multiple liability or otherwise inconsistent obligations. The just and complete adjudication of the subject matter of this action thus requires the joinder of these absent parties.

**AFFIRMATIVE DEFENSE NO. 20**  
**(Unclean Hands)**

The Complaint and each claim therein is barred, in whole or in part, by the doctrine of unclean hands.

**AFFIRMATIVE DEFENSE NO. 21**  
**(Laches)**

The Complaint, and each claim therein, is barred by the doctrine of laches because of the inexcusable and unreasonable delay by plaintiff in taking action, notifying defendant, and/or in filing this action to the prejudice of defendant.

**AFFIRMATIVE DEFENSE NO. 22**  
**(Waiver)**

As a result of its own acts and omissions, plaintiff has waived any right to recover under each and every cause of action purportedly alleged in the Alleging Document.

**AFFIRMATIVE DEFENSE NO. 23**  
**(Offset)**

Defendant is entitled to an offset against any liability for (1) any amounts actually paid by any person or entity other than defendant, for any of the costs and/or damages alleged in the Alleging Document, (2) the equitable share of the liability of any person or entity that has received or hereafter receives a release from liability or a covenant not to sue with respect to any of the injuries, costs and damages alleged in the Alleging Document, and (3) plaintiff's share of liability.

**AFFIRMATIVE DEFENSE NO. 24**  
**(Statute of Limitations)**

The Complaint, and each claim therein, is barred by the applicable statutes of limitations

under federal law and under state law, including, but not limited to, California Code of Civil Procedure Sections 338(a) and 338(b).

**AFFIRMATIVE DEFENSE NO. 25**  
**(Failure to Mitigate)**

Plaintiff has failed to exercise reasonable efforts to minimize or avoid any damages which are alleged to have been caused by defendant. By reason thereof, plaintiff is barred, in whole or in part, from recovering damages from defendant and defendant's liability to plaintiff, if any, should be apportioned, denied, or reduced accordingly.

**AFFIRMATIVE DEFENSE NO. 26**  
**(Unjust Enrichment)**

The Complaint and each claim contained therein, is barred by the doctrine of unjust enrichment.

Exhibit "B"

## EXHIBIT "B" TO STIPULATION AND [PROPOSED] ORDER

### LEXISNEXIS FILE & SERVE PROCEDURES

#### I. LEXISNEXIS FILE & SERVE

1. In order to facilitate case management, document retrieval, and case organization, the parties will utilize the services of LexisNexis and its litigation system File & Serve for providing electronic service, storage, and delivery of discovery-related documents (excluding the production of documents) and correspondence through a secure website to facilitate expeditious, efficient, and economical communication by and amongst counsel.

#### II. SERVICE ONLY

1. File & Serve shall apply only to the service of documents that are not filed with the Court. Except that the parties shall utilize the services of File & Serve for providing service of court-filed documents until such time that all parties have been added to the CM/ECF system operated by the District Court.

#### III. SERVICE LIST, SIGN-UP, AND PAYMENT

1. Within five (5) days of entry of this Order, counsel for Plaintiff City of Colton ("Plaintiff") shall submit via email to LexisNexis at [Eservice@fileandserve.lexisnexis.com](mailto:Eservice@fileandserve.lexisnexis.com), a complete and current service list of counsel of record for this litigation. Within five (5) days of entry of this Order, all law firms of record shall register for electronic service in this litigation by completing the registration located at the following website: <http://www.lexisnexis.com/fileandserve> and shall notify plaintiff's or liaison counsel that they will need to be added to the service list.

2. Plaintiff's counsel shall be liaison counsel to LexisNexis for all service list changes. Plaintiff's counsel shall be responsible for monitoring the service list and law firms of record shall be responsible for advising Plaintiff's counsel of any changes or corrections. The service list will identify the counsel of record for each law firm of record, along with the party or parties they represent, who are to receive service of documents in the case utilizing File & Serve. Once a firm is registered on File & Serve, each firm will be provided functionality on File & Serve to designate a firm administrator to control the addition and deletion of registered users on File & Serve for their firm.

3. Access to File & Serve will be limited to registered users. Registered Users will consist of counsel for the parties, their designated staff members, and insurers, including their respective counsel, upon whom a demand has been made (at the sole discretion of the insured). Upon registration, LexisNexis will provide each registered user with a user name and password to access File & Serve and documents served in the litigation.

4. Each separately represented party will be responsible for an equal pro rata share

EXHIBIT "B" TO STIPULATION AND [PROPOSED] ORDER

of the costs of utilizing the File & Serve system. Payment arrangements will need to be made directly with LexisNexis within five (5) days of registering for electronic service with LexisNexis.

#### **IV. SERVICE OF DOCUMENTS AND WEBSITE**

1. When any counsel of record wishes to serve a document, that counsel shall serve the document according to all requirements and procedures of these Procedures. All references to “document” in these Procedures shall be interpreted to include any exhibits or attachments to the document and shall include pleadings, discovery-related documents (such as interrogatories, requests for production, deposition notices/transcripts, etc.), and correspondence provided, however, that each attorney shall determine individually whether to utilize File & Serve to serve correspondence and/or the actual production of discovery documents in response to another party’s request for production. Large volume productions shall be coordinated with LexisNexis.

2. LexisNexis will maintain the File & Serve internet website (the “Website”) for this litigation. When a transaction is submitted on File & Serve, File & Serve will electronically serve each document on the parties included on the service list provided to LexisNexis in accordance with the procedures herein.

3. Each attorney shall serve each document via electronic transfer of the document through File & Serve via the Internet (either as a word processing file or a scanned image of each document). Each attorney shall title each document to identify the type and purpose of each document and the party who is submitting such document. Each document electronically served pursuant to this Order shall be deemed to have been properly served in accordance with Federal Rule of Civil Procedure 5(b)(2)(E), such that following service, pursuant to Federal Rule of Civil Procedure 6(d), three (3) days shall be added to the prescribed period to file or serve any response. Any document served on a legal holiday, weekend, or after 5 p.m. California local time shall be deemed served on the subsequent business day.

4. After an attorney uploads a document onto File & Serve, File & Serve will convert such document into Adobe Portable Document Format (“PDF”) and post the document to the Website within one (1) hour of receipt. File & Serve will contain an index of all served documents for the litigation that will be searchable and sortable according to methods that provide 24/7 365 days’ access to the documents.

5. Within one (1) hour of the time a document is posted to the Website, File & Serve will send an email to all registered users notifying them that a document has been posted to the Website (unless such registered user has declined to receive such email notification). The email shall contain a hypertext link to File & Serve.

6. All documents posted on File & Serve will be identified by: (a) the name of the serving law firm; (b) the caption of the case, which shall be: *City of Colton v. American Promotional Events, Inc. et. al.*, Case No. ED CV 09-01864PSG (SSx) [Consolidated with ED CV 09-6630 PSG (SSx), CV 09-06632 PSG (SSx), ED CV 09-07501 PSG (SSx), and CV 09-

EXHIBIT “B” TO STIPULATION AND [PROPOSED] ORDER

07508 PSG (SSx)]; (c) the title of the document set forth on its caption; and (d) the identify of the party on whose behalf the document is being served.

7. Every pleading, document, and instrument served electronically through File & Serve shall bear a signature or signature equivalent of at least one of the attorneys of record, along with the typed name, address, and telephone number. Signature equivalents shall be treated exactly as personal signatures for purposes of electronically served documents under the Federal Rules of Civil Procedure.

8. Any document transmitted to File & Serve shall certify in the Proof of Service that a true and correct copy was electronically served on counsel of record by transmission through File & Serve, the date and time to be used on the Proof of Service will be the date and time reflected on the Transaction Receipt provided after submitting a transaction on File & Serve.

9. Until further notice, documents filed under seal shall not be served through File & Serve. Instead, the service of sealed documents shall be made pursuant to applicable law. Any party filing a document under seal shall serve, via File & Serve, a copy of the title page of the document.

10. File & Serve shall have available to counsel of record a telephone Customer Service hotline (1-888-529-7587) and website (<http://www.lexisnexis.com/fileandserve/support/asp>) available 365 days a year for the minimum hours of 6:00 a.m. to 9:00 p.m. Pacific Standard Time.

11. In the event a party believes the date and/or time stamp on a document submitted by that party to be erroneous, or that File & Serve failed to process and post a document otherwise properly submitted, the party shall serve proof of the date and/or time of submission within 10 days of the date of attempted submission, or within five (5) business days of the date the party knew or had reason to know of the alleged error, whichever is later. Any other party may challenge the proof of compliance within 5 business days by letter served through File & Serve. If proof of compliance is challenged, the party seeking to establish compliance must seek relief from the Court or as otherwise appropriate.

EXHIBIT "B" TO STIPULATION AND [PROPOSED] ORDER



**PROOF OF SERVICE**

I, Joy S. Ashwood, declare:

I am a citizen of the United States and employed in Riverside County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3750 University Avenue, Suite 400, P.O. Box 1028, Riverside, California 92502. On January 15, 2010, I served a copy of the within document(s):

**STIPULATION; [PROPOSED] ORDER**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.
- by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- on counsel of record by transmission to Lexis-Nexis File & Serve.

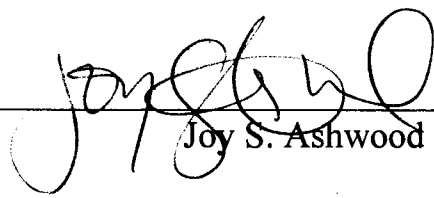
See attached service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 15, 2010, at Riverside, California.

  
Joy S. Ashwood

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3750 UNIVERSITY AVENUE, SUITE 400  
P.O. BOX 1028  
RIVERSIDE, CA 92502