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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

JAMIE KIRSCHENBAUM, MARK WEST
and ERIC KEARNS, individually, on behalf of
all others similarly situated and the general
public,

Plaintiffs,

v.

ELECTRONIC ARTS, INC. and DOES 1-100,
inclusive,

Defendants.

No. Civ. 440876

CLASS ACTION

FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR (1) VIOLATION OF
LABOR CODE SECTIONS 201 and 202, 204.
AND 510 ET SEQ.; (2) VIOLATION OF
LABOR CODE SECTIONS 2698 ET
SEQ.; (3) VIOLATION OF BUSINESS &
PROFESSIONS CODE SECTIONS 17200 ET
SEQ.; AND (4) ACCOUNTING

ENDORSED FILED
SAN MATEO COUNTY

NOV 30 2004

Clerk of the Superior Court
By M. YOUNG
DEPUTY CLERK

1 Plaintiffs Jamie Kirschenbaum, Mark West and Eric Kearns ("Plaintiffs") bring this action
2 against Electronic Arts, Inc. ("Electronic Arts") and Does 1-100 (collectively, "Defendants"), on
3 behalf of themselves, all others similarly situated and the general public, upon information and
4 belief, except as to their own actions, the investigation of their counsel, and the facts that are a
5 matter of public record, as follows:

6 OVERVIEW

7 1. As alleged more fully below, Defendants have failed to pay overtime compensation
8 required by California Labor Code § 1194 and applicable Industrial Welfare Commission Orders to
9 their employees whose primary duties are to produce, copy or install images designed by others into
10 video games, using commercial or in-house software computer programs. Such persons include
11 animators, modelers, texture artists, computer graphics artists, lighters, visual effects artists,
12 environmental artists, and employees with similar job titles. Such persons are referred to in this
13 Complaint as "Image Production Employees."

14 2. Plaintiffs bring this action to obtain statutory penalties, damages, punitive damages,
15 restitution, and injunctive relief.

16 THE PARTIES

17 3. Plaintiff Jamie Kirschenbaum is a resident of Redwood City, California, who has been
18 employed by Electronic Arts in California as an Image Production Employee since approximately
19 June 30, 2003.

20 4. Plaintiff Mark West is a resident of San Francisco, California, who was employed by
21 Electronic Arts in California as an Image Production Employee from approximately August 13,
22 2001 to August 29, 2003.

23 5. Plaintiff Eric Kearns is a resident of Las Vegas, Nevada, who was employed by
24 Electronic Arts in California as an Image Production Employee from approximately March 17, 2003
25 to January 30, 2004.

26 6. Electronic Arts is a corporation organized under the laws of Delaware and has its
27 principal place of business in Redwood City, California.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this class and representative action pursuant to Bus. & Prof Code §§ 17200 et seq.; Labor Code §§ 1194 and 2698; and Code of Civ. Proc. § 382. There is no federal question at issue, as the status of Plaintiffs and those similarly situated as “exempt” employees is a question solely of California law and statutes, including the California Civil Code, Labor Code, Code of Civil Procedure, and/or Business & Professions Code.

13. Venue is proper in this County, because Electronic Arts’ headquarters is located here, Plaintiff Kirschenbaum resides in this County, and many of the wrongful acts complained of occurred in this County.

SUBSTANTIVE ALLEGATIONS

14. Electronic Arts is a part of the motion picture, television and theatrical entertainment industry. It competes with companies such as Disney, Sony, Time Warner, Vivendi Universal, Lucas Films and others in the entertainment market. Its products include video game versions of Lord of the Rings, James Bond, Harry Potter and many other popular films, as well as popular television shows such as Saturday morning cartoons or Star Trek.

15. Because the motion picture, television and video game industries use the same or similar types of computer software to produce, copy and install imagery for effects in their products, much of the labor pool that performs such work for each of those industries is common to all of them.

16. Electronic Arts regularly recruits employees creating, copying, reproducing and installing imagery in the motion picture and television industries to perform similar such imaging for Electronic Arts.

17. For example, prior to working for Electronic Arts, Plaintiff Kirschenbaum produced, copied and installed similar computer imagery for effects for motion pictures manufactured by Disney Animation.

18. Electronic Arts models its product development methods and organization on the motion picture and television industries and employs "Producers" who oversee the development of Electronic Arts' products.

19. Once Electronic Arts makes a formal commitment to develop a video game, Producers work with Designers to create a production plan for the game. The Designers create a master design document that specifies the contents of the game, including game play, fiction, characters, and levels. Based in part on that document, Producers create a list of tasks to be done and a schedule under which such tasks are to be performed.

20. Electronic Arts employs Tools and Software Engineers to transform the ideas contained in the master design document into a game prototype. The Engineers perform the computer programming to create the game software needed in order to develop the game.

21. Before the game software is created by the Engineers, Electronic Arts also employs Concept Artists who create paintings and sketches to show how the images in the game will look.

1 These illustrations are noncomputerized models for the computer-generated images that will later
2 appear in the video game. If the video game is based on a particular motion picture or a real person
3 such as a professional athlete, which is often the case, there is less need for a Concept Artist to
4 create illustrations to show how those images should appear in the video game, because the video
5 game images are derived directly from the images in the film or actual images of the professional
6 athlete.

7 22. A variety of types of images appear in video games, including characters (human or
8 other), objects of all kinds, special effects such as explosions, and general background and
9 environment images, including light and shadow. Art Directors oversee and direct the process by
10 which each such image is produced and incorporated into the video game.

11 23. Art Directors and Producers closely supervise and direct the Image Production
12 Employees in the performance of their duties, providing specific instructions and specifications with
13 respect to minute details, such that the images produced, copied or installed by Image Production
14 Employees are consistent with the overall design of the game and that the images will appear
15 alongside each other appropriately. Any image of significance produced, copied or installed by an
16 Image Production Employee is carefully reviewed by Art Directors and/or Producers who routinely
17 request that Image Production Employees alter or refine such image in order to make it fit more
18 appropriately in the game.

19 24. For example, Art Directors (and, in some cases, Producers) commonly perform "dailies"
20 in which they literally stand over the shoulder of an Image Production Employee while that
21 employee is working on an image and review his or her work to indicate what changes are required
22 to render the images satisfactory. These "dailies" occur at least several times a week and, during
23 periods where time is of the essence, can occur one or more times every day. Art Directors and
24 Producers also regularly communicate specific email instructions and requests to Image Production
25 Employees concerning specific images.

26 25. Generally speaking, creative judgments with respect to images produced, copied or
27 installed by Image Production Employees are made by Art Directors, Producers, or Concept Artists.
28

1 26. The first stage of production of an image is performed by modelers, who produce a
2 computerized three-dimensional ("3D") model of the image desired by the Art Directors or
3 Producers; that image is later "painted" or copied on the computer by texture artists. Animators then
4 move the computerized 3D model around within the computer environment to give the appearance
5 of the image moving in some fashion, such as walking, running, or swinging a sword. Lighters
6 and/or background artists "paint" the environment and/or background for the individual images
7 appearing in the video game in the manner requested by the Producers or Art Directors. Similar
8 tasks are performed by Image Production Employees in the motion picture industry.

9 27. The work of Image Production Employees requires the use of computers, and such
10 employees are skilled in the use of the computer software used to produce, copy or install images for
11 video games.

12 28. Image Production Employees do not have management responsibilities. They do not
13 customarily and regularly direct the work of two or more other employees. They do not have the
14 authority to hire or fire other employees, and they are not responsible for making hiring and firing
15 recommendations. Were they to make such recommendations, the recommendations would not be
16 given any particular weight because of their status as Image Production Employees.

17 29. Image Production Employees do not have duties directly related to the creation or
18 implementation of management policies, or to the general business operations of Electronic Arts.

19 30. Image Production Employees do not require a license or certification from the State of
20 California or any other governmental entity in order to perform their jobs.

21 31. Image Production Employees do not perform work requiring knowledge of an advanced
22 type in a field of science or learning customarily acquired by a prolonged course of specialized
23 intellectual instruction and study.

24 32. Image Production Employees do not perform work that is original and creative in
25 character in a recognized field of artistic endeavor. Image Production Employees do not
26 customarily and regularly exercise discretion and independent judgment. Rather, they follow strict
27 instructions and specifications to produce, copy and install images to be used in the video games,
28

1 and they rely on their general manual and intellectual ability and training with computers and certain
2 software programs provided to them by Electronic Arts in order to do so.

3 33. Image Production Employees' work is not predominantly intellectual and varied in
4 character. Image Production Employees neither choose what images to produce, copy or install, nor
5 determine how or where those images should appear in the video game. Instead, they simply
6 provide the images that are assigned to them in accordance with Defendants' instructions and
7 specifications. Producers and Art Directors supervise Image Production Employees closely to
8 ensure timely production of each image assigned to them in conformity with Electronic Arts's
9 specifications and instructions.

10 34. Image Production Employees' job duties do not consist of the application of
11 computer systems analysis techniques and procedures.

12 35. Image Production Employees' job duties do not require them to be highly skilled or
13 proficient in the theoretical and practical application of highly specialized information to computer
14 systems analysis, programming, or software engineering.

15 36. Image Production Employees' duties do not involve computer systems analysis or
16 programming. Instead, their duties only require them to be skilled in the operation and use of
17 computers and computer software to produce, copy or install imagery for effects used in video
18 games or entertainment software.

19 37. Plaintiffs and the other Image Production Employees are or were salaried employees.
20 They regularly work or worked more than eight hours a day and forty hours in a workweek. They
21 have worked on weekends and occasionally on national holidays without being paid any overtime
22 compensation for such work.

23 38. During the Class Period, Defendants were aware of the duties performed by Plaintiffs
24 and the Class. Defendants also were aware that the duties of Plaintiffs and the Class members were
25 inconsistent with exempt status, and that such persons were and are not exempt from the overtime
26 provisions of the California overtime laws.

27 39. In failing to properly compensate Plaintiffs and the Class for overtime hours worked,
28 Defendants acted maliciously, oppressively, and/or fraudulently, and such despicable conduct

1 designed to maximize the Defendants' economic gain was carried out with the wrongful intention of
2 causing injury to Plaintiffs and the Class, in willful and conscious disregard of the rights of Plaintiffs
3 and the Class as established by California law and applicable regulations.

4 40. The harm caused by Defendants' wrongful actions grossly outweighs any benefit that
5 could be attributed to it.

6 **CLASS ACTION ALLEGATIONS**

7 41. Plaintiffs bring this action as a class action pursuant to Code of Civil Procedure Section
8 382 and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of
9 themselves and the following proposed Class:

10 All persons who, from July 29, 2000 up to the time of judgment, are or were
11 (1) employed and/or worked as salaried Image Production Employees for Defendants
12 in California and (2) are or were classified as exempt employees and were not paid
overtime.

13 42. The period between July 29, 2000 and the date of trial or final resolution of this matter is
14 referred to below as the "Class Period."

15 43. The Class members are similarly situated to Plaintiffs and to each other, because they all
16 perform similar duties and assignments, and all have been subject to Defendants' common policy
17 and practice of classifying all Image Production Employees as exempt from the California overtime
18 laws – while at the same time being assigned to duties inconsistent with exempt status. Like
19 Plaintiffs, each member of the Class was employed by Electronic Arts to use computers and
20 computer software programs to produce, copy and/or install images for use in Electronic Arts' video
21 games pursuant to specific instructions and specifications, and subject to close supervision by the
22 Art Directors and Producers, and, like Plaintiffs, no member of the Class has been paid overtime
23 compensation in accordance with the California laws identified herein.

24 44. Furthermore, the Class Members were all subject to the same unlawful policy or plan of
25 Defendants as the Plaintiffs, under which they were classified as exempt from the California
26 overtime laws. Any differences which exist in the job duties of the Image Production Employees
27 are not material to their right to overtime compensation pursuant to the California overtime laws.
28

1 45. Plaintiffs are currently unaware of the identities of all the members of the Class. On
2 information and belief, several hundred persons have worked for Defendants as Image Production
3 Employees in California during the Class Period and would therefore be members of the Class. For
4 this reason, joinder of all members of the Class would be impracticable.

5 46. There are questions of law and fact common to the members of the Class that
6 predominate over any questions affecting only individual members, including:

7 a. whether the duties of Image Production Employees are inconsistent with exempt
8 status under California law;

9 b. whether Defendants' failure to pay Plaintiffs and Class members overtime
10 compensation violates the California Labor Code and applicable Industrial Wage Commission Wage
11 orders;

12 c. whether Defendants failed to keep adequate records of hours worked by Plaintiffs and
13 Class members (and the consequence for such statutory violations if it did not);

14 d. the correct method of calculating back overtime pay;

15 e. whether, by the misconduct alleged herein, Defendants have engaged in unfair and/or
16 unlawful business practices; and

17 f. whether, as a result of Defendants' misconduct, Plaintiffs and the Class are entitled to
18 statutory and other penalties, damages, punitive damages, an accounting, restitution, equitable and
19 other relief.

20 47. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all
21 Class members were subjected to and harmed by Defendants' uniform policy of misclassifying
22 Image Production Employees as exempt from overtime compensation in order to avoid having to
23 pay overtime as required by California law. Any differences between individual Class members'
24 job duties are immaterial to the question of whether Image Production Employees were or were not
25 correctly classified as exempt under California law. Plaintiffs are subject to no unique defenses, as
26 Defendants' policies were uniform throughout California.

27 48. Plaintiffs will fairly and adequately protect the interests of the Class and have retained
28 attorneys experienced in class and employment litigation.

49. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual Class members. All of the facts material to resolving the common legal question of whether exemption from the California overtime laws is appropriate are common to all members of the Class. Facts not common to the Class are not material to resolving the common legal question of whether Defendants' exempt classification of the Class is legally correct. A class action is therefore superior to other available methods for the fair and efficient adjudication of this controversy. A class action is also superior to other available methods for the fair and efficient adjudication for the following reasons:

- a. it is economically impractical for members of the Class to prosecute individual actions;
 - b. the Class is readily definable;
 - c. prosecution as a class action will eliminate the possibility of repetitious litigation;
- and
- d. a class action will enable claims to be handled in an orderly and expeditious manner: a class action will save time and expense and will ensure uniformity of decisions.

50. The prosecution of separate actions against Defendants under California law would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the Defendants. In addition, adjudications with respect to individual members of the Class could as a practical matter be dispositive of the interests of the other members of the Class not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

51. Plaintiffs do not anticipate any difficulty in the management of this litigation.

PRIVATE ATTORNEY GENERAL ALLEGATIONS

52. In addition to asserting class action claims in this action, Plaintiffs assert claims as private attorneys general on behalf of the members of the general public pursuant to Bus. & Prof. Code Sections 17204. The purpose of such claims is to require Defendants to disgorge and restore all monies wrongfully obtained by Defendants through their unfair business practices. A private

1 attorney general action is necessary and appropriate because Defendants have engaged and continue
2 to engage in the wrongful acts described herein.

3 53. Plaintiffs also assert claims as private attorneys general on behalf of all current and
4 former Image Production Employees of Defendants pursuant to Labor Code Sections 2698 et seq.
5 Defendants have violated various provisions of the Labor Code as alleged herein, and thereby
6 caused harm to all current and former Image Production Employees. For each such violation,
7 Defendants owe statutory penalties to be assessed by the Court.

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME WAGES**
10 **(VIOLATION OF LABOR CODE SECTIONS 201 AND 202, 204 AND 510)**

11 54. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
12 herein.

13 55. By their conduct, as set forth herein, Defendants violated California Labor Code § 510
14 et seq. (and the relevant orders of the Industrial Welfare Commission) by failing to pay the Class:
15 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
16 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
17 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in
18 excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh
19 day of work in a workweek.

20 56. Defendants' failure to pay overtime compensation in a timely fashion also constitutes a
21 violation of California Labor Code § 204 which requires that all wages are paid in semimonthly
22 payments. In direct violation of this provision of the Labor Code, Defendants have to date failed to
23 pay any overtime compensation earned by Plaintiffs and the Class during the Class Period. Each
24 such failure to make a timely payment of overtime compensation to Plaintiffs and the members of
25 the Class constitutes a separate violation of Section 204 of the California Labor Code.

26 57. Defendants' failure to pay overtime compensation in a timely fashion also constitutes a
27 violation of California Labor Code Sections 201 and 202 which require that all wages be paid upon
28 termination, or, in the case of an employee who quits without providing at least 72 hours notice,
within 72 hours of the date of quitting. In direct violation of these provisions of the Labor Code,

1 Defendants have to date failed to pay any overtime compensation earned by Plaintiffs and the Class
2 during the Class Period.

3 58. Defendants' violations of California Labor Code §§ 201 and 202, 204, and 510 (and the
4 relevant orders of the Industrial Welfare Commission) were repeated, willful and intentional.

5 59. Plaintiffs and the Class members have been damaged by said violations of California
6 Labor Code §§ 201 and 202, 204, and 510 (and the relevant orders of the Industrial Welfare
7 Commission).

8 60. Pursuant to California Labor Code §§ 510 and 1194 (and the relevant orders of the
9 Industrial Welfare Commission), Defendants are liable to Plaintiffs and members of the Class for the
10 full amount of all their unpaid overtime compensation with interest plus their reasonable attorneys'
11 fees and costs.

12 61. Defendants are also liable to Plaintiffs and members of the Class for statutory penalties
13 due pursuant to Labor Code § 203 and § 210 for their violations of Labor Code §§ 201 and 202, and
14 § 204, respectively.

15 62. Because Defendants' unlawful classification of the Plaintiffs and the Class as exempt
16 from the California overtime laws constituted despicable conduct that was carried out with malice,
17 oppression, or fraud, in willful and conscious disregard for their rights, Plaintiffs and the Class are
18 entitled to exemplary damages to punish the Defendants pursuant to California Civil Code § 3294.

19 **SECOND CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE SECTIONS 2698, ET SEQ.**

21 63. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
22 herein.

23 64. Defendants' conduct as set forth herein has caused injury to Plaintiffs and each member
24 of the Class and violated various provisions of the Labor Code, including but not limited to
25 violations of Labor Code §§ 201 and 202, 204, 510 and 1174. For each such violation, Plaintiffs
26 seek civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for
27 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
28 each subsequent violation or such other civil penalties as are permitted by law.

65. Plaintiffs also seek an award of reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET. SEQ.

66. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

67. Defendants have engaged in unfair, unlawful, and fraudulent business practices as set forth above.

68. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of Bus. & Prof. Code Section 17200, et seq.

69. Plaintiffs, on behalf of themselves and on behalf of the Class and the general public seek an order of this Court awarding restitution, injunctive relief and all other relief allowed under Bus. & Prof. Code Sections 17200 et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civ. Proc. Section 1021.5.

FOURTH CAUSE OF ACTION
ACCOUNTING

70. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

71. Plaintiffs and members of the Class are owed wages which equal the sum of overtime compensation not paid by Defendants to them, statutory interest on such compensation, and waiting time penalties.

72. Plaintiffs do not know the precise amount of compensation due to Plaintiffs and each member of the Class. Upon information and belief, Plaintiffs allege that Defendants possess records from which the amount of compensation due and owing to Plaintiffs and each member of the Class can be determined.

73. The amount of statutory interest and penalties owed to Plaintiffs and each member of the Class is based upon the amount of compensation owed by Defendants. This amount can only be determined by an accounting of books and records in the possession of Defendants.

74. Because it is impossible for the Plaintiffs to determine the exact amount of money due to Plaintiffs and members of the Class without a detailed review of Defendants' books and records

1 and/or discovery in this action, Plaintiffs seek, among other things, an accounting of books and
2 records in the possession of Defendants and/or the appointment of a receiver to determine the
3 compensation owed to Plaintiffs and Class members.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the
6 General Public pray for judgment against Defendants as follows:

7 A. An order certifying this case as a class action and appointing Plaintiffs and their counsel
8 to represent the Class;

9 B. A judgment awarding Plaintiffs and members of the Class compensatory damages in an
10 amount to be proven at trial, together with prejudgment interest at the maximum rate allowed by
11 law;

12 C. An order requiring Defendants to immediately cease their wrongful conduct as set forth
13 above; enjoining Defendants from continuing to improperly classify Image Production Employees
14 as exempt from California overtime regulations and failing to pay such employees overtime wages;

15 D. Restitution and disgorgement of all amounts obtained by Defendants as a result of their
16 misconduct, together with interest thereon from the date of payment, to the victims of such
17 violations;

18 E. An accounting of books and records in the possession of Defendants and/or the
19 appointment of a receiver to determine the compensation owed to Plaintiffs and Class members;

20 F. Statutory penalties as permitted by law, including waiting time penalties;

21 G. Reasonable attorneys' fees and the costs of this action as permitted by law, including but
22 not limited to California Labor Code § 1194 and Code of Civ. Proc. § 1021.5;

23 H. Punitive damages;

24 I. Statutory pre-judgment interest; and

25 J. Such other relief as this Court may deem just and proper.
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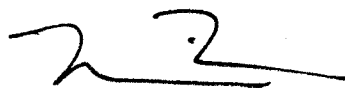
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JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

November 30, 2004

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of All Others Similarly Situated and the General
Public*

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PROOF OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco, State of California; that I am over the age of eighteen (18) years and not a party to the within action; that I am employed at Schubert & Reed LLP, Two Embarcadero Center, Suite 1660, San Francisco, California 94111; that on the date set out below, I served a true copy of the attached:

FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR (1) VIOLATION OF LABOR CODE SECTIONS 201 AND 202, 204, AND 510 ET SEQ.; (2) VIOLATION OF LABOR CODE SECTIONS 2698 ET SEQ.; (3) VIOLATION OF BUSINESS & PROFESSIONS CODE SECTIONS 17200 ET SEQ.; AND (4) ACCOUNTING

on the person listed below, by placing said copy enclosed with postage thereon fully prepaid, in the United States mailbox at San Francisco, California, addressed as follows:

Lynne Hermle, Esq.
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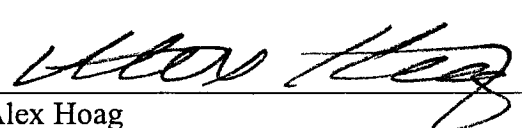
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Counsel for Plaintiff

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 30th day of November, 2004 in San Francisco, California.


Alex Hoag