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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91168906
Party	Plaintiff The American Academy of Neurology
Correspondence Address	Erika S. Koster Oppenheimer, Wolff & Donnelly LLP 45 South Seventh Street , Suite 3300 Minneapolis, MN 55402 UNITED STATES dprange@oppenheimer.com
Submission	Other Motions/Papers
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Signature	/David A. Prange/
Date	11/04/2008
Attachments	Stipulation for Entry of Judgment and Exhibit 1.pdf (13 pages)(575521 bytes) Proposed Order.pdf (1 page)(19217 bytes) Certificate of Service.pdf (2 pages)(32957 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The American Academy of Neurology,	)	Opposition No. 91168906
	)	
Opposer	)	Mark: BRAIN MATTERS
	)	
v.	)	Serial No. 78/321,810
	)	
Brain Matters, Inc.,	)	Filing Date: 10/31/2003
	)	
Applicant	)	Published: 12/20/2005
	)	

STIPULATION FOR ENTRY OF JUDGMENT

IT IS HEREBY STIPULATED AND AGREED, by and between the parties and their respective counsel as follows:

1. On October 31, 2003, Applicant Brain Matters, Inc. ("BMI") filed U.S. Trademark Application Serial No. 78/526,186 for the term BRAIN MATTERS for "brain imaging services, brain diagnostic services" (the "Application"). The goods and services were thereafter amended on December 13, 2004, to be "medical services, namely brain imaging services, brain diagnostic services." The Application was published for registration on December 20, 2005.

2. Opposer The American Academy of Neurology (the "Academy") filed the present Opposition, Opposition No. 91168906 (the "Opposition"), to oppose registration of BMI's term BRAIN MATTERS as provided in the Application on the basis that the registration of BRAIN MATTERS is likely to cause confusion or to cause mistake and deception among purchasers and potential purchasers, both among the general public and among physicians, with Academy's previously used and duly registered trademark THE BRAIN MATTERS, U.S. Registration No. 2,663,399.

3. During the course of the Opposition, on February 15, 2008, Applicant BMI filed for Chapter 11 bankruptcy, thereby staying this Opposition. The bankruptcy was resolved by the sale of all assets, including the Application, to CereScan Corp. (BMI hereinafter referred to as "CereScan"), located at Jackson Place, 300 South Jackson Street, Suite 200, Denver, Colorado, 80209, as provided in the Sale Order, attached as Exhibit 1 to this Stipulation. Upon resolution of the bankruptcy proceeding, this Opposition resumed.

4. The parties desire to resolve this opposition proceeding without further delay. CereScan admits that the registration of the term BRAIN MATTERS for the goods and services provided in the Application is likely to cause confusion or to cause mistake and deception among purchasers and potential purchasers, both among the general public and among physicians, with Academy's previously used and duly registered THE BRAIN MATTERS mark, resulting in damage to Academy.

5. The parties agree that Academy is entitled to have its opposition sustained and that registration of the term BRAIN MATTERS be refused.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The parties agree that Academy shall be entitled to have judgment and CereScan shall consent and stipulate to their taking a judgment, adjudging that registration of the term BRAIN MATTERS for the goods and services provided in the Application is likely to cause confusion or to cause mistake and deception among purchasers and potential purchasers, both among the general public and among physicians, with Academy's previously used and duly registered THE BRAIN MATTERS mark, resulting in damage to Academy.

2. Academy shall be entitled to judgment and that this Opposition be sustained and that registration of the term BRAIN MATTERS be refused.

Dated: November 4, 2008.

OPPENHEIMER WOLFF & DONNELLY LLP

By: _____
Edward M. Laine
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ATTORNEYS FOR OPPOSER
AMERICAN ACADEMY OF NEUROLOGY

Dated: Oct. 29, 2008

CERESCAN CORP.

By: _____
David Stafford Johnson, Esq.

Its: Director of Brain Forensics and General Counsel

Attachment: Exhibit 1 – Order Approving the Sale of Substantially All of the Debtors' Assets and Business Free and Clear of All Liens, Claims and Encumbrances Pursuant to 11 U.S.C. § 363.
Certificate of Service

STIPULATION FOR ENTRY OF JUDGMENT

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:	)	
	)	Case No. 08-11721-HRT
BRAIN MATTERS, INC.	)	Chapter 11
EIN: 77-1544869	)	
	)	
Debtor.	)	
_____	)	
	)	
BRAIN MATTERS IMAGING AND	)	Case No. 08-14792-HRT
TREATMENT CENTERS, INC.,	)	Chapter 11
EIN: 26-1274075	)	
	)	
Debtor.	)	
_____	)	
	)	
IMMUNE HEALTH TECHNOLOGIES,	)	Case No. 08-14794-HRT
LLC	)	Chapter 11
EIN: 20-8385669	)	
	)	**Jointly Administered Under**
Debtor.	)	**Case No. 08-11721-HRT**

ORDER APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363

This matter is before the Court on the Motion of the above-referenced Debtors and Debtors in possession (the "Debtors"), for an Order Approving the Sale of Substantially All of the Debtors' Assets and Business Free and Clear of All Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. § 363 (the "Sale Motion;"). In the Sale Motion, the Debtors seek the entry of an order (the "Sale Order"): (i) authorizing and approving that certain asset purchase agreement (the "APA") and other related documents between the Debtors and Newco Brain Matters Corp., now known as Cerescan Corp. (the "Buyer"); (ii) authorizing the sale of substantially all of the Debtors' assets (the "Assets," as further identified in the Sale Motion and the APA), to the Buyer free and clear of all liens, claims, interests, charges and encumbrances, subject to the terms of the APA and other related documents; (iii) authorizing assumption and assignment of certain of the Debtors' unexpired leases and other executory

contracts (collectively, the "Assigned Agreements"); and (iv) authorizing the Debtors to consummate all transactions related to the above; and the bidding procedures ("Bidding Procedures") having been established by the notice and Order filed in connection therewith (the "Procedures"); and the Court having considered the Sale Motion and the record in this bankruptcy proceeding, and having heard the statements of counsel in support of, and in objection to (if any), the relief requested in the Sale Motion at a hearing before the Court (the "Sale Hearing") held on August 12, 2008 at 3:30 p.m.; and the Court having found that notice of the Sale Motion was sufficient under the circumstances; and the Court having been fully advised and having determined that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted in this Sale Order. All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the APA.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Jurisdiction

A. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2). Venue is proper in this district under 28 U.S.C. §§1408 and 1409.

Notice

B. The notice provided by the Debtors of the Sale Motion and Sale Hearing constitutes adequate notice to all parties in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). No other or further notice of the Sale Motion, the Sale Hearing or the entry of this Sale Order is necessary or required.

Justification for Sale

C. The Debtors have established sound business justifications in support of the proposed sale. Such business justifications include, but are not limited to, the following: (i) Debtors have continued to experience losses in the operation of their businesses notwithstanding ongoing efforts to improve the Debtors' business performance; (ii) the Debtors have been unable to obtain financing to fund operations as a going concern; (iii) the sale of the Assets provides a greater benefit to the estates and their creditors than an operational restructuring or liquidation and a sale pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code")

that is subject to higher and better offers is the most effective means of maximizing the value for the Assets, the bankruptcy estates, and the Debtors' businesses. After considering the circumstances described in the Sale Motion, the Court has determined that the Buyer's offer presents the best opportunity for the Debtors to realize the highest recovery possible for the Assets for the benefit of all creditors.

D. The transactions contemplated by the Sale Motion, as approved and implemented by this Sale Order, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including, without limitation, sections 363(b), (f) and (m) and 365 of the Bankruptcy Code. The terms and conditions of the sale of the Assets and the other transactions approved by this Sale Order are fair and reasonable.

E. The Buyer's offer, as approved by this Sale Order, is the highest and best offer for the Assets. The aggregate purchase price offered by the Buyer constitutes full and adequate consideration and reasonably equivalent value for the Assets.

F. The transfer of the Assets on the closing date to the Buyer for the consideration set forth in the APA is in the best interests of the Debtors' estate, their creditors, and all parties in interest.

Good Faith

G. The sale process conducted by the Debtors, was non-collusive, fair and reasonable, and was conducted openly and in good faith. The transfer of the Assets to the Buyer represents an arm's-length transaction and has been negotiated in good faith between the parties. The Buyer, as transferee of the Assets, is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protection of section 363(m) of the Bankruptcy Code.

Sale Free and Clear of Liens, Claims and Encumbrances

H. The Debtors are authorized to sell the Assets to the Buyer free and clear of all Liens (as defined in Paragraph 5 below) pursuant to and in accordance with section 363(f) of the Bankruptcy Code.

Leases and Executory Contracts to be Assumed and Assigned

I. Upon the transfer of the Assigned Agreements to the Buyer and, subject to the payment of the cure amounts contemplated and required by the APA, this Sale Order and one or more separate motions to assume and assign unexpired leases and executory contracts which

will be filed by the Debtors, upon approval of each such separate motion: (A) each Assigned Agreement constitutes a valid and existing leasehold interest in the property subject to such Assumed Contract or is executory in nature; (B) the Assigned Agreements have not been terminated or rejected and are in full force and effect; and (C) no default exists under any Assigned Agreement, except as a result of the filing of this chapter 11 case, or provision of the payment of any amount which is in default has been made or will be made in accordance with the Sale Motion, the APA, the Bid Procedures and this Order, and therefore no further cure payment is due; and (D) the Assigned Agreements are subject to assumption by the Debtors and Assignment to Buyer pursuant to 11 U.S.C. § 365; and (F) the assumption and assignment of the Assigned Agreements is in compliance with and satisfies all provisions of the Bankruptcy Code, including section 365.

J. The Buyer has provided adequate assurance of future performance of the Assigned Agreements pursuant to section 365(f) of the Bankruptcy Code.

Corporate Authority; Consents and Approvals

K. In accordance with sections 323(a) and 1107(a) of the Bankruptcy Code, the Debtors have full corporate power and authority to execute the APA, any related agreements and all other documents contemplated by the APA or such other related agreements, and the sale of the assets by the Debtors have been duly and validly authorized by all necessary corporate power and authority necessary to consummate the transactions contemplated by the APA. No consents or approvals, other than this Sale Order, are required for the Debtors to consummate such transactions.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that:

1. The Sale Motion is approved.

2. All objections to the Sale Motion that were not withdrawn or otherwise settled are overruled.

3. Subject to the provisions of this Sale Order, the APA (including other related or ancillary agreements executed in connection therewith) and the terms and conditions contained therein are approved. The Debtors are authorized at the Closing to execute, deliver, implement and fully perform the APA, together with all additional instruments, agreements and documents which are related to or contemplated by the APA and those instruments, agreements and documents which may be reasonably necessary, convenient or desirable in implementing the

APA (collectively, the "Related Agreements"), and to take all further actions (including any prorations, adjustments and the like provided for in the APA and/or the Related Agreements) as may be necessary or appropriate in performing the obligations as contemplated by the APA.

4. Subject to the fulfillment of the terms and conditions of the APA, at the Closing, the Debtors are authorized to sell, transfer, assign and convey to the Buyer all of the Debtors' rights, title and interest in and to the Assets. The Debtors are authorized and empowered at the Closing to deliver bills of sale, assignments and other such documentation contemplated by the APA and this Sale Order.

5. The transfer of the Assets to the Buyer as of the Closing will be free and clear of any and all liens, claims, interest, charges, and encumbrances therein, thereon and/or thereagainst of whatever kind, type, nature, or description, including, without limitation, any lien, security interest, pledge, hypothecation, encumbrance or other charge, interest or claim (including, but not limited to, any "claim" as defined in section 101(5) of the Bankruptcy Code) in, against or with respect to any of the Assets, having arisen, existed or accrued prior to and through the Closing, whether direct or indirect, absolute or contingent, choate or inchoate, fixed or contingent, matured or unmatured, liquidated or unliquidated, arising by agreement, statute or otherwise and whether arising prior to, on or after the Petition Date. All of the foregoing interests described in this Paragraph 5 are collectively referred to herein as "Liens."

6. This Sale Order is and will be effective as a determination that, upon the Closing, all Liens in, on or upon the Assets are adjudged and declared to be unconditionally released, discharged and terminated, with all such Liens to attach to the cash proceeds of the sale of the Assets (the "Proceeds"), with the same force, validity, effect, priority and enforceability, *inter se*, as such Liens had in the Assets prior to the filing of the Debtors' voluntary petition for relief. Except as otherwise provided in this Sale Order, any issues or challenges regarding the extent, validity, perfection, priority and enforceability of such Liens, and/or the claims underlying the same, as and against the Proceeds will be determined by the Court, if, as and when appropriate, upon proper motion, application, or complaint filed at a later date by the Debtors, or any subsequently appointed trustee or other fiduciary of the Debtors' estates, including, without limitation, pursuant to a proposed plan of reorganization.

7. The Proceeds, less any Cure Amounts (as defined hereinafter) paid in accordance herewith, shall be retained by the Debtors subject to further order of this Court.

8. Notwithstanding anything to the contrary contained herein, this Sale Order shall not, in any way, affect, impair or restrict the liens, claims, encumbrances and interests of any entity (including the Debtors) in, against, or with respect to, any of the Debtors' assets other than the Assets being acquired by Buyer.

9. The Buyer will have provided adequate assurance of its future performance under the Assigned Agreements, and the assumption and assignment of the Assigned Agreements to the Buyer satisfy the requirements of section 365 of the Bankruptcy Code upon approval of the separate motions for assumption and assignment. Notwithstanding any provision of the Assigned Agreements (including those described in sections 365(b)(2) and (f) of the Bankruptcy Code) that purport to prohibit, restrict or condition an assignment or transfer, the Debtors are authorized and directed at the Closing, pursuant to section 365 of the Bankruptcy Code, to assume the Assigned Agreements and assign its rights, title and interest therein to the Buyer.

10. The Debtors, utilizing funds provided by Buyer, are authorized to pay that portion of the undisputed cure amounts due and owing under those Assigned Agreements as reflected in the cure notices served by the Debtors upon the non-debtor parties to the Assigned Agreements (the "Cure Notices") which are obligations of the Buyer in accordance with the terms of the APA. All parties to the Assigned Agreements are deemed to have consented to the Cure Amounts unless a timely objection has been filed. Such Cure Amounts shall be paid within a reasonable period of time following the closing in accordance with the terms of the APA or upon the resolution of any disputed Cure Amounts, whichever is later. Each of the non-Debtor parties to any of the Assigned Agreements that will have failed to object to the assignment of the Assigned Agreements, including the payment of the Cure Amount, are forever barred from asserting any pre-Closing claim, loss or liability against the Debtors or the Buyer other than the Cure Amount.

11. Each Assigned Agreement shall, as of the closing, be deemed to be valid and binding on the Buyer and in full force and effect and enforceable in accordance with its terms. Following the Closing, the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Agreements.

12. Except as expressly set forth in this Sale Order and/or the APA, the Buyer will not be deemed to have assumed any "claims" (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtors. Under no circumstances will the Buyer be deemed a

successor of or to the Debtors for any liability of the Debtors (whether direct or indirect, liquidated or unliquidated, choate or inchoate or contingent or fixed) whatsoever except as set forth in this Sale Order and/or the APA.

13. All of the Debtors' rights, title and/or interests in the Assets are, as of the Closing, transferred to and vested in the Buyer. Subject to the fulfillment of the terms and conditions of the APA, as of the Closing, this Sale Order will be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Assets or a bill of sale transferring good and marketable title in the Assets to the Buyer. Any and all governmental recording offices and all other parties, persons or entities shall accept this Sale Order as such an assignment or bill of sale as conclusive evidence of the free and clear, unencumbered transfer of title to the Assets conveyed to the Buyer at Closing.

14. If any of the Assets is in the care or custody of any non-debtor party, such party following the Closing shall immediately, upon written request and presentation of this Sale Order, surrender any such Assets in its care or custody to the Buyer.

15. The following shall be deemed Excluded Assets as the term is used in section 1.3 of the APA: (a) all state and federal law avoidance actions, including those provided for in Chapter 5 of the Bankruptcy Code; and (b) those assets identified in section 1.3 of the APA.

16. The Purchase Price shall be paid in full by Buyer at Closing, and at Closing the Buyer shall assume the Assumed Liabilities. The Closing Date shall occur no later than August 22, 2008.

17. On the Closing Date, each of the Debtors' creditors having Liens on any of the Assets is authorized and directed to execute such documents and take all actions as may be necessary to release its Liens, if any, in, on or against the Assets as such Liens may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens in, on or against the Assets has not delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens or other interests that such person or entity has with respect to the Assets, the Debtors are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets.

18. Any allocation of the Purchase Price in the APA shall not be binding upon the Debtors' creditors and other parties in interest and will not have any precedential value with respect to any allocations of the value contained in a plan of reorganization or liquidation involving the Debtors, their estates and their creditors.

19. This Court has exclusive jurisdiction to implement and enforce the terms and provisions of the APA (and all Related Agreements) and this Sale Order, including any disputes relating thereto or with respect to the sale, the proceeds of sale, the transfer or assignment and delivery of the Assets to the Buyer and the Buyer's peaceful use and enjoyment thereof after the Closing, free and clear of any Liens.

20. The Court retains jurisdiction over the parties to the APA with respect to any controversies that may arise thereunder.

21. The terms and provisions of this Sale Order are binding in all respects upon the Debtors, their employees, officers and directors, their creditors, their shareholders, any parties having received notice of these proceedings, any affected third parties and other parties-in-interest, any persons asserting a Lien in, on or against the Assets, the Buyer and all of the aforementioned parties' successors or assigns, including, without limitation, any subsequently appointed trustee or other fiduciary of the Debtors' estate.

22. The failure specifically to include any particular provisions in the APA or the Related Agreements in this Sale Order will not diminish the effectiveness of such provision, it being the intent of this Court that the APA and Related Agreements are authorized, approved and effective in their entirety.

23. This is a final order and enforceable immediately upon its entry. To the extent necessary under Rules 5003, 6004(h), 6006(d), 9014, 9021 and 9022 of the Bankruptcy Rules, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order and expressly directs entry of judgment as set forth in this Sale Order. The stay of Bankruptcy Rule 6004(h) shall not apply to the transactions approved hereby.

24. Pursuant to section 363(m) of the Bankruptcy Code, the reversal or modification of this Sale Order on appeal shall not affect the validity of the transfer of the Assets to the Buyer, as well as the transactions contemplated or authorized by this Sale Order, unless the same is stayed pending appeal prior to the Closing of the transactions authorized by this Sale Order.

25. The Debtors are authorized to pay, at Closing, the agreed upon sum of $150,000 to the secured creditor Mad River Holdings, Inc. in satisfaction and release of its secured claim. The balance of Mad River's claim in this case shall be unsecured.

26. Notwithstanding any other provision in this Order to the contrary, the Buyer's acquired rights to trademark application No. 78/321,810 for "Brain Matters" (the "Trademark") shall continue to be subject to the TTAB opposition proceeding at the USPTO between the Debtor and the American Academy of Neurology ("Academy") as case number 91168906 (the "TTAB Proceeding'), and the Academy shall have relief from the automatic stay pursuant to 11 U.S.C. § 362 to continue such TTAB Proceeding. Moreover, any claims that the Academy may have against the Buyer for infringement based upon the Buyer's use of the Debtor's Intellectual Property (as defined in the APA and including the Trademark) shall not be affected by this Order.

27. The Debtor is authorized to perform all of its obligations and duties pursuant to the separately filed and approved Stipulation and Settlement Agreement between the Debtor and Frederick Sandvick, John Olrich, Vanguard Strategies Inc, and Vanguard Strategies Inc., Pension Fund and the objection to sale and cure objection filed by those parties herein are deemed resolved as set forth in the Stipulation and Settlement Agreement. Said Stipulation and Settlement Agreement is contingent upon the performance of certain obligations by the third party purchaser which are to occur on or before the closing date.

DONE and entered this 12th day of August, 2008 at Denver, Colorado.

Howard Tallman

Honorable Howard R. Tallman
Chief United States Bankruptcy Judge

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The American Academy of Neurology,	)	Opposition No. 91168906
	)	
Opposer	)	Mark: BRAIN MATTERS
	)	
v.	)	Serial No. 78/321,810
	)	
Brain Matters, Inc.,	)	Filing Date: 10/31/2003
	)	
Applicant	)	Published: 12/20/2005
_____	)	

ORDER ON STIPULATION FOR ENTRY OF JUDGMENT

The parties, as represented by counsel, jointly stipulate for entry of judgment in favor of Opposer The American Academy of Neurology in Opposition No. 91168906.

IT IS HEREBY ORDERED that the parties' Stipulation for Entry of Judgment dated November 4, 2008 is GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY IN COMFORMANCE WITH THE PARTIES' STIPULATION.

Dated: _____ _____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The American Academy of Neurology,	)	Opposition No. 91168906
	)	
Opposer	)	Mark: BRAIN MATTERS
	)	
v.	)	Serial No. 78/321,810
	)	
Brain Matters Inc.,	)	Filing Date: 10/31/2003
	)	
Applicant	)	Published: 12/20/2005
	)	

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2008, I caused to be served the attached documents:

1. Stipulation for Entry of Judgment and attached Exhibit 1;
2. (Proposed) Order on Stipulation for Entry of Judgment;
3. Certificate of Service.

by placing a true and correct copy in an enveloped with First Class Postage addressed as follows:

Mr. David Stafford Johnson
CereScan
Jackson Place
300 South Jackson Street, Suite 200
Denver, CO 80209

and depositing the same, with all fees prepaid, with the United States mail at Minneapolis, Minnesota.

///

I also certify that on the 4th day of November, 2008, the foregoing documents were filed with:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Alexandria, VA 22314

via the United States Patent and Trademark Office Electronic System for Trademark Trials and Appeals.

Executed on the 4th day of November, 2008.

DAVID A. PRANGE