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10 INTERNET CORPORATION FOR ASSIGNED
11 NAMES AND NUMBERS

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 SNAPNAMES.COM INCORPORATED,
15 an Oregon corporation,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS, a
20 California corporation;

21 Defendant.

CASE NO. BC 324782

Assigned for all purposes to
Judge Emilie H. Elias

Complaint Filed: November 18, 2004

**NOTICE OF HEARING ON DEMURRER
AND DEMURRER BY DEFENDANT
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with ICANN's Notice Of
Request And Request For Judicial Notice]

[C.C.P. § 430.10]

Date: February 10, 2005
Time: 8:45 a.m.
Dept.: 3

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LAI-2169189v1

**NOTICE OF DEMURRER AND DEMURRER BY DEFENDANT
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

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NOTICE OF HEARING ON DEMURRER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 10, 2005, at 8:45 a.m., or as soon thereafter as counsel may be heard, in Department 3 of the above-entitled Court located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California 90012, defendant Internet Corporation for Assigned Names and Numbers ("ICANN") will and hereby does demur to the Complaint filed herein by plaintiff SnapNames.com Inc.

The demurrer is made pursuant to California Code of Civil Procedure section 430.10, and is based upon this Notice of Hearing; the Demurrer by Defendant Internet Corporation for Assigned Names and Numbers and Memorandum of Points and Authorities filed herewith; the concurrently-filed Request for Judicial Notice; the pleadings, documents, and records on file in this action; and all other matters that may appropriately be presented to the Court before or at the hearing on the demurrer.

DATED: January 7, 2005

JONES DAY

By: Jeffrey A. LeVee
Jeffrey A. LeVee *swj*

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

1 DEMURRER

2 ICANN demurs to the Complaint on the following grounds:

3 1. The Complaint fails to state facts sufficient to constitute a cause of action for *tortious*
4 *interference with an existing contract* for two separate and independent reasons:

5 (a) The allegations of the Complaint admit that the subject matter of the purported
6 contract cannot be implemented without approval from the United States Department of
7 Commerce. Unless and until such approval is obtained, the purported contract is not of
8 sufficient force and effect to support a claim for tortious interference.

9 (b) The allegations of the Complaint establish that ICANN and plaintiff had
10 separate contracts with the same third party. ICANN was entitled to resort to any
11 legitimate means to protect its own contractual interests, even if the necessary result was
12 to cause a breach of plaintiff's contract.

13 DATED: January 7, 2005

JONES DAY

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16 By: Jeffrey A. LeVee
17 Jeffrey A. LeVee swg

18 Attorneys for Defendant
19 INTERNET CORPORATION FOR
20 ASSIGNED NAMES AND NUMBERS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 ICANN is a not-for-profit, public benefit corporation dedicated to preserving the
4 operational stability of, and managing the domain name system for, the Internet.¹ ICANN sells
5 no goods or services, and it has no trade or business. (Indeed, its bylaws prohibit it from selling
6 domain names, for example.) Thus, while ICANN's decisions and actions may have an impact on
7 companies that offer services to users of the Internet, ICANN is not in competition with any of
8 those companies. ICANN operates pursuant to a Memorandum of Understanding that it
9 originally signed with the United States Department of Commerce, which has ultimate authority
10 with respect to any changes to the domain name system. The purpose of the Memorandum of
11 Understanding was to facilitate a transition of the responsibilities related to the management of
12 the domain name system from the Department of Commerce to the private sector.²

13 Plaintiff SnapNames.com Inc. alleges in this action that ICANN intentionally and
14 tortiously interfered with a contract plaintiff entered into with VeriSign, Inc. Plaintiff alleges that
15 the subject contract provided for the use of plaintiff's technology in VeriSign's proposed
16 implementation of a new Internet service known as the "Wait Listing Service" ("WLS"), and that
17 ICANN has blocked VeriSign's (and, thus, plaintiff's) efforts to introduce that service. Plaintiff

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19 ¹ Background regarding ICANN may be found at its Internet web site, located at
20 <http://www.icann.org/>. Its "frequently asked questions" page contains the following about
ICANN:

21 The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for
22 managing and coordinating the Domain Name System (DNS) to ensure that every address
23 is unique and that all users of the Internet can find all valid addresses. It does this by
24 overseeing the distribution of unique IP addresses and domain names. It also ensures that
25 each domain name maps to the correct IP address. ICANN is also responsible for
26 accrediting the domain name registrars. "Accredit" means to identify and set minimum
standards for the performance of registration functions, to recognize persons or entities
meeting those standards, and to enter into an accreditation agreement that sets forth the
rules and procedures applicable to the provision of Registrar Services.

26 See <http://www.icann.org/faq/#WhatisICANN>.

27 ² A copy of the original Memorandum of Understanding, and its most recent amendment,
28 is attached as Exhibits A and B to ICANN's concurrent request for judicial notice.

1 alleges that ICANN has engaged in this conduct as part of a purported "conspiracy" with certain
2 competitors of plaintiff and VeriSign.

3 As a factual matter, plaintiff's story is utterly implausible. Indeed, several of the alleged
4 "co-conspirators" have sued ICANN *twice* for injunctive relief and breach of contract, claiming
5 that ICANN wrongfully has *facilitated* the introduction of WLS.³

6 More importantly for purposes of this demurrer, plaintiff's allegations fail to state any
7 cause of action against ICANN as a matter of law. Initially, the Complaint fails to state a valid
8 claim for interference with any *existing* contract because the allegations establish that plaintiff's
9 alleged contract with VeriSign will not have any effect until WLS is approved by the Department
10 of Commerce. Moreover, ICANN's alleged conduct in "resisting" the implementation of WLS
11 was privileged because the allegations establish ICANN was acting to protect its interests under
12 its own separate contract with VeriSign; plaintiff cannot possibly maintain a claim that is based
13 on ICANN's alleged refusal to amend a contract with a third-party (VeriSign, Inc.). Indeed,
14 virtually all of the main charging allegations of the Complaint allege that ICANN refused to
15 negotiate with VeriSign or made misrepresentations to the Department of Commerce. Even if
16 these allegations were correct -- which they are not -- they do not form the basis of a claim that
17 plaintiff could assert against ICANN.

18 APPLICABLE LEGAL STANDARD

19 California Code of Civil Procedure section 430.10(e) provides that a defendant may object
20 by demurrer to a complaint on the ground that the pleading fails to allege facts sufficient to
21 constitute a cause of action. The absence of any allegation essential to the cause of action makes
22 the complaint vulnerable to such a demurrer. *E.g., Banerian v. O'Malley*, 42 Cal. App. 3d 604,
23 610-11 (1974). The demurrer also may be sustained based on any affirmative defense that
24 appears on the face of the complaint. *E.g., Casterson v. Superior Court*, 101 Cal. App. 4th 177,
25 183 (2002); *see also Halvorsen v. Aramark Uniform Services, Inc.*, 65 Cal. App. 4th 1383, 1391

26 _____
27 ³ *See, e.g., Dotster, Inc. v. Internet Corporation for Assigned Names and Numbers*, 296 F.
28 Supp. 2d 1159 (C.D. Cal. 2003) (a copy of which is included in ICANN's appendix of
authorities).

1 (1998) (demurrer to interference claims properly sustained where the complaint alleges facts
2 constituting an affirmative defense). Moreover, where the facts are not in dispute and no liability
3 exists as a matter of substantive law, the court should sustain the demurrer without leave to
4 amend. *E.g., Lawrence v. Bank of America*, 163 Cal. App. 3d 431, 536 (1985). In undertaking
5 this analysis, the court may sustain a demurrer based on facts subject to judicial notice that
6 contradict the allegations of the Complaint. Cal. Code Civ. Proc. §§ 430.70, 437(b); *Del E. Webb*
7 *Corp. v. Structural Materials Co.*, 123 Cal. App. 3d 593, 604 (1981).

8 **SUMMARY OF PERTINENT ALLEGATIONS⁴**

9 The Internet is a network of interconnected computers and computer networks. Every
10 computer connected to the Internet is assigned a unique “address” known as an Internet Protocol
11 (“IP”) number. [Complaint at ¶ 5.] Because IP numbers can be cumbersome and difficult to
12 remember, the IP number system has been overlaid with a more “user-friendly” system of
13 addresses known as the “domain name system.” This overlay associates a unique string of
14 alphanumeric characters -- or a domain name -- with a given IP number. [*Id.* at ¶ 6.]

15 Each domain name consists of a string of separate “domains” separated by periods. The
16 “top-level domain,” or “TLD,” is identified by the characters found at the far right end of the
17 domain name, *e.g.*, “.com,” “.gov,” and “.net.” [*Id.* at ¶ 7.] Lower-level domains are identified
18 by the characters located to the left of the TLD, *e.g.*, “uscourts” within the domain name
19 “uscourts.gov.” [*Id.* at ¶ 8.]

20 VeriSign, Inc. has contracted with ICANN to act as the central “registry” for domain
21 names within the .com and .net TLDs, *i.e.*, domain names ending with the characters “.com” and
22 “.net.” [*Id.* at ¶ 10.] Any individual or entity who seeks to use a particular domain name within
23 the .com or .net TLD must take steps to “register” that domain name via an ICANN-accredited
24 “registrar.” [*Id.* at ¶ 11.] Because each registered domain name must be unique, a given domain
25 name can be registered to only one individual or entity at any given time. [*Id.* at ¶ 9.]

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28 ⁴ These allegations are taken from the Complaint and are not admitted.

1 In or about December 2001, VeriSign informed ICANN that it wished to make available
2 to Internet users a new service known as "Wait Listing Service." This new service would afford
3 prospective domain name registrants the opportunity to place a "subscription" to register a
4 currently-registered domain name in the event the current registrant elects not to renew its
5 registration. [*Id.* at ¶¶ 16-17.]

6 After consideration, ICANN's Board recognized that WLS might represent a beneficial
7 option for consumers and authorized ICANN's staff to negotiate appropriate revisions to the
8 ICANN-VeriSign registry agreements that would allow WLS to be submitted to the Department
9 of Commerce for its review and approval. VeriSign did not initially agree to the conditions that
10 the staff sought to impose, but the staff and VeriSign ultimately concluded negotiations for the
11 amendment to the registry agreements, which the Board then approved. [*Id.* at ¶¶ 45-51.]

12 However, to date, ICANN and VeriSign have been unable to agree upon the actual
13 language to the amendment to the registry agreements that would incorporate the terms necessary
14 for the implementation of WLS. Thus, the service has not been submitted to the Department of
15 Commerce for its review and approval. The parties' inability to reach a final resolution stems
16 from VeriSign's insistence that any such amendment include a reservation of VeriSign's right to
17 contend WLS is not a registry service and not governed by the registry agreements.⁵ [*Id.* at ¶¶ 53,
18 54, 56.] According to plaintiff, ICANN has refused to negotiate in good faith with VeriSign to
19 amend the registry agreements to permit WLS to proceed. [*Id.* at ¶ 61(a).]

20 ARGUMENT

21 I. THE COMPLAINT FAILS TO STATE A VALID CLAIM FOR INTERFERENCE 22 WITH ANY EXISTING CONTRACT.

23 A. The Subject Matter Of The Alleged Contract Between Plaintiff And 24 VeriSign Was Subject To Government Approval.

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26 ⁵ Indeed, VeriSign has filed suit in this Court against ICANN seeking a judicial
27 declaration to the effect that WLS is *not* a registry service, and not subject to any review or
28 approval by ICANN. (A copy of VeriSign's Complaint is attached as Exhibit C to ICANN's
request for judicial notice.) The relevant allegations include paragraphs 38-45.

1 California law is clear that the tort of interference with contract affords protection only to
2 “an *existing, formally cemented* economic relationship.” See *PMC, Inc. v. Saban Entertainment,*
3 *Inc.*, 45 Cal. App. 4th 579, 601 (1996) (emphasis in original) (disapproved on other grounds by
4 *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1159 fn.11 (2003)). Here, the
5 Complaint alleges that plaintiff’s contract with VeriSign will allow for the use of plaintiff’s
6 technology in the proposed implementation of WLS, and WLS must be approved by the United
7 States Department of Commerce before it can be implemented. As such, the contract plainly
8 cannot be performed *unless and until WLS is finally approved by the Department of Commerce.*
9 These undisputed facts defeat plaintiff’s claim for interference with an existing contract as a
10 matter of law.

11 The court of appeal stated the dispositive rule in *A-Mark Coin Co. v. General Mills, Inc.*,
12 148 Cal. App. 3d 312 (1983). There, the plaintiff buyer of rare coins had signed an agreement
13 with the executrices of a Nevada estate to purchase a coin collection owned by that estate.
14 However, that sale was subject to the approval of the probate court. Defendants subsequently
15 offered to purchase the collection at a higher price, with full knowledge of plaintiff’s agreement
16 with the estate. The court of appeal affirmed the trial court’s judgment in favor of defendants,
17 offering the following explanation: “The concept that a contract subject to court approval or
18 other governmental confirmation, and not yet approved or confirmed, is not sufficient to support a
19 claim of tortious interference with contract has been recognized in several cases.” *Id.* at 321.

20 Here, plaintiff entered into a contract with VeriSign pursuant to which it agreed to license
21 certain technology necessary for the implementation of WLS. [See Complaint at ¶ 16.] However,
22 plaintiff’s own allegations (confirmed by the materials that ICANN has submitted for judicial
23 notice) establish that VeriSign’s implementation of WLS is subject to the approval of the
24 Department of Commerce and that such approval has never been obtained. [See, e.g., *id.* at ¶ 49
25 (VeriSign delayed launch of WLS because ICANN “had not yet sought Department of Commerce
26 approval”); ¶ 54 (VeriSign sought “submission [of WLS] to the Department of Commerce for
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1 review and approval”); ¶ 70 (WLS has not been implemented because WLS has not been
2 forwarded to Department of Commerce for approval).]

3 Thus, plaintiff’s own allegations establish that its contract with VeriSign will not have any
4 force or effect unless and until WLS is approved by the Department of Commerce, which
5 approval could not be assumed even once the WLS proposal is forwarded to the Department of
6 Commerce. Thus, the relationship between plaintiff and VeriSign is not the sort of “formally
7 cemented economic relationship” that the tort of interference was designed to protect. Because
8 the subject matter of plaintiff’s contract with VeriSign was -- and remains -- subject to
9 government approval, plaintiff cannot state a valid claim for interference with an existing
10 contract. *See A-Mark Coin, supra*, 148 Cal. App. 3d at 321; *see also Bank of America v. County*
11 *of Los Angeles*, 270 Cal. App. 2d 165, 175 (1969) (finding no interference, tortious or otherwise,
12 where “[t]he contract made with [plaintiff] was subject to confirmation”) (disapproved on other
13 grounds by *Klopping v. City of Whittier*, 8 Cal. 3d 39, 52 fn.5 (1972)).

14 **B. ICANN Has Been Lawfully Protecting Its Rights Under Its Own**
15 **Separate Agreements With VeriSign.**

16 In paragraph 61 of the Complaint, plaintiff makes a number of allegations regarding the
17 conduct of ICANN's "staff." For example, the staff "refus[ed] to negotiate in good faith with
18 VeriSign," "misrepresent[ed] ICANN's plans" to the Department of Commerce," and
19 "misrepresent[ed] when and how ICANN would respond to proposals by VeriSign to amend the
20 Registry Agreement[s]." Even if any of these allegations were correct (and they are not), none of
21 these allegations involve duties that ICANN might have had to plaintiff; instead, any
22 "misrepresentations" or "refusals to negotiate" might (or, most likely, might not) involve duties
23 owed to VeriSign or to the Department of Commerce.

24 In their core, plaintiff's allegations boil down to the notion that ICANN should have
25 amended its agreements with VeriSign and that ICANN's failure to do so gives rise to a claim in
26 favor of SnapNames. But the law does not permit strangers to a contract to require the
27 contracting parties to amend their contract.

1 The tort duty not to interfere with contracts was developed to protect the expectations of
2 *contracting* parties against frustration by *strangers*, i.e., “interlopers who have no legitimate
3 interest in the scope or course of the contract’s performance.” See *Applied Equipment Corp. v.*
4 *Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994). Thus, “an entity with a direct interest or
5 involvement in that [contractual] relationship is not usually liable for harm caused by pursuit of
6 its interests.” See *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832 (9th
7 Cir. 2001) (construing California law).⁶ Here, the allegations of the Complaint demonstrate that
8 ICANN has a substantial and direct interest in plaintiff’s alleged contract with VeriSign, arising
9 out of its own separate (and pre-existing) agreements with VeriSign. ICANN’s conduct in
10 protecting its own pre-existing contractual relationships with VeriSign (and by allegedly
11 declining to amend those contracts) was privileged as a matter of law.

12 It is well-established that in a proper case, interference with the contractual right of
13 another may be justified and therefore privileged. See, e.g., *Los Angeles Pie Bakers Ass’n v.*
14 *Bakery Drivers Local No. 276*, 122 Cal. App. 2d 237, 243 (1953); *Halvorsen, supra*, 65 Cal. App.
15 4th at 1391. One such privilege arises where two parties have separate contracts with a third, in
16 which case “each may resort to any legitimate means at his disposal to secure performance of his
17 contract even though the necessary result will be to cause a breach of the other contract.”
18 *Imperial Ice Co. v. Rossier*, 18 Cal. 2d 33, 37 (1941) (emphasis added).

19 In support of this proposition, the *Imperial Ice* Court cited *Knapp v. Penfield*, 256 N.Y.S.
20 41 (N.Y. Sup. Ct. 1932), which provides further insight regarding the proper application of the
21 rule.⁷ There, the defendant had entered into a contract with a theatrical producer, pursuant to
22 which the former agreed to finance, and the latter agreed to produce, a musical play. When the
23 producer hired the plaintiff actress for one of the leading roles, defendant objected and forced the
24 producer to replace plaintiff with another actress. The New York court held that defendant could
25 not be liable for interference with plaintiff’s employment contract, stating that “[p]ersons acting

26 ⁶ A copy of the *Marin Tug & Barge* decision is included in ICANN’s appendix of
27 authorities

28 ⁷ A copy of the *Knapp* decision is included in ICANN’s appendix of authorities .

1 *for the protection of contract rights of their own which are of an equal or superior interest to*
2 *another's contractual rights may invade the latter with impunity." See id. at 44 (emphasis*
3 *added). The Court concluded that plaintiff's employment contract was "subordinate" to*
4 *defendant's prior agreement to finance the production, given that plaintiff would not have had any*
5 *employment but for that original agreement. See id.*

6 The California Court of Appeal applied this same rule in *Lawless v. The Brotherhood of*
7 *Painters, Decorators and Paperhangers of America*, 143 Cal. App. 2d 474, 478 (1956). There,
8 plaintiffs were creditors of a local union affiliated with the defendant parent international union
9 (the "Brotherhood"). The Brotherhood had dissolved the local union ostensibly based on the
10 latter's failure to comply with the constitution of the Brotherhood,⁸ and thereby rendered the local
11 unable to pay its debts to the plaintiffs. The court rejected plaintiffs' claims for interference,
12 stating that "[t]he Brotherhood was privileged to insist upon its contract with the local (the
13 constitution of the Brotherhood), even though such insistence rendered the local unable to
14 perform its obligations to its creditors." 143 Cal. App. 2d at 478.

15 These authorities compel the conclusion that ICANN's conduct in the present case was
16 privileged. Plaintiff's own allegations establish that WLS cannot be implemented unless and
17 until certain additional terms are incorporated into ICANN's pre-existing registry agreements
18 with VeriSign. [See Complaint at ¶ 45 (ICANN's board authorized its president and general
19 counsel to negotiate the necessary revisions to the registry agreements to allow for the offering of
20 WLS); ¶ 54 (VeriSign offered to sign an amendment to the registry agreements that incorporated
21 terms necessary for implementation of WLS).] ICANN plainly was not a "stranger" to the
22 alleged contractual relationship between plaintiff and VeriSign; to the contrary, the proposed
23 introduction of WLS directly implicated -- and indeed *threatened* -- ICANN's rights under the
24 registry agreements.

25 ICANN required an amendment to the registry agreements before VeriSign could
26 implement WLS; plaintiff obviously could not compel ICANN to amend those agreements and,

27 ⁸ The Brotherhood's actions against the local had arisen out of accusations that an officer
28 of the local was associating with "communists and subversives." See 143 Cal. App. 2d at 476-77.

1 thus, could not file suit against ICANN for "interfering" with WLS. Indeed, plaintiff
2 acknowledges that ICANN's refusal to execute the necessary amendment to the registry
3 agreements followed from VeriSign's own refusal to agree that WLS is a "registry service." [See
4 *id.* at ¶ 54 (ICANN has failed to proceed because VeriSign will not waive its position that WLS is
5 not a registry service); ¶ 56 (VeriSign has continued to insist on a "conditional amendment").]
6 Thus, plaintiff's own allegations demonstrate that ICANN was acting to defend its rights under its
7 separate and superior contracts with VeriSign, *i.e.*, by resisting the "conditional" amendments
8 proposed by VeriSign. As such, ICANN's conduct was privileged, and cannot support a claim
9 for tortious interference. See *Imperial Ice, supra*, 18 Cal. 2d at 37; *Lawless, supra*, 143 Cal. App.
10 2d at 478.

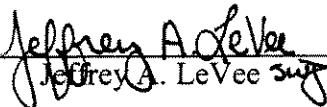
11 Whether ICANN had an obligation to negotiate in good faith with VeriSign to amend the
12 contracts, ICANN obviously owed *plaintiff* no obligation to negotiate in good faith with
13 VeriSign. Nor did ICANN owe any other obligations to *plaintiff* merely because plaintiff entered
14 into an agreement with VeriSign that post-dated ICANN's agreements with VeriSign.

15 CONCLUSION

16 Defendant ICANN requests that the Court sustain this demurrer and dismiss the
17 Complaint in its entirety, with prejudice.

18 DATED: January 7, 2005

JONES DAY

19
20
21 By:  _____
Jeffrey A. LeVe *supg*

22 Attorneys for Defendant
23 INTERNET CORPORATION FOR
24 ASSIGNED NAMES AND NUMBERS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 West Fifth Street, Suite 4600, Los Angeles, California 90013.

On January 7, 2005, I caused to be served the document described as:

**NOTICE OF HEARING ON DEMURRER AND DEMURRER BY DEFENDANT
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS;
MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested parties in this action.

X **BY (U.S. MAIL)**. I placed _____ the original X a true copy thereof enclosed in sealed envelope(s) to the addressee(s) as follows:

Shaye Diveley
Attorney at Law
111 Sutter Street, Suite 700
San Francisco, CA 94104

____ **BY PERSONAL SERVICE**. I placed ___ the original X true copies thereof enclosed in sealed envelope(s) and caused such envelope to be hand delivered via messenger to the offices of the addressee(s) as follows:

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 at Los Angeles, California 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 of mailing in affidavit.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 7, 2005, at Los Angeles, California.

Elba Alonso de Ortega
Type or Print Name


Signature