

ESTTA Tracking number: **ESTTA721758**

Filing date: **01/20/2016**

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

Proceeding	91220166
Party	Plaintiff Flowers Vineyard and Winery, LLC
Correspondence Address	JENNIFER LEE TAYLOR MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482 UNITED STATES SLarson@mofo.com, JTaylor@mofo.com, tmdocket@mofo.com
Submission	Opposition/Response to Motion
Filer's Name	Jennifer Lee Taylor
Filer's e-mail	SLarson@mofo.com, JTaylor@mofo.com, tmdocket@mofo.com, cburns@mofo.com
Signature	/Jennifer Lee Taylor/
Date	01/20/2016
Attachments	2016-01-20 Opposer's Opposition to Motion to Compel.pdf(177828 bytes)

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

3 FLOWERS VINEYARD AND WINERY,
4 LLC,

5 Opposer,

6 vs.

7 THE WINE GROUP, LLC,

8 Applicant.

Opposition No.: 91220166

Application Serial No.: 86/348,425

Mark: FLORET

9 **OPPOSER’S OPPOSITION TO APPLICANT’S MOTION TO COMPEL**

10 Applicant The Wine Group, LLC (“Applicant”) has filed this motion to compel without
11 properly meeting and conferring with Opposer Flowers Vineyard and Winery, LLC (“Opposer”).
12 Opposer therefore respectfully requests the Board not consider Applicant’s motion on the merits
13 due to Applicant’s failure to follow the Board’s procedures. Should the Board consider
14 Applicant’s motion on the merits, Opposer respectfully requests that the motion be denied.
15 Although Applicant claims that it has narrowed its issues to “only four” (TTABVUE No. 9 at
16 p. 1:19), Applicant has moved on a large number of requests – without any apparent consideration
17 to whether Applicant really requires the requested information. For the reasons set forth below,
18 Applicant’s objections are unfounded, and Applicant’s motion should be denied.

19 **I. FACTUAL BACKGROUND**

20 On July 22, 2015, Applicant’s counsel sent its initial letter (“July 22, 2015 letter”)
21 regarding Opposer’s discovery responses. (TTABVUE No. 9, Ex. A.) Over the course of the
22 next week, Opposer’s counsel worked with Applicant’s counsel to address his inability to access
23 Opposer’s document production electronically and provided hard copies. (Declaration of Sabrina
24 A. Larson In Support of Opposer’s Opposition to Applicant’s Motion To Compel (“Larson
25 Decl.”) ¶ 2.) On October 7, 2015, Opposer provided a written response to Applicant’s letter
26 (“October 7, 2015 letter”), expressly asking Applicant to provide more explanation for some of its
27 requests. (TTABVUE No. 9, Ex. B.) For example, regarding Interrogatory No. 1, on which
28

1 Applicant now moves to compel, Opposer explained the reasons why it could not provide sales
2 information more than six years old, and, in an effort to continue the meet and confer process,
3 asked Applicant to explain why it needed sales information older than six years. (TTABVUE
4 No. 9, Ex. B, p. 17 at no. 4.b.) Likewise, regarding Interrogatory No. 2, Opposer asked
5 Applicant to explain where it believed Opposer had made a claim of fame. (*Id.*, p. 18 at no. 5.)
6 On October 21, 2015, Opposer provided its First Amended Responses to Applicant’s First Set of
7 Requests for Production to address some of the issues raised by Applicant’s July 22, 2015 letter.
8 (*Id.*, Ex. F.)

9 Applicant never responded to Opposer’s October 7, 2015 letter, and did not provide the
10 additional information requested by Opposer (Larson Decl. ¶ 3), although when Applicant’s
11 counsel sent an email on November 2, 2015 seeking a two-month extension of deadlines in the
12 proceeding, he represented that he would “be responding to [Opposer’s] letter *shortly*.” (Larson
13 Decl. ¶ 4, Ex. A (emphasis added).) He never did. Instead, on December 31, 2015, Applicant
14 filed this motion to compel. (TTABVUE No. 9.)

15 **II. APPLICANT HAS FAILED TO MAKE ITS BEST EFFORT TO MEET AND**
16 **CONFER PRIOR TO FILING A MOTION TO COMPEL**

17 The above facts illustrate that Applicant has failed to make its best effort to meet and
18 confer with Opposer prior to filing this motion to compel. The Board is clear that “where the
19 parties disagree as to the propriety of certain requests for discovery, they are under an obligation
20 to get together and attempt in *good faith* to resolve their differences and to present to the Board
21 for resolution only those remaining requests for discovery, if any, upon which they have been
22 unable, *despite their best efforts*, to reach an agreement.” *Sentrol, Inc. v. Sentex Systems, Inc.*,
23 231 U.S.P.Q.666, 667 (T.T.A.B. 1986) (emphasis added); T.B.M.P. § 523.02. It is the Board’s
24 policy to intervene “only where it is clear that the parties have in fact followed the aforesaid
25 process.” *Sentrol*, 231 USPQ at 667. “In order for the meet and confer process to be meaningful
26 and serve its intended purpose, the parties must present to each other the merits of their respective
27 positions with the same candor, specificity, and support during informal negotiations as during
28 the briefing of discovery motions.” *Amazon Technologies Inc. v. Wax*, 93 U.S.P.Q.2d 1702, 1705

1 (T.T.A.B. 2009) (internal quotation omitted). Applicant has not followed the Board's procedures
2 because it has not in good faith used its best efforts to reach an agreement.

3 Applicant's July 22, 2015 letter said merely that it would "seek the assistance of the
4 Board" absent Opposer's "prompt response." (TTABVUE No. 9, Ex. A.) After Opposer
5 provided its response, however, including by explaining its objections, serving amended
6 responses, and seeking further dialog with Applicant regarding its requests, Applicant neither
7 mentioned a motion to compel again nor ever responded to Opposer's queries. (Larson Decl.
8 ¶ 4.) This is despite the fact that Applicant expressly told Opposer on November 2, 2015 that it
9 would be "responding to" Opposer's letter "shortly." (*Id.*, Ex. A.)

10 By sending only one letter, ignoring Opposer's questions regarding its position, and
11 failing to engage in any further discussion, Applicant has failed to confer in any meaningful way
12 with Opposer. Applicant failed to put Opposer on notice that it intended to move to compel and
13 failed to reach out to Opposer during the entire month of December to convey its intentions and to
14 attempt to resolve the issues before bringing to them to Board. Applicant never called Opposer
15 on the phone to discuss these issues. (Larson Decl. ¶ 4.) Instead, Applicant filed the instant
16 motion on New Year's Eve.

17 Applicant's efforts fall woefully short of "best efforts." "Where it is apparent that the
18 effort toward resolution is incomplete, establishing the good faith effort that is a prerequisite for a
19 motion to compel *necessitates* that the inquiring party engage in additional effort toward
20 ascertaining and resolving the substance of the dispute." *Hot Tamale Mama...and More, LLC v.*
21 *SF Investments, Inc.*, 110 USPQ2d 1080, 1081-82 (T.T.A.B. 2014) (emphasis added) (finding
22 single email exchange between the parties insufficient to establish good faith effort as it was
23 incumbent upon applicant to make at least one additional inquiry).

24 Opposer requests that the Board give no consideration to Applicant's motion, given
25 Applicant's failure to comply with the Board's procedure. Should the Board decide Applicant's
26 motion on the merits, Opposer sets forth its response below.

1 **III. OPPOSER HAS PROVIDED SUFFICIENT INFORMATION REGARDING**
2 **SALES AND PROMOTIONAL INFORMATION**

3 Applicant's Interrogatory No. 1 and Document Requests No. 22 requested sales by year
4 for every year since the date of first use of Opposer's mark. (TTABVUE No. 9, Ex. C at No. 1;
5 *id.*, Ex. D at No. 22.) Opposer responded by producing sales information for the previous six
6 years, dating back to 2009. (*Id.*, Ex. E at No. 1; *id.*, Ex. F at No. 22.). Opposer's objection
7 explained that Opposer's first use date is 1998 and it has been selling wine under its mark for 17
8 years. (*Id.*) Opposer's October 17, 2015 letter, moreover, explained that Opposer acquired its
9 winery six years ago, and that it "does not have reasonable access to sales records that pre-date its
10 acquisition of the winery." (*Id.*, Ex. B, p.17 at no. 4.b.)

11 Applicant's July 22, 2015 letter asserted that *all* historical sales from Opposer are
12 "necessary in light of [Opposer's] claim that [its] mark is entitled to a broad scope of protection
13 because it is famous." (TTABVUE No. 9, Ex. A, p. 11 at no. 4.a.) As Opposer noted in its
14 October 7, 2015 letter, Opposer never made a claim that its mark was "famous." (*id.*, Ex. B, p. 17
15 at no. 4.a), so the alleged claim of "fame" cannot be a basis for Applicant to require *all* historical
16 sales records.

17 In fact, Opposer's cause of action asserted against Applicant is brought under Section 2(d)
18 for priority and likelihood of confusion, not 43(c) for dilution. (TTABVUE No. 1 at p. 5.)
19 Opposer's priority can be established by its first use date. Opposer can also establish priority
20 through its evidence, produced to Applicant, of sales in the past six years; because the application
21 is an intent-to-use application and Applicant has not started using its mark yet, six years is well
22 prior to any priority date that Applicant could claim for its mark. Therefore, Opposer does not
23 see why sales information older than six years is relevant—and considering the significant burden
24 that would be involved in Opposer obtaining the sales information from its predecessor, as
25 Opposer explained to Applicant in its October 7, 2015 letter, Opposer does not believe it is
26 reasonable to request this data. Applicant failed to provide any response when Opposer explained
27 this reasoning and specifically asked Applicant to "[p]lease explain why it need[ed] additional
28 information." (TTABVUE No. 9, Ex. B, p. 17 at no. 4.b)

1 Applicant explains for the first time in its motion to compel that it believes pre-2009 sales
2 information is relevant to the “fame” factor of the *DuPont* test. (*Id.* at 1:24-2:1.) In establishing
3 likelihood of confusion, however, Opposer has the burden of proof, and Opposer has produced
4 sales information that it believes sufficient to carry its burden. Considering the substantial burden
5 involved in obtaining sales figures pre-dating 2009, Opposer has determined that it cannot
6 reasonably produce these figures. Opposer understands that it will not be permitted to rely at trial
7 on any documents not produced in discovery. Therefore, it is not clear why Applicant continues
8 to press this issue.

9 The same arguments are true for Applicant’s requests regarding “promotional expenses.”
10 Opposer explained in its response why it found “promotional expenses” to be ambiguous in the
11 context of wine sales, in which wines are promoted primarily by third parties, and why it believed
12 Opposer’s actual “expenses” to be irrelevant to the proceeding. (TTABVUE No. 9, Ex. F, p. 43
13 at no. 2.) With regard to Applicant’s Document Request No. 16 for documents supporting
14 Opposer’s claim that its mark has “become widely known and recognized by the public as
15 identifying [Opposer’s] wine” (*id.*, Ex. F, p. 67 at no. 16), Opposer has produced documents that
16 it believes are sufficient to show the wide recognition of Opposer’s wine bearing the mark
17 FLOWERS. Again, Opposer has the burden of proof on the issue of likelihood of confusion, and
18 Opposer has produced the documents that it intends to rely on to prove its case. It is, therefore,
19 unclear to Opposer what more Applicant is requesting.

20 **IV. OPPOSER’S WRITTEN RESPONSES TO APPLICANT’S DOCUMENT**
21 **REQUESTS ARE PROPER**

22 Federal Rule of Civil Procedure 34(b)(2)(E)(i) states that “[a] party must produce
23 documents as they are kept in the usual course of business *or* must organize and label them to
24 correspond to the categories in the request.” Fed. R. Civ. P. 34 (emphasis added). The rule
25 presents two alternative methods of production. Applicant’s assertion that the Board has
26 “amplified on that requirement by insisting that a party specify the documents responsive to each
27 request” (TTABVUE No. 9 at 3:5-7) is unsupported. Applicant cites solely to *Amazon*
28 *Technologies v. Wax*, 95 U.S.P.Q.2d 1865. *Amazon*, however, states no such thing. *Amazon*

1 simply reiterates the terms of Rule 34(b), stating that it “requires parties to ‘organize and label’
2 documents *which are not produced as kept in the ordinary course of business.*” *Id.* (emphasis
3 added). The producing party in *Amazon* did *not* claim that it produced documents as kept in the
4 ordinary course of business, and therefore the Board addressed its failure to organize and label the
5 31,000 pages it produced. *Id. Amazon*, therefore, does not “amplify on” Rule 34, but applies it.
6 It is unclear what Applicant believes the Board’s decision in *Amazon* “appear[s] to say”
7 (TTABVUE No. 9 at 3:18), but Applicant appears to have misread the case.

8 In this case, Opposer has stated that it produced its documents as they are kept in the
9 ordinary course of business. (TTABVUE No. 9, Ex. B, p. 18 at no. 1.) Therefore, Opposer need
10 not “organize and label them to correspond to the categories in the request.” Opposer also only
11 produced a total of 345 pages. (Larson Decl. ¶ 5.) This is hardly the burdensome and
12 voluminous production in *Amazon*. Opposer is aware of no rule or case, and Applicant cites to no
13 rule or case, that requires it to specifically identify and list every document that is responsive to
14 every request when it produced documents as kept in the ordinary course of business.

15 Finally, Applicant takes issue with Opposer’s response that it will produce documents to
16 the extent they are located after a reasonable search. When Opposer had no responsive
17 documents, Opposer clearly so stated. (See, e.g., TTABVUE No. 9, Ex. F, p. 62 at no. 6.) When
18 Opposer anticipated producing responsive documents, it clearly so stated and stated what those
19 documents would show. (*Id.*, no. 5.) At the time of drafting those responses, Opposer had not
20 completed its search and production, so it was not certain what documents it would locate, but it
21 has done so now and has produced only 345 pages. (Larson Decl. ¶ 5.) Opposer believes it
22 should be readily apparent to Applicant among those 345 pages what documents have been
23 produced. Applicant appears to have moved to compel on this issue for every single response it
24 considers deficient (*see* TTABVUE No. 9 at 3:11, listing 25 different responses) without regard
25 to whether or not it really needs the requested re-formatted responses. For example, Applicant
26 makes no claim that it cannot find which documents in Opposer’s 345-page production are
27 responsive to which request. If, however, the Board believes Opposer should revise its responses,
28 Opposer will do so.

1 **V. APPLICANT HAS CHANGED ITS DEFINITION OF “WITNESS” STATEMENT”**
2 **WITHOUT PROPERLY MEETING AND CONFERRING**

3 When Applicant sought “each witness statement” from Opposer, Opposer objected that it
4 was not aware of what a “witness statement” is. (TTABVUE No. 9, Ex. F, p. 77 at no. 35.) In its
5 July 22, 2015 letter, Applicant provided the definition of witness statement as “a written
6 statement made by an actual or potential witness in a legal proceeding that has been obtained in
7 the course of that proceeding.” (TTABVUE No. 9, Ex. A, p. 13 at no. 12.) Opposer then
8 amended its response to this document request to object to this request on the basis of attorney-
9 client privilege. (*Id.*, Ex. F, p. 54 at no. 35.) Applicant now argues in its motion that privilege is
10 not an appropriate objection and further modifies its definition of “witness statement.”
11 Applicant’s position is unclear, and even with Applicant’s attempted explanation, the term
12 “witness statement” remains vague. Applicant’s motion correctly notes that Opposer has
13 disclosed one witness, Agustin Huneus. (TTABVUE No. 9 at 4:23-24.) Any “written
14 statement”—that is, any written communication—made by Mr. Huneus to his attorneys is
15 without a doubt attorney-client privileged, and such communications are clearly enumerated on
16 Opposer’s privilege log. (*Id.*, Ex. F, pp. 55-56.) If, however, Applicant means a statement
17 specifically create with “the purpose . . . to ‘lock down’ facts and factual matter to which a
18 witness could testify” (*Id.* at 4:10-11)—a more specific explanation that Applicant provides for
19 the first time in its motion to compel, that would be considered work product and not discoverable
20 unless Opposer decides to waive privilege protections and it has not.

21 **VI. OPPOSER’S DOCUMENTS REGARDING ITS COUNSEL’S DECLARATION**
22 **ARE PRIVILEGED**

23 Applicant seeks all documents “constituting, reflecting, or discussing any communications
24 with Jay Behmke concerning the subject matter of the Declaration” filed with the USPTO in
25 connection with the FLOWERS trademark. (TTABVUE No. 9, Ex. F, p. 60 at no. 2). Opposer
26 responded to assert an objection on the basis of attorney-client privilege and to say that it has no
27 non-privileged responsive documents, and Opposer listed the withheld documents on its privilege
28 log. (*Id.*, pp. 55-56.)

1 The communications between Mr. Behmke and Opposer’s counsel are attorney-client
2 privileged, and that privilege has not been waived. It is an erroneous and untenable assertion of
3 law for Applicant to say that “by filing a detailed Declaration Opposer had waived the privilege
4 with respect to its subject matter.” (TTABVUE No. 9 at 5:11-12) As Applicant notes,
5 “[g]enerally disclosure of confidential communications or attorney work product to a third party,
6 such as an adversary in litigation, constitutes a waiver of privilege as to those items.” (*Id.* at 6:4-6
7 (quoting *Genentech, Inc. v. U.S. Int’l Trade Comm’n*, 122 F.3d 1409, 1415 (Fed. Cir. 1997).)
8 Opposer, however, has not disclosed *any* confidential communication or attorney work product.
9 Mr. Behmke’s declaration does not waive the privilege, for example, by specifically referring to
10 conversations with Opposer’s counsel or Opposer revealing the subject matter of those
11 conversations, or by disclosing any confidential communications or attorney work product.
12 (TTABVUE No. 9, Ex. G.) Instead, Mr. Behmke’s declaration recites solely facts—facts
13 regarding how he came to record an assignment rather than a name change in 2009. (*Id.*)

14 Applicant claims for the first time in its motion that Opposer’s assertion of privilege is
15 “functionally the same as asserting the ‘advice of counsel’ defense.” (TTABVUE No. 9 at 5:21-
16 22.) This assertion is enigmatic. As defined by one of the cases to which Applicant cites, the
17 advice of counsel affirmative defense is raised when the “client has made a conscious decision to
18 inject the advice of counsel as an issue in the litigation.” *Glenmede Trust Co. v. Thompson*, 56
19 F.3d 476, 486 (3d Cir. 1995). Opposer has not done so here. There is no issue for which
20 counsel’s advice was sought and regarding which Opposer is now revealing an opinion of
21 counsel. Mr. Behmke’s declaration does not set forth any of his opinions, thoughts, or advice to
22 his client, nor does it set forth any opinions, thoughts, or advice of other counsel of Opposer to
23 him. (TTABVUE No. 9, Ex. G.) His declaration merely states *facts* regarding a mistake that he
24 made. (*Id.*)

25 The cases to which Applicant cites deal with scenarios where parties asserted the defense
26 of advice of counsel, and those cases are unrelated to the present circumstances. *See e.g.*,
27 *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 486 (3d Cir. 1995) (party raised the defense of
28 reliance on the advice of counsel and produced some admittedly attorney-client documents,

1 thereby waiving the privilege with respect to all documents concerning the same subject matter);
2 *Saint-Gobain/Norton Indus. Ceramics Corp. v. Gen. Elec. Co.*, 884 F. Supp. 31, 33 (D. Mass.
3 1995) (party produced some opinions from counsel but not others, while asserting the defense of
4 advice of counsel); *Thorn Emi N. Am., Inc. v. Micron Tech., Inc.*, 837 F. Supp. 616, 621 (D. Del.
5 1993) (“When an alleged infringer decides to respond to a claim of willful infringement by
6 offering evidence that he or she reasonably and in good faith relied on advice of counsel in
7 making, using or selling the allegedly infringing device, then the advice becomes relevant and
8 admissible.”).

9 Opposer therefore requests that the Board deny Applicant’s motion to compel Opposer to
10 produce the privileged communications listed on its privilege log between Mr. Behmke and
11 Opposer’s current counsel.

12 CONCLUSION

13 Opposer respectfully the Board to either give no consideration to Applicant’s motion to
14 compel because it was filed without properly meeting and conferring, or to deny it for the reasons
15 enumerated above.

16
17 Dated: January 20, 2016

JENNIFER LEE TAYLOR
SABRINA A. LARSON
MORRISON & FOERSTER LLP

18
19
20 By: /s/ Jennifer Lee Taylor

21
22 Attorneys for Opposer
Flowers Vineyard and Winery, LLC

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

3 FLOWERS VINEYARD AND WINERY,
4 LLC,

5 Opposer,

6 vs.

7 THE WINE GROUP, LLC,

8 Applicant.

Opposition No.: 91220166

Application Serial No.: 86/348,425

Mark: FLORET

9 **DECLARATION OF SABRINA A. LARSON IN SUPPORT OF OPPOSER'S**
10 **OPPOSITION TO APPLICANT'S MOTION TO COMPEL**

11 I, Sabrina A. Larson, declare as follows:

12 1. I am an associate with the firm of Morrison & Foerster LLP, and am one of the
13 attorneys in this action for Opposer Flowers Vineyard and Winery, LLC. ("Opposer"). I make
14 the following statements of my own personal knowledge and, if called as a witness, I could and
15 would testify competently thereto.

16 2. After receiving Applicant The Wine Group, LLC ("Applicant")'s counsel's letter
17 regarding discovery dated July 22, 2015, I worked with Applicant's counsel over the next week to
18 address his inability to access Opposer's electronic documents and to provide him with hard
19 copies.

20 3. Opposer's October 7, 2015 response to Applicant's letter posed some questions to
21 Applicant in order to seek further clarification on Applicant's objections. Applicant never
22 acknowledged or responded to Opposer's queries. Applicant never notified Opposer that instead
23 of attempting to meet and confer regarding those remaining issues, it would move to compel.

24 4. On November 2, 2015, Applicant's counsel sent an email seeking a two-month
25 extension. The email began with the statement that he would "be responding to [Opposer's] letter
26 shortly." After this, however, Applicant neither mentioned a motion to compel again nor ever
27 responded to Opposer's queries. Applicant's counsel never called on the phone to discuss these
28

1 issues. Attached as **Exhibit A** is a true and correct copy of Applicant's counsel email dated
2 November 2, 2015.

3 5. Opposer has produced 345 total pages in this proceeding. At the time Opposer
4 drafted its written responses, Opposer had not completed its search and production of documents.
5 Opposer has now completed its document production.

6
7 I declare under penalty of perjury under the laws of the United States and the State of
8 California that the above is true and correct.

9
10 Executed at San Francisco, California, this 20th day of January, 2016.

11 /s/ Sabrina A. Larson

12 Sabrina A. Larson

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

Larson, Sabrina

From: Paul Reidl <reidl@sbcglobal.net>
Sent: Monday, November 02, 2015 11:16 AM
To: Larson, Sabrina
Cc: Taylor, Jennifer Lee (SF)
Subject: RE: Huneus/The Wine Group Trademark Opposition (67715-6033501)

Dear Sabrina,

I will be responding to your recent letter shortly but in the meantime wanted to reach out to you regarding deposition dates. Since you have disclosed only one witness (the President and owner of your client) I suspect that scheduling his time before the close of discovery may be impossible (especially since I will be at the INTA meeting the week of November 15.) I would be amenable to agreeing to another extension of the schedule in order to accommodate his schedule. Perhaps another two month extension might be in order which would, at a minimum, free up some time after the Holiday season. I would take his deposition on both a 30 (b) (6) basis and a personal basis.

Yours sincerely,

/paul reidl/

PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on January 20, 2016, I served a copy of:

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL

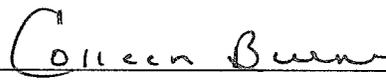
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Paul W. Reidl
Law Office of Paul W. Reidl
241 Eagle Trace Drive
Half Moon Bay, CA 94019

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 20th day of January, 2016.

Colleen Burns
(typed)


(signature)