

**AMERICAN ARBITRATION ASSOCIATION**

BLUEBERRY SOFTWARE INC. )  
 )  
 Claimant, )  
 v. )  
 )  
 PARAMETRIC TECHNOLOGY CORP. )  
 )  
 Respondent. )  
 )

AAA No: 54 180 Y 01325 06  
Case Manager: Hannah R. Cook  
Arbitrator: Kathryn J. Humphrey

**BLUEBERRY SOFTWARE, INC.'S  
RESPONSE TO ARBITRATOR'S  
REQUEST**

**Blueberry's Evidence of Delays**

At our previous telephone conference on April 4, 2007, Blueberry was asked to submit evidence supporting its statements regarding delays it encountered in its attempts to perform an audit of Arbortext. The attached documents are examples of the aforementioned delays.

The documents include statements from Lawrence Bernheim, attorney for ex-partner Kevin Dwan, Dick Blair, the court appointed Receiver charged with collecting and disbursing royalty payments, Dave Peralta, the CFO of Arbortext, and D. Lowell Jensen, the presiding Judge in these matters.

**Rules Dealing with "Motion to Dismiss"**

Blueberry was also asked to submit its opinion about which "Rule" should be applied regarding Parametric's "Motion to Dismiss."

The Contract Agreement between Blueberry and Arbortext/PTC called for arbitration to settle disputes. This contract is still ongoing.

**Rule 12(b)**

Motion to Dismiss (governed under the Federal Rules of Civil Procedure (FRCP), Rule 12(b)) is a dispositive motion that basically states that no information needs to be shared

or discussed between the parties, that the judge can dismiss the lawsuit as a matter of law without having assessed the facts of the case.

### Rule 56

Rule 56 under the FRCP governs motions for Summary Judgment. This means that the party bringing the Motion has undergone fact-finding and determined that the major facts are not in dispute. With those facts not in dispute, the Judge can decide the case as a matter of law. As added protection in these instances, the Judge must view these facts in a light that is most favorable to the party who did NOT file the Motion for Summary Judgment.

If Blueberry were in a Court of law, the appropriate standard to apply to PTC's Motion would be under Rule 12(b). However, Blueberry is NOT in a court of law, but has paid a lot of money for an Arbitrator to weigh the facts of the dispute and to reach a decision.

### Standards under AAA Rules

There is no AAA rule corresponding to Rule 12(b) or Rule 56. The plain reason for this is that matters are brought before arbitrators to be resolved ON THEIR MERITS. The AAA process is not about resolving pre-trial motions. If that were the case, there might be at least one AAA Rule addressing dispositive motions. There is not.

The AAA Rule that might come the closest is Rule 34, entitled "Interim Measures." Under this Rule the arbitrator may take such measure as she deems necessary—including injunctive relief—for the protection or conservation of property. The interim measures may take the form of a damage award, but this presumes that the arbitrator has heard arguments, assessed the evidence and ruled on liability.

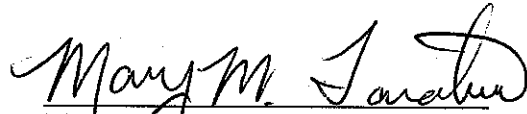
Again, there is NO AAA Rule governing Motions that would dispose of the dispute in its entirety, a so-called "dispositive motion."

Blueberry believes that the only conclusion is that the arbitrator should deny PTC's dispositive motion and proceed with a full substantive hearing and decide the case based on the facts presented.

Respectfully Submitted,

Dated: April 16, 2007

Blueberry Software, Inc.

A handwritten signature in cursive script that reads "Mary M. Tarantino". The signature is written in black ink and is positioned above the printed name and address.

Mary Tarantino  
Blueberry Software, Inc.  
P.O. Box 271235  
Concord, CA 94527  
(925) 798-4376

NOV-18-2003 TUE 03:45 PM BERNHEIM &amp; HICKS

FAX NO. 707528

P. 02/10

**BERNHAIM  
& HICKS**  
ATTORNEYS

November 18, 2003

**VIA TELECOPIER**

LAWRENCE BERNHEIM

RICHARD J. HICKS

Richard G. Blair  
1676 North Carolina Boulevard, Suite 200  
Walnut Creek, CA 95490-4137

Re: *Beigel v. Dwan*  
Our File Number: 3074-40703

Dear Mr. Blair:

I write to you on two points, both of which need immediate attention.

1. **Settlement of the Arbortext Royalty Issue**

Arbortext has contacted Kevin – and perhaps Mr. Beigel – offering to make a single \$100,000 payment to resolve all outstanding issues between Arbortext and the Partnership. They claim that their servicing arrangements with Mr. Beigel have not been working to their satisfaction, they have been doing their own fixes for some time, and they would like to terminate their contract, subject to an ongoing right on their part to continue using the software. Kevin believes this is a good deal. He is concerned that if we reject it, Arbortext may initiate steps to terminate the relationship altogether. (His concern is based in part on extensive testimony from Mary Tarantino during last summer's trial which described communications between the Beigels and Arbortext personnel, some of which were quite heated.)

It is our position that you should contact Arbortext (their attorney is Ted Herzog) at Dorsey & Whitney, LLP, 50 South 6<sup>th</sup> Street, Suite 1500, Minneapolis, MN 55402-1498 (phone: 612/340-2600; fax: 612/340-2868), and explore settlement. Kevin is willing to accept a cash buyout of the contract, without prejudice to how those monies would be apportioned between the parties or whether some of those monies will be used to resolve the MBNA debt.

2. **The MBNA Debt**

Enclosed please find a copy of an arbitration forum claim received by Mr. Dwan on November 13, 2003. This was the debt that Mr. Beigel was specifically ordered to pay. We are taking the position with MBNA that Kevin is not liable on this debt because

MAIN OFFICE AND  
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2511A STREET  
SANTA ROSA, CA 95401  
TEL: 707 528 7233  
FAX: 707 528 2307

SONOMA OFFICE:  
6711 WEST NAPA STREET  
SUITE B  
TEL: 707 535 3620

**EXHIBIT E**

NOV-18-2003 TUE 03:45 PM BEP  
M & HICKS

FAX NO. 70752 007

P. 03/10

Richard Blair  
November 18, 2003  
Page 2

some months ago a settlement agreement was entered into between MBNA with Mr. Beigel, without Mr. Dwan's knowledge, consent, or participation.

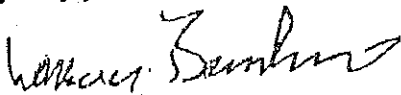
Notwithstanding that position, and without waiving that position as between the parties, Mr. Dwan believes that a compelling reason to immediately resolve the Arbortext claim is that it will provide money to settle the MBNA claim, thus avoiding the attorneys' fees, costs, and ongoing interest expenses of that claim. The parties can then work out their respective liabilities on their own. Kevin does not want to be in a position where Mr. Beigel is taking funds out of the Partnership (in addition to the extensive assets he has already received) and leaving this debt to be paid by Mr. Dwan.

With respect to this arbitration claim, it is our position that you, as Receiver, should contact opposing counsel, negotiate the best number possible, indicate to them that the best source of proceeds is a payment from Arbortext, and then negotiate settlement of the Arbortext claim.

If you feel that any one of these steps is beyond your powers, perhaps we should have a joint phone call with Mr. Beigel. I hope Mr. Beigel will realize that if we do not take immediate steps to resolve the Arbortext and MBNA issues, we could be left in a situation where \$10,000 or \$15,000 later in attorneys' fees we will have not only lost a substantial portion of the Arbortext payment stream, but the MBNA debt will still be out there.

Thank you for your immediate attention to this situation.

Very truly yours,



LAWRENCE BERNHEIM

LLB:mj  
Enclosure

cc: Steven Beigel (via U.S. Mail)  
Kevin Dwan

January 14, 2004

**VIA TELECOPIER**

Richard G. Blair, Esq.  
1676 North Carolina Boulevard, Suite 200  
Walnut Creek, CA 95490-4137

LAWRENCE BERNHEIM

RICHARD J. HICKS

Re: *Beigel v. Dwan*  
Our File Number: 3074-40703

Dear Mr. Blair:

My client continues concerned about the Arbortext contract, its performance, and the accounts receivable arising therefrom.

Mr. Beigel, Kevin, and yourself have all received information indicating Arbortext's dissatisfaction with aspects of the former Partnership's performance. It was apparent from her trial testimony, that Ms. Tarantino - who is not a member of the Partnership - has been confrontational and abrasive with Arbortext in the past. Ms. Tarantino recently represented that she and Mr. Beigel, on their own, were soliciting legal representation which could involve the former Partnership and Kevin in a lawsuit with Arbortext, potentially exposing Kevin to liabilities, including court costs and attorneys' fees, plus contract damages in connection with any counter-claim that Arbortext might bring.

The law firm referenced by Ms. Tarantino did not respond to my inquiries. (See my letter of December 31, 2003.) It is our opinion that any law firm representing Mr. Beigel with respect to issues arising from the Arbortext contract would necessarily have to protect the interests of the former Partnership, the Receiver and its individual partners, including accounts receivable to which the former Partnership may be entitled.

We appreciate your conscientious attempts to perform as a Receiver in this action. We also recognize that the Beigels - without counsel - may not be fully aware of the scope of your responsibilities and powers.

That said, you have a responsibility, as Receiver, to prevent either partner, individually, from taking any action which might prejudice the former Partnership's assets, including entitlements to accounts receivables and royalty payments, and to evaluate any buy-out proposals by Arbortext in the context of the best interest of the former Partnership.

MAIN OFFICE AND  
MAILING ADDRESS:  
528 A STREET  
SAN RAFAEL, CA 94901  
TEL: 707 520 7555  
FAX: 707 520 2107

SONOMA OFFICE:  
670 WEST NAPA STREET  
SUITE 11  
TEL: 707 939 3620

**EXHIBIT G**

Richard Blair  
January 14, 2004  
Page 2

We submit that you must act on these issues, or, at a minimum, seek immediate direction from the Court. Mr. Beigel has a duty to you and to his former partner to immediately disclose any actions which he has taken or is contemplating taking with respect to confrontation of Arbortext.

Very truly yours,



LAWRENCE BERNHEIM

LLB:mj

cc: Steven Beigel (via U.S. Mail)  
Kevin Dwan



**Morgan Miller Blair**  
A LAW CORPORATION

1676 NORTH CALIFORNIA BOULEVARD, SUITE 200 WALNUT CREEK, CALIFORNIA 94596-4137  
925.937.3600 925.943.1106 FAX www.mmblaw.com

RICHARD G. BLAIR  
dblair@mmblaw.com

February 6, 2004

Steven Beigel  
995 Court Lane  
Concord, CA 94518

Kevin Dwan  
7244 Wilton Avenue  
Sebastopol, CA 95472

Re: Blueberry Software Receivership  
Our File No. 9512-001

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Gentlemen:

Enclosed is a letter which I have sent to Judge Jensen along with my Second Report and Request for Direction. The letter is self explanatory. I have spoken with Francis Stone, his clerk, and she advises that a simple one sentence sealing order will suffice to keep the report confidential. A copy of that Motion for Order Sealing Report and Order Thereon is also enclosed.

She further advised that the earliest practicable hearing date would be Friday, February 13. I cannot attend that date. However, she thought that the next Friday, February 20, would also suffice. Of course, Judge Jensen may have his own ideas. Apparently, he will begin a trial this coming Tuesday.

I think it is important to have a full discussion of all aspects of my report. In particular, I am certainly aware that Steve Beigel feels that it would not be proper to negotiate a buyout of the contract with Arbortext. Each of you should present your thoughts on this matter to the court. I am also hopeful that by the date of the hearing (if it is February 20) that I will have received a concrete proposal from counsel for VistaSource.

Today I received the Fourth Quarter 2003 Arbortext payment in the sum of \$9,271.65. I will deposit it in the Mechanic's Bank account and request your proposal as to how the said funds should be disbursed.

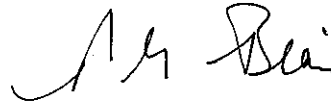
In summary, I hope to have a hearing some time within the next two weeks at which time we will can discuss the decisions presented to the Receivership. I think it is very important that there be no public filings which would prejudice our legal position with respect to both Arbortext and VistaSource. That was the reason for my request that my report be sealed or held unfiled and that the discussion be held in-camera.



Finally, I do not have a copy of the Blueberry/Arbortext contract. Dave Peralta of Arbortext advised me that the contract has roughly three years to run but I cannot verify this because I do not have the agreement. If either of you have the agreement, please provide it to me and to one another as soon as possible.

Very truly yours,

MORGAN MILLER BLAIR

A handwritten signature in cursive script, appearing to read "R G Blair".

RICHARD G. BLAIR

RGB:cab

cc: Lawrence Bernheim

MMB: 9512-001:353555:1



1000 Victors Way  
Ann Arbor, MI 48108  
Tel: 734.327.6859  
Fax: 734.623.6128  
Email:  
dperalta@arbortext.com

344.64

March 18, 2004

Richard G. Blair  
Morgan Miller Blair  
1676 N. California Blvd., Suite 200  
Walnut Creek, CA 94596-4137

Dear Mr. Blair,

In response to your request of this week, this letter serves to summarize Arbortext's offer to buyout its existing contract with Blueberry Software.

Last November, Raymond Schiavone, Arbortext's CEO, and I had a telephone conversation with Mary Tarantino of Blueberry Software. During this conversation, we verbally offered to make a lump-sum cash payment of \$100,000 to Blueberry in exchange for a non-exclusive, perpetual, and royalty-free license for the source code and object code of the "Blueberry Software", including unlimited rights to modify, enhance and distribute the software globally. We are interested in a buyout for two primary reasons: (i) Blueberry has not continued to maintain the software (the last source code update that we received from Blueberry was in December 2002), and (ii) our relationship with Blueberry has largely turned negative and unproductive. Blueberry has rejected our offer.

We believe a \$100,000 buyout fee represents a reasonable amount to pay Blueberry for the software, based on the following:

- For 2003 product sales, Arbortext paid Blueberry royalties of \$33,520 under the existing contract;
- For a similar level of product sales in 2004 and future years, Arbortext will pay Blueberry annual royalties of \$29,112 under the existing contract;
- Microsoft Word 2003 now has built-in XML support. As this version of Word becomes more widely adopted, we expect the need for the Blueberry technology in our client base to lessen dramatically over the next 2-3 years;
- Notwithstanding the above, if we assume three years to be the remaining life of the software, the net present value of royalties to be paid over the next three years approximates \$77,000 (assuming \$29,000 in annual royalties and an 8% discount rate). The \$100,000 buyout fee represents a 30% premium over this amount;
- Finally, our contract with Blueberry contains a two-year notice provision in the event of termination. Given our tenuous relationship with Blueberry, we are in the process of considering alternative sources of the technology. In the event we terminate the contract, our royalties to Blueberry would cease two years thereafter.

In making the offer summarized above, our intention was to achieve a resolution acceptable to both Blueberry and Arbortext. We hope this information is helpful in your proceedings. If you have questions, do not hesitate to call me.

Very Truly Yours,

David Peralta  
Chief Financial Officer, Arbortext



**Morgan Miller Blair**  
A LAW CORPORATION

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RICHARD G. BLAIR  
dblair@mmblaw.com

May 21, 2004

**VIA FACSIMILE**

Steven Beigel  
995 Court Lane  
Concord, CA 94518

Kevin Dwan  
7244 Wilton Avenue  
Sebastopol, CA 95472

Lawrence Bernheim, Esq.  
Bernheim & Hicks  
528 A Street  
Santa Rosa, CA 95401

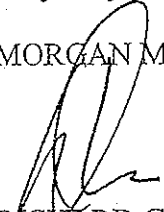
Re: Blueberry Software Receivership  
Our File No. 9512-001

Dear Steve, Kevin and Larry:

Attached is a transcription of a voice mail which Dave Peralta left several days ago (I've been out of the office, ill). In the meantime, I also received an email from Mary Tarrantino indicating that I should now call Peralta to advise him of the approaching audit. I am concerned that the audit may push Arbortext in the direction of a cancellation, and not a buyout. I think it would be prudent to revisit this concept with Judge Jensen. I intend to contact his clerk to ascertain whether the court wishes have further discussion of the audit in light of this email.

Very truly yours,

MORGAN MILLER BLAIR

  
RICHARD G. BLAIR

RGB:cab



## MEMORANDUM

TO: FILE/RGB 9512-001

VM FROM: DAVE PERALTA

DATE: May 19, 2004

RE: Beigel v. Dwan Receivership

SUBJECT: ARBORTEXT

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Hi Dick, this is Dave Peralta from Arbortext. It is Wednesday afternoon about 1:30 my time - that's East Coast time. I got your message of a few weeks back and I appreciate you following up and giving me the background in terms of where things stand. I guess I am optimistic that the court will support a buyout somewhere along the lines consistent with what we presented to you in that letter. I will say this though, and I kind of wanted to discuss this interactively so I can give you a feel for where we are at, we have been researching other alternatives given the situation and given the concern over the lack of support from Blueberry, and I think we have a viable alternative solution now that I think would be quite a bit less expensive for us. So I just wanted to preface any future discussions you might have with the Judge that that's only one of the factors in our minds as we go forth. If you get a chance, you want to give me a call, I'd be happy to share that with you. I'm actually working from home today. My home business line is (734) 513-9437. Otherwise I will be back in the office - actually I'll be in the home office tomorrow - but I'll be in the regular office on Friday. Thanks Dick, hope all is well. Take care.

RGB



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925.937.3600 925.943.1106 FAX www.mmlaw.com

RICHARD G. BLAIR  
Direct: (925) 979-3309  
dblair@mmlaw.com

June 11, 2004

**PERSONAL & CONFIDENTIAL -- NOT FOR FILING**

**VIA FEDERAL EXPRESS**

Hon. D. Lowell Jensen  
United States District Court, Northern District  
1301 Clay Street, Suite 400 C  
Oakland, CA 94612-5212

Re: *Beigel v. Dwan - Blueberry Software*  
U.S. District Court Case No. C02 3116 DLJ  
Our File No. 9512-001

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Dear Judge Jensen:

**Introduction**

I wanted to share my thinking regarding the question whether there should be an audit of the Arbortext royalties, in light of several new developments. Plainly, this issue presents the classic - "is a bird in the hand worth two in the bush" conundrum. Arbortext's indication of a lack of support, Arbortext's payment of lessening royalties, Arbortext's indication that it may be planning to use alternate software, together with Arbortext's continuing desire to pursue a buyout, indicates to me that the buyout alternative continues to have great merit. Also recognizing, however, the legitimate need to know whether royalties have been properly paid, I suggest a more conservative and threshold process, pursuant to which all parties engage in an analysis of Steven Beigel's assertion that royalties have been underpaid, so as to substantiate, or negate, one way or another, whether there is a legitimate question whether royalties have indeed been underpaid.

**Attachments**

Attached to this letter as **Exhibit A** is my March 26, 2004 letter to the Court, in which I examine the reasons to do a buyout, the reasons not to do a buyout, and provide a present value analysis of the Arbortext \$100,000.00 buyout.

Attached as **Exhibit B** is a copy of Dave Peralta's voice mail to me dated May 19, 2004 in which he indicates that Arbortext may be pursuing alternative software, and with it implies that the contract may be cancelled.

Attached as **Exhibit C** is a copy of the most recent royalty statement from Arbortext to Blueberry, in the sum of \$4,652.46 for the first quarter of 2004.

**EXHIBIT M**

Attached as **Exhibit D** is an Arbortext printout entitled "Invoice Blueberry Register for 1/1/1999 to 3/31/2004" which appears to indicate Arbortext royalties paid to Blueberry for the stated time frame.

### **New Developments**

Since the Court's discussion of this issue earlier this Spring, I perceive several new developments.

First, Peralta's voice mail (See Exhibit B) indicates that Arbortext has "a viable alternative solution now that I think would be a quite a bit less expensive for us." Whether this is bluff, or not, his statement is consistent with earlier statements that he made regarding Arbortext's perception of a need to find an alternative software to the Blueberry Software given the alleged lack of support.

Second, in my March 26 letter, I assumed quarterly royalties in an amount somewhat in excess of \$7,000 per quarter, for a \$28,000 annual payment and a \$56,000 two year payment under the two year cancellation option (should Arbortext chose to cancel the contract but agreed to pay two year's royalties). What is new is that the last royalty check, for the first quarter of 2004, is in the sum of \$4,652. Should this royalty amount remain relatively constant, this would translate to an \$18,608 annual royalty payment, and a \$37,216 royalty payment should Arbortext elect to cancel the contract but pay two year's worth of royalties. This two year payment is substantially less than the amount which I assumed for purposes of comparing that alternative with the buyout alternative. In simple terms, this makes the buyout even more attractive.

While not new, Arbortext continues to make the assertion (which it has made often) that Blueberry does not provide support for the software. This is something I cannot address first hand; it should be the subject of direct discussion with Steven Beigel.

In short summary, Arbortext's indication that it has found alternative software and its assertion that it does not receive support from Blueberry would seem to justify a buyout, given the increasing difference between the proposed buyout amount (\$100,000) and the reduced amount of minimum royalties which Arbortext would pay if it cancelled the contract under the two year notice provision (an amount of roughly \$36,000 based on first quarter of 2004 royalties of \$4,652.00.)

### **Reason to do an audit**

Obviously there is one reason to do an audit. If there was a reasonable basis to believe that the audit would discover past unpaid royalties in an amount which would generate a net benefit to Blueberry in excess of the buyout net benefit amount, then an audit may be justified. The risk is that if Blueberry pursues an audit without having a reasonable basis to do so, Arbortext may come to the conclusion that it does not want to pursue a buyout, that it has grounds to terminate the contract without payment of two year's royalties, and that it will resort

to litigation to assert its rights. In this case, and unless the audit generated very substantial past unpaid amounts, Blueberry could end up receiving nothing and having to bear substantial attorney's fees which it does not have the financial ability to pay.

I therefore respectfully suggest that the Court require a detailed showing of why an audit is justified and a further showing as to what unpaid royalties are reasonably believed to be provable by an audit so that such dollar amount could be compared to the net benefit to Blueberry of the buyout strategy.

I am told that the subject of Arbortext royalty underpayments was addressed in the litigation; I am in no position to evaluate or judge this issue and would leave it to the litigants to address. I do know that there is a very detailed response from Arbortext's counsel regarding the issue of unpaid royalties and I have not seen any rebuttal to that letter.

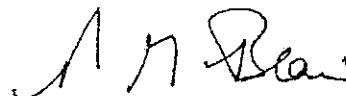
#### Summary

Everybody wants to accomplish the same goal here, which is to maximize the benefit to be obtained from the Arbortext agreement. From what I have seen, I continue to believe that the buyout strategy will generate the greatest net benefit, and also represents the most conservative path. I recognize, however, that each party has a legitimate right to know that royalties have been properly paid. The threshold approach which I suggest above would provide both parties and the Court with the most information to then judge whether an audit was truly justified or was an unduly risky and unjustified search for the "two birds in the bush".

Finally, attached is a letter I received from Michael Kessler, the auditor retained by Mary Tarantino. I have sent him a copy of the Order appointing me Receiver. He requests to participate in the telephone conference. I will leave it to the Court to determine whether he should participate in this conference, or whether this conference should be limited to the parties, the Receiver and the Court, with him to participate in a later conference if and when the Court deems such necessary or appropriate.

Respectfully submitted,

MORGAN MILLER BLAIR



RICHARD G. BLAIR

RGB:cab  
Enclosures

cc: Lawrence Bernheim (via email)  
Steven Beigel (via email)  
Kevin Dwan (via email)

1 **PROOF OF SERVICE**

2 I, the undersigned, certify and declare as follows:

3 I am a citizen of the United States and over the age of eighteen years. I am not a party to  
4 this action. I am employed in the county where the delivery described below occurs and my  
5 business address is 1300 Clay Street, Suite 1000, Oakland, California 94612.

6 On the date indicated below, I caused to be served the following document(s):

7 **BLUEBERRY SOFTWARE, INC.'S RESPONSE TO ARBITRATOR'S REQUEST**

8 On the following party(ies) in this action:

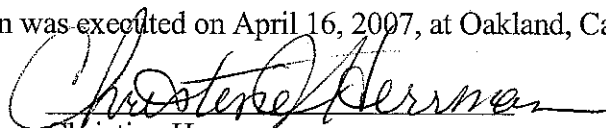
9  
10 A. Michael Palizzi, Esq.  
11 K. Spano, Esq.  
12 Miller, Canfield, Paddock & Stone, PLC  
13 150 West Jefferson, Ste. 2500  
14 Detroit, MI 48226  
15 313.496.7645 (direct)  
16 313.496.8454 (fax)

Hannah R. Cook  
American Arbitration Association-Northeast  
Case Management Center  
950 Warren Avenue  
East Providence, RI 02914  
Toll Free: 866-293-4053  
Direct Dial: (401) 431-4708  
Facsimile: (401) 435-6529

17 As follows:

<input checked="" type="checkbox"/>	<b>BY MAIL (CCP §§ 1013A, et seq.)</b> I am readily familiar with the practice of my employer for the collection and processing of correspondence for mailing with the United States Postal Service, by which correspondence is placed, in a sealed envelope, postage prepaid, in the designated station for outgoing mail, and is the same day delivered to the United States Postal Service. I served such envelopes following this practice.
<input type="checkbox"/>	<b>BY HAND DELIVERY/PERSONAL SERVICE (CCP §§ 1011, et seq.)</b> I caused said envelopes to be personally served.
<input type="checkbox"/>	<b>BY EXPRESS SERVICE (CCP §§ 1913 (c)(d), et seq.)</b> I caused said envelopes to be deposited with an express service carrier or Express Mail in accordance with the carrier's designated practice.
<input checked="" type="checkbox"/>	<b>BY ELECTRONIC TRANSMISSION BY MARY TARANTINO</b>

18  
19  
20  
21  
22  
23  
24  
25 I declare under penalty of perjury under the laws of the State of California that the foregoing  
26 is true and correct, and that this declaration was executed on April 16, 2007, at Oakland, California.

27   
28 Christine Hermann

[6410.006]

PROOF OF SERVICE