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

Proceeding	91215296
Party	Plaintiff American DJ Supply, Inc.
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Date	05/30/2014
Attachments	20140530 Something.pdf(424751 bytes)

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

In the matter of Trademark Registration

U.S. Serial No.: 86/037,386
Date of Publication: March 4, 2014
By: American Pro International Corp.
For the Trademark: AMERICAN PRO

AMERICAN DJ SUPPLY, INC.,

Opposer,

vs.

AMERICAN PRO
INTERNATIONAL CORP.,

Applicant.

Opposition No. 91215296

**OPPOSER'S FILING IN
ACCORDANCE WITH THE ORDER
DATED MAY 20, 2014**

Pursuant to the granting of Opposer American DJ Supply, Inc. (“American DJ”)’s motion to suspend this proceeding pending final resolution of two related proceedings between the parties, American DJ attaches hereto the following requested documents:

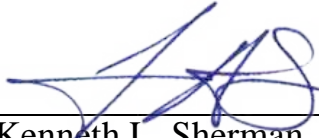
1. A copy of the district court order on appeal to the Court of Appeals for the Ninth Circuit (Case No. 13-56087, American DJ Supply, Inc. v. American Pro International Corp. , ARPI Group, Inc., et al.; and
2. A copy of the complaint and counterclaim in the action pending in the United States District Court for the Southern District of

ADJ1-LIT.e16.E

California (Civil Action No. 13-CV-22093-ALTONAGA, American Pro International Corp. , ARPI Group, Inc., et al. v. American DJ Supply, Inc.).

Date: May 30, 2014

SHERMAN & ZARRABIAN LLP

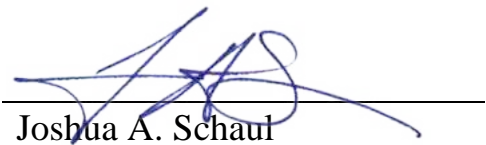
By: 
Kenneth L. Sherman, Reg. No.: 33783
Joshua A. Schaul, Reg. No.: 57691
Attorneys for respondent
AMERICAN DJ SUPPLY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FILING IN ACCORDANCE WITH THE ORDER DATED MAY 20, 2014** has been served on Petitioner's counsel on May 30, 2014:

American Pro International Corp.
13550 NW 107 Ave., Suite D-2
Hialeah Gardens, FL 33018

David K. Friedland
FRIEDLAND VINING, P.A.
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Joshua A. Schaul

ATTACHMENT A

Name SHERMAN & ZARRABIAN, LLP
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 FPD Appointed CJA Pro Per Retained

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMERICAN DJ SUPPLY, INC., a California corporation

PLAINTIFF(S),

v.

AMERICAN PRO INTERNATIONAL CORP., a Florida corporation, et al.

DEFENDANT(S).

CASE NUMBER:

CV 12-08951-MWF (Ex)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that AMERICAN DJ SUPPLY, INC. hereby appeals to
Name of Appellant
the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- Conviction only [F.R.Cr.P. 32(j)(1)(A)]
- Conviction and Sentence
- Sentence Only (18 U.S.C. 3742)
- Pursuant to F.R.Cr.P. 32(j)(2)
- Interlocutory Appeals
- Sentence imposed:

Bail status:

Civil Matter

- Order (specify):
complaint dismissed without leave to amend
- Judgment (specify):
- Other (specify):

Imposed or Filed on June 11, 2013. Entered on the docket in this action on June 11, 2013.

A copy of said judgment or order is attached hereto.

June 18, 2013
Date

/s/ Joshua A. Schaul
Signature
 Appellant/ProSe Counsel for Appellant Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES -- GENERAL

Case No. **CV 12-08951-MWF (Ex)**

Date: **June 11, 2013**

Title: American DJ Supply Inc., et al. -v- American Pro International Corp., et al.

PRESENT: HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT JUDGE

Rita Sanchez
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING DEFENDANTS' RENEWED MOTION TO DISMISS [36]

This matter is before the Court on the Renewed Motion to Dismiss Second Amended Complaint for Lack of Personal Jurisdiction, for Improper Venue, or in the Alternative, to Transfer Under § 1406 (the "Motion") filed by certain "Moving Defendants" (American Pro International Corp. and other entities and individuals identified below). (Docket No. 36). The Court has read and considered the papers filed on this Motion and held a hearing on May 21, 2013. For the reasons stated below, the Motion is GRANTED.

On October 17, 2012, Plaintiff American DJ Supply Inc. ("American DJ") filed a Complaint initiating this action. (Docket No. 1). Two motions to dismiss were filed against American DJ's Complaint. (Docket Nos. 10, 12). On December 20, 2012, American DJ filed a First Amended Complaint ("FAC"). (Docket No. 16). American DJ did not comply with Local Rule 3-2, and the FAC was stricken. (Docket Nos. 17, 18). Consequently, the Court ordered American DJ to manually file the FAC by January 9, 2013. (Docket No. 18). In compliance with both that Order and Local Rule 3-2, American DJ manually filed the FAC on January 8, 2013. (Docket No. 19). On January 9, 2013, the Court denied as moot the two motions to dismiss the original Complaint. (Docket No. 20).

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Again, two motions were filed against American DJ's FAC. (Docket Nos. 22, 24). The Court granted the motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), and the FAC was dismissed with leave to amend. (Docket No. 33; *see also* Docket No. 24). Consequently and given the fluidity of American DJ's claims, the Court held in abeyance the motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2). (Docket No. 33; *see also* Docket No. 22). However, the Court expressed skepticism that American DJ would be able to demonstrate personal jurisdiction over the Defendants in this action. (Docket No. 33).

On March 8, 2013, American DJ filed a Second Amended Complaint ("SAC"). (Docket No. 34). On March 21, 2013, the Moving Defendants filed this Motion. (Docket No. 36).

American DJ is a California corporation with its principal place of business in Los Angeles. (SAC ¶ 1). The SAC names five Defendants: American Pro International Corp. ("API") and ARPI Group Inc., both Florida corporations; Show Import d/b/a Macaio Argentina ("Show Import"), an Argentinian entity; and individuals Claudio Resnick, a Florida resident, and Omar Diaz Blasco, who has a place of business in Florida. (SAC ¶¶ 2-6). The Moving Defendants are API, ARPI Group and Messrs. Resnick and Blasco. The parties dispute whether American DJ properly has served Show Import, and Show Import has not joined in this Motion. (*See* Docket No. 60).

American DJ manufactures professional lighting equipment, electronic audio amplifiers, audio mixers, controllers, staging products, related accessories and apparel. (SAC ¶¶ 14-15). Defendants are authorized dealers for American DJ products. (SAC ¶ 22).

The SAC alleges four claims for relief: (1) trademark infringement; (2) unfair competition; (3) breach of the implied covenant of good faith and fair dealing; and (4) unjust enrichment. (*See generally* SAC).

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The law applicable to a motion to dismiss for lack of personal jurisdiction is well-established:

District courts have the power to exercise personal jurisdiction to the extent authorized by the long-arm statute of the state in which they sit. *See, e.g.*, Fed. R. Civ. P. 4(k)(1)(A). The parties do not dispute that the California long arm statute, California Civil Procedure Code Section 410.10, extends jurisdiction to the limit of federal due process such that the Court need only analyze the due process implications of exercising personal jurisdiction over Defendants.

Consistent with federal due process requirements, the Court may exercise personal jurisdiction over a non-resident defendant when that defendant has “at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004) (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). Personal jurisdiction may be based on either general or specific jurisdiction. *Id.* at 801-804 (analyzing both general and specific jurisdiction).

General jurisdiction in a particular forum exists over a non-resident defendant when a defendant engages in “continuous and systematic general business contacts that approximate physical presence in the forum state.” *Schwarzenegger*, 374 F.3d at 801 (citations and internal quotation marks omitted). The Ninth Circuit has observed that “[t]his is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Id.*

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Specific jurisdiction exists where the subject case or controversy arises out of acts related to the particular forum. The Ninth Circuit analyzes specific jurisdiction according to three factors:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Id. at 802.

If a plaintiff shows the existence of the first two factors, the burden shifts to the defendant to present a "compelling case" that the exercise of personal jurisdiction is unreasonable. *Id.* (explaining the burden shifting in specific jurisdiction analysis).

Here, neither party has requested an evidentiary hearing. "Consequently, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *Fiore v. Walden*, 688 F.3d 558, 574 (9th Cir. 2012) (citation and internal quotation marks omitted). "[U]ncontroverted allegations in plaintiff's complaint must be taken as true, and, in deciding whether a prima facie showing has been made, the court resolves all disputed facts in favor of the plaintiff." *Id.* (citations and internal quotation marks omitted). "Nonetheless, mere bare bones assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff's pleading burden." *Id.* at 574-75 (citations and internal quotation marks omitted).

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The SAC alleges only that this Court “has personal jurisdiction over Defendants because, inter alia, (1) each of the Defendants or their respective agents are doing business in this district, and (2) Plaintiff is informed and believes that a substantial part of the wrongful acts alleged herein have occurred in interstate commerce, in the State of California, and in the Central District of California.” (SAC ¶ 12).

The Moving Defendants have introduced evidence contradicting these “bare bones” allegations. (*See* Blasco Decl. (Docket No. 10-2); Resnick Decl. (Docket No. 10-3)). Consequently, American DJ must make a prima facie showing of jurisdictional *facts* to withstand this Motion. *See Fiore*, 688 F.3d at 575 n.13 (“If the plaintiff succeeds in meeting that prima facie burden, then the district court may still order an evidentiary hearing or the matter may be brought up again at trial.” (citation and internal quotation marks omitted)). Therefore, the Court will address each of American DJ’s arguments in turn below.

Preliminarily, American DJ concedes that the Court does not have general jurisdiction over Defendants. Instead, American DJ asserts personal jurisdiction on the basis of specific jurisdiction.

First, American DJ argues that Show Imports contacts with California should be imputed to the Moving Defendants on the basis of an alleged “conspiracy” among the Defendants. But, “California law does not recognize conspiracy as a basis for acquiring jurisdiction over a foreign defendant. Thus, actions taken by co-conspirators in furtherance of the conspiracy cannot be attributed to a conspirator for purposes of establishing personal jurisdiction.” *EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1089 (C.D. Cal. 2010) (citations omitted).

At the hearing, counsel for American DJ argued that the “Ninth Circuit has not expressly accepted or rejected the conspiracy theory of personal jurisdiction.” *In re W. States Wholesale Natural Gas Litig.*, 605 F. Supp. 2d 1118, 1138 (D. Nev. 2009) (applying Wisconsin long-arm statute and noting that “[e]ven if Wisconsin

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would adopt the conspiracy theory of personal jurisdiction for purposes of its long-arm statute, the exercise of personal jurisdiction by this Court still must comport with due process of law”). Regardless, American DJ has not demonstrated that Show Imports in particular has any contacts with California that the Moving Defendants do not.

Second, American DJ argues that the Court has personal jurisdiction over Mr. Blasco pursuant to Federal Rule of Civil Procedure 4(k)(2). Under Rule 4(k)(2)(A), for a “claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if . . . the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction.” *Id.* Specifically, this rule “permits federal courts to exercise personal jurisdiction over a defendant that lacks contacts with any single state if the complaint alleges federal claims and the defendant maintains sufficient contacts with the United States as a whole.” *Getz v. Boeing Co.*, 654 F.3d 852, 858 (9th Cir. 2011). However, Mr. Blasco admits that jurisdiction would be proper in Florida. *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 461 (9th Cir. 2007) (“[A] defendant who wants to preclude use of Rule 4(k)(2) has only to name some other state in which the suit could proceed.” (citation omitted)).

Third, American DJ argues that the “purposeful availment” prong for specific jurisdiction is satisfied under the “effects test.” *See, e.g., Hall-Magner Grp. v. Convocation Flowers, Inc.*, No. 11-CV-312 JLS (POR), 2012 WL 3069782, at *5 (S.D. Cal. July 27, 2012) (“In cases alleging tort-like causes of action, such as Plaintiff’s trademark infringement . . . and unfair competition claims against Defendants in this case, the Ninth Circuit focuses on ‘purposeful direction,’ applying the ‘Calder effects’ test originated in *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).” (citation omitted)); (*see also* Docket No. 33 at 8-9).

The “effects test” examines whether the defendant committed “(1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered – and which the defendant knows is likely to be suffered

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– in the forum state.” *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993); *see also Panavision Int’l, L.P. v. Toepfen*, 938 F. Supp. 616, 621 (C.D. Cal. 1996).

American DJ has introduced evidence that Mr. Resnick, on behalf of API, personally negotiated delivery of allegedly infringing products to a California resident – specifically, David Saghian, the owner of Six Star DJ, Inc., a California corporation with its principal place of business in Los Angeles. (Saghian Decl. ¶ 2 (Docket No. 39-2)). Six Star DJ is a dealer for American DJ. (*Id.*) American DJ also has introduced evidence of e-mail advertisements that a “representative for American DJ” received from API. (Loader Decl. ¶ 3 (Docket No. 39-1)).

“[C]ourts must examine the defendant’s contacts with the forum at the time of the events underlying the dispute when determining whether they have jurisdiction. When a court is exercising specific jurisdiction over a defendant, arising out of or related to the defendant’s contacts with the forum, the fair warning that due process requires arises not at the time of the suit, but when the events that gave rise to the suit occurred.” *Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) (citation and internal quotation marks omitted). Consequently, a “plaintiff cannot manufacture personal jurisdiction in a trademark case by purchasing the accused product in the forum state.” *Clarus Transphase Scientific, Inc. v. Q-Ray, Inc.*, No. C 06-3450 JF (RS), 2006 WL 2374738, at *3 n.3 (N.D. Cal. Aug. 16, 2006) (citation omitted); *NuboNau, Inc. v. NB Labs, Ltd*, No. 10cv2631-LAB (BGS), 2012 WL 843503, at *3 (S.D. Cal. Mar. 9, 2012) (“[T]his kind of orchestrated purchase cannot give rise to personal jurisdiction over [the defendant] in California.” (citation and internal quotation marks omitted) (citing *Sinatra v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988)).

As noted above, American DJ initiated this lawsuit in October 2012. The record evidence demonstrates that the only contact between Defendants and Saghian occurred in February-April 2013 and between Defendants and the “representative of American DJ” in December 2012 and January 2013. As a result,

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this evidence is irrelevant to the question whether the Court has personal jurisdiction over Defendants.

American DJ also has introduced evidence that Defendants use the allegedly infringing mark on certain websites that are in English, accessible from California, and allow potential customers to send information directly to Defendants. (*See* Schaul Decl. (Docket No. 39-3)).

The Ninth Circuit has held that “simply registering someone else’s trademark as a domain name and posting a web site on the Internet is not sufficient to subject a party domiciled in one state to jurisdiction in another. . . . there must be ‘something more’ to demonstrate that the defendant directed his activity toward the forum state.” *Panavision*, 141 F.3d at 1322 (citation omitted); (*see* Docket No. 33 at 9); *see also Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 417 (9th Cir. 1997) (“[N]o court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff’s home state.”); *Holland Am.*, 485 F.3d at 460 (“The [defendants’] website does not provide any direct means for purchasing parts or requesting services; it simply provides information on the various products manufactured by the [defendants] and redirects potential customers to the appropriate subsidiary. This type of passive website is not purposefully directed to the forum state . . .”). Therefore, American DJ cannot base personal jurisdiction on Defendants’ websites.

American DJ next argues that a “showing that a defendant purposefully availed himself of the privilege of doing business in a forum state typically consists of evidence of the defendant’s actions in the forum, such as executing or performing a contract there.” *Schwarzenegger*, 374 F.3d at 802.

However, American DJ has introduced no evidence that any Defendant executed or performed any contract in California. *See McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 816 (9th Cir. 1988) (affirming the district court’s dismissal of the complaint for lack of personal jurisdiction) (“[N]o authorized

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agents of [the defendant] were alleged to have performed or executed any portion of the contract in California.”).

Furthermore, “[a plaintiff’s] performance in California cannot give jurisdiction over . . . [a nonresident defendant]; it is [a defendant’s] activity that must provide the basis for jurisdiction.” *Id.* at 816-17 (citation and internal quotation marks omitted). The fact that American DJ has shipped orders from California to Defendants is irrelevant on this Motion.

Fourth, American DJ argues that its claims arise out of Defendants’ forum-related activities. On the “arises out of or results from” prong of the test, the Ninth Circuit follows a “but for” analysis. *Panavision*, 938 F. Supp. at 622 (citation omitted). “That is, if the plaintiff would not have suffered loss ‘but for’ the defendant’s forum-related activities, courts hold that the claim arises out of the defendant’s forum-related activities.” *Id.* (citation omitted). But, as discussed above, American DJ has failed to introduce any relevant evidence that Defendants engaged in any forum-related activities.

Moreover, to the extent that American DJ seeks to base personal jurisdiction on the fact that Mr. Blasco visited American DJ’s corporate headquarters in Los Angeles on one occasion, it is clear that none of American DJ’s claims arise out of this single visit. (*See Velazquez Decl.* (Docket No. 39-4)). Likewise, American DJ does not allege any wrongdoing with respect to Defendants’ ordering, scheduling the transportation of, and remitting payment for, American DJ products – to the extent that such conduct even could be understood to have occurred in California.

Therefore, American DJ has failed to make a prima facie showing with respect to the first two factors for specific jurisdiction. The Moving Defendants need not show that the exercise of personal jurisdiction would be unreasonable.

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Additionally, and as noted above, American DJ has not demonstrated any reason that the Court should treat Show Imports differently from the Moving Defendants in this regard.

Finally, “[a]lthough there is no definitive Ninth Circuit authority specifically addressing the level of showing that a plaintiff must make to be entitled to jurisdictional discovery, district courts in this circuit have required a plaintiff to establish a ‘colorable basis’ for personal jurisdiction before discovery is ordered.” *Phillips v. Hernandez*, No. 12-CV-748-MMA (WMC), 2012 WL 5185848, at *7 (S.D. Cal. Oct. 18, 2012) (citation and internal quotation marks omitted).

At the hearing, counsel’s argument focused on whether the Court should permit limited, jurisdictional discovery in this regard. American DJ’s counsel referred to the evidence of e-mails that the “representative for American DJ” received from API, but for the reasons discussed above these e-mails are not relevant to the personal jurisdiction analysis.

American DJ’s counsel also argued that API is selling its allegedly infringing products in California – *i.e.*, that the alleged wrongful conduct is occurring in California. However, counsel for Defendants pointed out that the record evidence demonstrates otherwise: Defendants “do not now sell, nor have they ever sold goods or services in California. [Defendants] do not operate, conduct, engage in, or carry on a business or business venture in California.” (Resnick Decl. ¶ 21; *see also* Blasco Decl. ¶ 21). American DJ has not introduced any evidence to the contrary. As a result, there is no factual dispute that would suggest the need for an evidentiary hearing. Nor has American DJ demonstrated a colorable basis for personal jurisdiction over Defendants, other than the unsupported contentions of counsel at the hearing. American DJ’s request for jurisdictional discovery is DENIED.

Accordingly, the Motion (Docket No. 36) is GRANTED. This action is hereby dismissed *without prejudice* for lack of personal jurisdiction. This Order

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shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. Pursuant to Local Rule 58-6, the Court ORDERS the Clerk to treat this order, and its entry on the docket, as an entry of judgment.

The Court does not reach American DJ's Motion for Preliminary Injunction (Docket No. 41) or Motion for Leave to Amend Summons and Proof of Service, Nunc Pro Tunc (Docket No. 60), which are therefore DENIED as moot.

IT IS SO ORDERED.

ATTACHMENT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**AMERICAN PRO INTERNATIONAL
CORP.**, a Florida corporation, **ARPI GROUP,
INC.**, a Florida corporation, **CLAUDIO
RESNICK**, a resident of Florida, and **OMAR
DIAZ BLASCO**, a resident of Argentina,

Plaintiffs,

v.

AMERICAN DJ SUPPLY, INC., a
California corporation,

Defendant.

Case No.:

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, **AMERICAN PRO INTERNATIONAL CORP.** (hereinafter “American Pro”), **ARPI GROUP, INC.** (“ARPI”), **CLAUDIO RESNICK** (“Resnick”), and **OMAR DIAZ BLASCO** (“Blasco”)(collectively, “Plaintiffs”), hereby sue Defendant **AMERICAN DJ SUPPLY, INC.** (hereinafter “ADJ”) and allege the following:

NATURE OF THE ACTION

1. This is an action seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that Plaintiffs’ use of the mark **AMERICAN PRO** does not constitute trademark infringement under 15 U.S.C § 1114, nor false designation of origin under 15 U.S.C § 1125 of ADJ’s alleged **AMERICAN DJ** and **AMERICAN AUDIO** trademarks.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the subject matter of this action. Original jurisdiction for any civil action arising under 15 U.S.C. §§ 1114 and 1125 is conferred on this Court pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a).

3. This Court has personal jurisdiction over ADJ because, on information and belief, ADJ transacts business in the State of Florida, and specifically in this judicial district, or ADJ has otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and § 1391(c), because a substantial part of the events giving rise to the claims alleged herein occurred in this judicial district.

THE PARTIES

5. American Pro is a Florida corporation with its principal place of business located at 13550 NW 107th Ave., Suite D-2, Hialeah Gardens, Florida 33018.

6. ARPI is a Florida corporation with its principal place of business located at 13550 NW 107th Ave., Suite D-1, Hialeah Gardens, Florida 33018.

7. Resnick is a domicile of the state of Florida and President of ARPI and a Director of American Pro. Resnick is also the registered agent for American Pro and ARPI.

8. Blasco is a domicile of Argentina and a Director of American Pro.

9. Upon information and belief, ADJ is a California corporation with its principal place of business located at 6122 South Eastern Ave., Los Angeles, California 90040.

FACTUAL ALLEGATIONS

10. American Pro uses the mark AMERICAN PRO to identify various lines of professional audio and lighting equipment sold in the United States. Plaintiffs introduced their AMERICAN PRO mark in the United States in 2012, following nearly 10 years of use of AMERICAN PRO in South America by companies related to, and doing business with, Plaintiffs.

11. Upon information and belief, ADJ owns U.S. Registration Nos. 1,894,020; 2,671,305; and 3,047,295 for the mark AMERICAN DJ, and U.S. Registration Nos. 2,520,699 and 3,964,197 for the mark AMERICAN AUDIO, in connection with miscellaneous professional audio and lighting equipment.

12. On October 17, 2012, ADJ filed a lawsuit against Plaintiffs, among other parties, in the United States District Court for the Central District of California (the "California Action"), alleging that Plaintiffs committed trademark infringement, unfair competition, and other wrongful acts related to ADJ's purported rights in "an AMERICAN family of trademarks".

13. Upon information and belief, ADJ's admissions in documents submitted both to the U.S. Patent & Trademark Office and a California district court (in a prior lawsuit) make clear that ADJ's rights in its marks, if any, are extremely narrow in scope and not infringed by the AMERICAN PRO trademark, a mark that has been, with ADJ's

express knowledge, in concurrent use internationally for over a decade and been registered in Argentina since 2005.

14. Plaintiffs advised ADJ, in writing, following the initiation of the California Action, that its claims were based on tenuous trademark rights and frivolous arguments, but ADJ maintained its position in the California Action.

15. On January 23, 2013, Plaintiffs moved to dismiss the California Action on the bases of lack of personal jurisdiction and improper venue. Subsequently, on June 11, 2013, the district court in the California Action granted Plaintiffs' motion to dismiss.

16. The previous lawsuit filed by ADJ (i.e., the California Action) has created a reasonable apprehension on the part of Plaintiffs that ADJ will file yet another lawsuit against Plaintiffs.

17. Plaintiffs firmly deny that their use of the mark AMERICAN PRO infringes or unfairly competes with ADJ's alleged trademarks or that Plaintiffs have otherwise engaged in actionable conduct.

COUNT I
ACTION FOR DECLARATORY JUDGMENT OF
NON-TRADEMARK INFRINGEMENT OF REGISTERED TRADEMARK

18. Plaintiffs incorporate paragraphs 1 through 17 inclusive as if set forth verbatim herein.

19. This is an action for a declaratory judgment and further relief against ADJ pursuant to 28 U.S.C. §§ 2201 and 2202.

20. ADJ has alleged, and Plaintiffs deny, that Plaintiffs' use of the mark AMERICAN PRO in connection with professional audio and lighting equipment

products infringes ADJ's federally-registered AMERICAN DJ and AMERICAN AUDIO trademarks.

21. ADJ's allegations of trademark infringement, as well as ADJ's other acts in the California Action as set forth above, create a reasonable apprehension by Plaintiffs that ADJ will file another lawsuit against Plaintiffs asserting claims for trademark infringement under 15 U.S.C. § 1114.

22. The previous lawsuit filed by ADJ in the Central District of California creates an actual controversy regarding Plaintiffs' right to use the mark AMERICAN PRO in connection with their products.

23. ADJ's allegations of trademark infringement adversely affect Plaintiffs and will continue to adversely affect Plaintiffs because, until this Court makes a determination of Plaintiffs' rights, Plaintiffs will be in doubt as to their rights to continue to use the mark AMERICAN PRO.

COUNT II
ACTION FOR DECLARATORY JUDGMENT OF
NON-UNFAIR COMPETITION

24. Plaintiffs incorporate paragraphs 1 through 17 inclusive as if set forth verbatim herein.

25. This is an action for a declaratory judgment and further relief against ADJ pursuant to 28 U.S.C. §§ 2201 and 2202.

26. ADJ has alleged, and Plaintiffs deny, that Plaintiffs' use of the mark AMERICAN PRO in connection with professional audio and lighting equipment

products constitutes unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

27. ADJ's allegations of unfair competition, as well as ADJ's other acts in the California Action as set forth above, create a reasonable apprehension by Plaintiffs that ADJ will file another lawsuit against Plaintiffs asserting claims for unfair competition under 15 U.S.C. § 1125 (a).

28. The previous lawsuit filed by ADJ in the Central District of California creates an actual controversy regarding Plaintiffs' right to use the mark AMERICAN PRO in connection with its products.

29. ADJ's allegations of unfair competition adversely affect Plaintiffs and will continue to adversely affect Plaintiffs because, until this Court makes a determination of Plaintiffs' rights, Plaintiffs will be in doubt as to their rights to continue to use the mark AMERICAN PRO.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs AMERICAN PRO INTERNATIONAL CORP., ARPI GROUP, INC., CLAUDIO RESNICK, and OMAR DIAZ BLASCO pray for entry of a declaratory judgment against Defendant, AMERICAN DJ SUPPLY, INC., as follows:

1. That the Court enter judgment declaring that Plaintiffs' use of the mark AMERICAN PRO does not constitute trademark infringement under 15 U.S.C. § 1114;
2. That the Court enter judgment declaring that Plaintiffs' use of the mark AMERICAN PRO does not constitute unfair competition under 15 U.S.C. § 1125(a);

3. That ADJ be ordered to pay to Plaintiffs an award covering Plaintiffs' attorneys' fees, costs, and other expenses incurred as a result of this controversy; and

4. That this Court grants such further and other relief as this Court deems just and proper.

DATED: June 11, 2013

Respectfully submitted,

FRIEDLAND VINING, P.A.

s/David K. Friedland

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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 13-CV-22093-ALTONAGA

AMERICAN PRO INTERNATIONAL
CORP., a Florida corporation, ARPI GROUP,
INC., a Florida corporation, CLAUDIO
RESNICK, an individual and OMAR DIAZ
BLASCO, an individual,

Plaintiffs,

v.

AMERICAN DJ SUPPLY, INC., a California
corporation,

Defendant.

AMERICAN DJ SUPPLY, INC., a California
corporation,

Counterclaimant,

v.

AMERICAN PRO INTERNATIONAL
CORP., a Florida corporation, ARPI GROUP,
INC., a Florida corporation, CLAUDIO
RESNICK, an individual, OMAR DIAZ
BLASCO, and individual and
SHOW IMPORT SA d/b/a MACAIO
ARGENTINA, an Argentine company

Counter-Defendants.

AMERICAN DJ SUPPLY, INC.'S ANSWER AND COUNTERCLAIMS

Defendant and Counterclaimant American DJ Supply, Inc. ("American DJ") answers the

complaint of American Pro International Corp. (“American Pro”), ARPI Group, Inc. (“ARPI”), Claudio Resnick (“Resnick”) and Omar Diaz Blasco (“Blasco”) as follows:

1. American DJ admits the allegations of paragraph 1.
2. American DJ admits the allegations of paragraph 2.
3. American DJ admits the allegations of paragraph 3.
4. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4, and on that basis denies them.
5. American DJ admits that American Pro is a Florida corporation with a place of business in Hialeah Gardens, Florida. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 5, and on that basis denies them.
6. American DJ admits that ARPI is a Florida corporation with a place of business in Hialeah Gardens, Florida. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 6, and on that basis denies them.
7. American DJ admits that Resnick is a domicile of the state of Florida. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 7, and on that basis denies them.
8. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8, and on that basis denies them.
9. American DJ admits the allegations of paragraph 9.
10. American DJ admits that American Pro uses the mark AMERICAN PRO to identify various lines of audio and lighting equipment sold in the United States. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations contained in paragraph 10, and on that basis denies them.

11. American DJ admits that it owns U.S. Registration Nos. 1,894,020; 2,671,305; and 3,047,295 for the mark AMERICAN DJ, and U.S. Registration Nos. 2,520,699 and 3,964,197 for the mark AMERICAN AUDIO, in connection with entertainment audio and lighting equipment. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 11, and on that basis denies them.

12. American DJ admits the allegations of paragraph 12.

13. American DJ denies each and every allegation of paragraph 13.

14. American DJ denies each and every allegation of paragraph 14.

15. American DJ admits the allegations of paragraph 15.

16. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16, and on that basis denies them.

17. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17, and on that basis denies them.

18. American DJ incorporates by reference its answers to paragraphs 1 through 17 of the complaint.

19. American DJ admits the allegations of paragraph 19.

20. American DJ admits that it has alleged that Plaintiffs and Counter-Defendants' use of the mark AMERICAN PRO in connection with entertainment lighting and audio products infringes American DJ's federally registered American DJ® and American Audio® trademarks. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 20, and on that basis denies them.

21. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21, and on that basis denies them.

22. American DJ admits the allegations of paragraph 22.

23. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 23, and on that basis denies them.

24. American DJ incorporates by reference its answers to paragraphs 1 through 23 of the complaint.

25. American DJ admits the allegations of paragraph 25.

26. American DJ admits that it has alleged that Plaintiffs and Counter-Defendants' use of the mark AMERICAN PRO in connection with entertainment lighting and audio products constitutes unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). American DJ lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 26, and on that basis denies them.

27. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27, and on that basis denies them.

28. American DJ admits the allegations of paragraph 28.

29. American DJ lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29, and on that basis denies them.

ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF

American DJ denies each and every allegation of paragraphs 1 through 4 of the prayer for relief.

FURTHER AND SEPARATE DEFENSES

30. American DJ, without altering the applicable burdens of proof, asserts each of the following affirmative defenses to the complaint and each purported claim for relief stated therein.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

31. The complaint and each purported claim for relief therein, fail to state facts sufficient to constitute a claim for relief upon which relief can be granted against American DJ.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

32. Plaintiffs have, by their own conduct and words, waived any purported claims set forth in the complaint as against American DJ.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

33. American DJ alleges on information and belief, that Plaintiffs come to this court with unclean hands and, on that basis, are not entitled to the equitable relief requested.

34. Since at least 1986, American DJ has and continues doing business using the now federally registered, famous and incontestable American DJ® trademarks, Registration Nos. 1,894,020, 2,671,305 and 3,047,295. Since at least 1999, American DJ has and continues doing business using the now federally registered, famous and incontestable American Audio® trademarks, Registration Nos. 2,520,699 and 3,964,197. Further, American DJ applied to register its American DJ® trademark in Argentina on or about January 26, 1999 (with registration granted on March 31, 2000). American DJ applied to register its American Audio® trademark in Argentina on or about August 14, 2002 (with registration granted on June 24, 2003).

35. Each of the Plaintiffs adopted the infringing “American Pro” and “American Pro Audio” marks after being on constructive, and in some cases actual notice, that American DJ has the exclusive right in and to the American DJ®, American Audio® and American™ marks.

FOURTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

36. American DJ alleges on information and belief that Plaintiffs are equitably estopped by their own conduct from asserting the matters set forth in the complaint.

FIFTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

37. American DJ reserves the right to raise any and all other affirmative defenses pending the outcome of discovery.

WHEREFORE, American DJ prays for judgment as follows:

1. That Plaintiffs take nothing by virtue of the complaint and any purported claim therein;
2. That judgment be entered against Plaintiffs and in favor of American DJ, on each and every purported claim for relief in the complaint;
3. That American DJ be awarded its attorneys' fees and costs incurred herein; and
4. For such other and further relief as the Court deems just.

AMERICAN DJ SUPPLY, INC.'S COUNTERCLAIMS FOR TRADEMARK INFRINGEMENT; UNFAIR COMPETITION; BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; and UNJUST ENRICHMENT

Defendant and Counterclaimant American DJ Supply Inc. for its Counterclaims against Plaintiffs and Counter-Defendants American Pro International Corp., ARPI Group Inc., Claudio Resnick, Omar Diaz Blasco, Show Import SA d/b/a Macaio Argentina and Does 1 through 10, alleges as follows:

PARTIES

1. Counterclaimant American DJ Supply, Inc. ("American DJ"), is a California corporation with its principal place of business at 6122 South Eastern Avenue, Los Angeles, California 90040.
2. Counter-Defendant American Pro International Corp. ("American Pro") is a Florida corporation having its principal place of business at 13550 NW 107 Avenue, Suite D-1, Hialeah Gardens, Florida 33018.

3. Counter-Defendant ARPI Group Inc. (“ARPI Group”) is a Florida corporation having its principal place of business at 13550 NW 107 Avenue, Suite D-1, Hialeah Gardens, Florida 33018.

4. Counter-Defendant Claudio Resnick (“Resnick”) is the Director, Registered Agent, owner and shareholder of Counter-Defendants American Pro and ARPI Group, and has a place of business in and is a resident of the State of Florida.

5. Counter-Defendant Omar Diaz Blasco (“Blasco”) is President of Counter-Defendant American Pro, as well as a director and shareholder of Counter-Defendant Show Import SA d/b/a Macai Argentina, and has a place of business in the State of Florida.

6. Counter-Defendant Show Import SA d/b/a Macaio Argentina (“Show Import”) is an Argentine company having its principal place of business at 25 de Mayo 120, San Isidro, Buenos Aires, Argentina.

7. American DJ lacks the true names and capacities of the counter-defendants sued herein as Does 1 through 10, inclusive, and therefore sues these counter-defendants by such fictitious names. American DJ will amend these Counterclaims to allege their true names and capacities when they have been ascertained.

8. Each of the counter-defendants designated here as a Doe is responsible in some manner for the events and happenings herein alleged, as well as for the damages alleged. (Hereinafter, the named Counter-Defendants and the Doe defendants are collectively referred to as “Counter-Defendants.”)

9. Each of the Counter-Defendants was the agent or employee of each of the remaining Counter-Defendants and, at all relevant times herein, acted within the course and scope of such agency and/or employment.

JURISDICTION AND VENUE

10. This action is subject to the jurisdiction of this Court pursuant to 15 U.S.C. §1121(a) (action arising under the Lanham Act), 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1338(a) (any act of congress relating to trademarks), 28 U.S.C. §1338(b) (action asserting a state claim of unfair competition joined with a substantial and related federal claim under trademark law) and 28 U.S.C. §1367(a) (supplemental jurisdiction).

11. This Court also has jurisdiction based upon 28 U.S.C. §1332 (diversity and amount in controversy in excess of \$75,000, exclusive of interest and costs).

12. This Court has personal jurisdiction over Counter-Defendants because, inter alia, (1) each of the Counter-Defendants or their respective agents are doing business in this district, (2) each of the Counter-Defendants have made or established contacts with the State of Florida sufficient to permit the exercise of personal jurisdiction, and (3) a part of the wrongful acts alleged herein have occurred in interstate commerce, in the State of Florida, and in the Southern District of Florida¹.

13. Venue is proper in this judicial district under the Federal Rules of Civil Procedure Rule 4(k)(2) and 28 U.S.C. §§ 1391(b) and (c) and (d) because at least one of the Counter-Defendants is subject to the Court's personal jurisdiction with respect to the wrongful acts detailed herein.

FACTUAL ALLEGATIONS

14. This dispute concerns trademark infringement, unfair competition, breach of the covenant of good faith and fair dealing and other wrongful acts regarding American DJ's

¹ American DJ asserts that the U.S. District Court for the Central District of California has jurisdiction over the Counter-Defendants and that this Court has concurrent jurisdiction. By bringing its counterclaims herein, American DJ does not waive any rights in the First Action, Case No.: 12CV-08951 MWF (Ex), filed in the U.S. District Court for the Central District of California. Instead, American DJ is filing the instant counterclaims consistent with this Court's order of July 19, 2013, Dkt. No. 018.

products and the American DJ® and American Audio® trademarks. American DJ is a leader in its industry. American DJ is part of the American DJ Group of companies which is one of the most well-known manufacturers of stage lighting equipment in the world. Selling on six continents, American DJ's historical marketing expenditures of these trademarks have generated sales exceeding a billion dollars.

15. In the United States alone, in addition to specialized distributors and dealers, the American DJ Group sells its products through Amazon, Best Buy, Guitar Center and many other mainline and specialized sellers and dealers. Since 1985, American DJ has been actively engaged in the design, manufacture, advertising, distribution and sale of its products, including professional lighting equipment, electronic audio amplifiers, audio mixers, controllers, staging products, related accessories and apparel. American DJ's websites (www.americandj.com, www.americanaudio.us and www.adjaudio.com) prominently display its American DJ® and American Audio® products.

16. American DJ has achieved international recognition for its quality products in the lighting and audio industry. To date, American DJ has offices on five continents and distributes its products worldwide through sister companies, including Elation Lighting, Inc., Global Truss America, LLC, Acclaim Lighting, LLC, ADJ Supply Europe B.V. and Duratruss B.V.

17. American DJ is the owner of numerous trademarks, United States Trademark Registrations and the goodwill symbolized by the trademarks and the registrations thereof. In order to protect American DJ's investment in its development of products and goodwill, American DJ obtained numerous trademark registrations including U.S. Trademark Registration Nos. 1,894,020, 2,671,305 and 3,047,295 for the American DJ® mark, and U.S. Trademark Registration Nos. 2,520,699 and 3,964,197 for the American Audio® mark.

18. Since at least 1986, American DJ has and continues doing business using the now

federally registered, famous and incontestable American DJ® trademarks for *lighting apparatus for discotheques and nightclubs; namely, lights that project various patterns, dimensions, and colors*, in international class 11 and for *electronic audio equipment for professional audio entertainers, namely, amplifiers, mixers, CD players, turntables, equalizers, loudspeakers, electronic crossovers, audio signal cables and audio units with MP-3 software*, in international class 9.

19. Since at least 1999, American DJ has and continues doing business using the now federally registered, famous and incontestable American Audio® trademarks for *audio amplifiers for professional use and DJ use*, in international class 9 and for *audio amplifiers and audio mixers, namely preamplifier mixers, channel mixers; audio mixer accessories, namely crossfaders and lights, MIDI audio controllers; stereo amplifiers, power amplifiers, and sound cards; computer software for audio mixers; cases for audio equipment; audio recorders and players, namely digital audio tape recorders, MP3 players, compact disc players, turntables, phonographs, and sound level displays; audio speakers, audio speaker accessories, namely transportation luggage, mounting hardware, and speaker stands; audio headphones; microphones, namely wireless microphones; electric cables and wires, namely audio speaker cables, microphone cables, patch cables, DMX cables, electrical power extension cords, computer cables, HDMI cables, and USB cables; and electrical power distribution units*, in international class 9.

20. American DJ also has a right in the American™ family of marks on special effects lighting and audio equipment based upon its continuous and exclusive use, for over 25 years, on a variety of different products, including but not limited to, all types of entertainment lighting, audio equipment and accessories. American DJ uses the American™ trademark in the advertising and promotion of its entertainment lighting and audio equipment throughout the

United States and the Americas. By virtue of advertising and sales, together with consumer acceptance and recognition, the American™ mark identify American DJ's lighting and audio goods only and distinguishes them from goods sold by others. The American™ mark, when placed on special effects lighting and audio products, has thus become synonymous with American DJ and is a valuable asset symbolizing American DJ, its quality lighting and audio products, and its goodwill.

21. Through longstanding, extensive and exclusive use, American DJ's American DJ®, American Audio® and American™ marks have become distinctive, famous and American DJ has enjoyed substantial commercial success, in significant part, due to its sales of American DJ® and American Audio® branded products. These marks are readily recognized by consumers of quality lighting and audio products and are valuable assets of American DJ.

22. At all times relevant to these counterclaims, Counter-Defendants are and have been acutely aware of American DJ's businesses, its sister companies, including the products sold under the American DJ® and American Audio® trademarks and the goodwill represented and symbolized by American DJ's American™ family of trademarks. This is because ARPI Group, Show Import, Resnick and Blasco, and each of them, were authorized dealers for American DJ products, either directly or by having an ownership interest in another Counter-Defendant.

23. On or about January 6, 2004, Counter-Defendant Show Import entered into an oral agreement (the "Argentina Agreement") with American DJ whereby Show Import became a dealer of American DJ's products in Argentina. Show Import then began to regularly purchase product from Los Angeles, California and engage in related transactions in Los Angeles, California.

24. On or about November 21, 2011, Counter-Defendant ARPI Group entered into an

agreement with American DJ in Los Angeles, California, part written, and part oral (the “US Agreement”), whereby ARPI Group became a dealer of American DJ’s products in the United States. ARPI then began to regularly purchase product from Los Angeles, California and engage in related transactions in Los Angeles, California.

25. Pursuant to Argentina Agreement and the US Agreement (collectively, the “Agreements”), Counter-Defendants were allowed to purchase, advertise and resell American DJ® and American Audio® branded products manufactured and sold by American DJ and distributed from Los Angeles, California. Further, as per the Agreements, Counter-Defendants were to use American DJ’s American DJ® and American Audio® trademarks in the advertisement for resale of licensed American DJ products.

26. Implicit within the Agreements, Defendants were permitted to use American DJ’s trademarks only to advertise authentic American DJ products bearing its famous American DJ®, American Audio® and American™ marks.

27. Over the past nine years, Show Import has contacted American DJ, in Los Angeles, California, on numerous occasions, during which Show Import ordered in excess of \$1,225,000 worth of entertainment lighting and audio products from American DJ, including a wide array of products bearing the American DJ® and American Audio® trademarks. Show Import’s contacts with American DJ included scheduling the transportation of the \$1.2 million of products from American DJ’s warehouses in Los Angeles, California, through the Los Angeles / Long Beach seaport, to Show Import in South America, and contacting American DJ to remit payment of the goods ordered from and delivered from Los Angeles, California. Moreover, on at least one occasion, Blasco, owner of Show Import, visited the corporate headquarters of American DJ in Los Angeles, California. Further, from Los Angeles, California, American DJ provided customer support and warranty related services on the entertainment audio, lighting and

trussing products it sold to Show Import. When warranty repairs were needed, Show Import would contact American DJ in Los Angeles, California, for replacement parts and American DJ would deliver, from Los Angeles, California, the requested parts to Show Import.

28. Recently, American DJ became aware that Counter-Defendants adopted and began using the marks “American Pro” and “American Pro Audio” in connection with entertainment lighting and audio products. Counter-Defendants’ marks are virtually identical to American DJ’s American DJ® and American Audio® trademarks and utilize the whole of American DJ’s American™ family of marks. Counter-Defendants’ “American Pro” and “American Pro Audio” marks incorporate the most prominent portion of American DJ’s trademarks, the term “American,” which in connection with entertainment lighting and audio products has come to exclusively identify American DJ.

29. Without the consent, authorization or approval of American DJ, Counter-Defendants are using their “American Pro” and “American Pro Audio” marks on websites registered to Blasco, including, but not limited to, www.american-pro.com, www.americanpro-audio.com, www.macaio.com.ar and www.macaio-web.com.

30. Counter-Defendants’ use of the infringing “American Pro” and “American Pro Audio” marks on products virtually identical to those sold by American DJ and its sister companies leads consumers to erroneously believe that products bearing the “American Pro” and “American Pro Audio” marks are affiliated with, or sponsored by American DJ. Given that Show Import and ARPI Group were dealers of American DJ, consumers are more likely to erroneously believe that products bearing the “American Pro” and “American Pro Audio” marks are reputable and renowned American DJ products when, in fact, they are not. Counter-Defendants adopted their infringing names with the intent to actively conduct a bait and switch operation. Thereafter, in bad faith they lured customers by marketing, advertising and offering

for sale authentic American DJ merchandise, and then selling unauthorized “American Pro” products, usurping American DJ’s reputation and expected profits. As conduits for American DJ® and American Audio® brand products in the U.S. and Argentina, Counter-Defendants’ bait and switch scheme frustrated the benefits American DJ was to receive pursuant to the Agreements, namely recognition of the innovation and quality of American DJ® and American Audio® products and revenues from the sale thereof.

31. Counter-Defendants, with constructive and/or actual notice of American DJ’s ownership of the federally registered American DJ® and American Audio® trademarks and American™ family of marks, continuously from in or about mid-2012, through and including the present, intentionally and wrongfully imported, advertised, distributed and/or sold entertainment lighting and audio equipment in interstate commerce in the United States using the “American Pro” and “American Pro Audio” marks.

32. Counter-Defendants’ use of the “American Pro” and “American Pro Audio” marks side-by-side with American DJ’s American DJ’s American DJ® American Audio® marks is willful and calculated to deceive and cause confusion among prospective purchasers of entertainment lighting and audio equipment.

33. Counter-Defendants have engaged in its infringing conduct with a willful and deliberate intent to cause confusion among the purchasing public and to trade on the goodwill symbolized by American DJ’s American DJ®, American Audio® and American™ trademarks.

34. Counter-Defendants, and each of them, have agreed among themselves to act, and have acted, in concert for the purpose of unfairly injuring, usurping and appropriating to themselves American DJ’s business and the American DJ®, American Audio® and American™ trademarks in one or more of the following ways:

- a. Becoming dealers for American DJ in disjoint markets thereby appropriating

for themselves American DJ's customer information and confidential information regarding American DJ's pricing and inventory in order to compete with American DJ;

- b. Interfering with American DJ's relationship with existing and potential customers by advertising and selling products bearing the "American Pro" and "American Pro Audio" marks side-by-side with American DJ® and American Audio® branded products;
- c. Asserting ownership of the American DJ®, American Audio® and American™ trademarks without American DJ's consent and infringing American DJ's rights under established trademark law; and
- d. Offering, distributing and/or selling entertainment lighting and audio products inside and outside of the U.S. which infringe American DJ's American DJ®, American Audio® and American™ family of trademarks.

35. In particular, defendants Resnick and Blasco own and exercise substantial control over defendants American Pro, ARPI Group and Show Import. Resnick is actively involved in the day to day operations of ARPI Group's entertainment and events production divisions, including the marketing and advertising. Blasco is actively involved in the day to day operations of Show Import, including managing the advertising and importation divisions. Further, Resnick and Blasco are personally involved in the operations of American Pro; both defendants managed the American Pro booth at a tradeshow in Las Vegas, Nevada, in October 2012 where American Pro attempted to exhibit, display and advertise products bearing the "American Pro" and "American Pro Audio" marks.

36. As a result of the actions described above, American DJ has lost and is at risk of losing further substantial business. The harm to American DJ's business cannot be adequately

redressed by damages, since American DJ's business reputation and the continuing value of the American DJ® and American Audio® brands are jeopardized by Counter-Defendants' acts. Further, the injury to American DJ's reputation will continue to accrue unless and until Counter-Defendants are enjoined from using the "American Pro" and "American Pro Audio" marks and interfering with American DJ's business relationships.

37. Each and every condition precedent required to bring these counterclaims have been performed, waived or otherwise excused.

FIRST CLAIM FOR RELIEF

(Trademark Infringement Against All Counter-Defendants)

38. American DJ repeats and incorporates by reference into this claim each of the preceding allegations detailed in paragraphs 1 through 37.

39. American DJ sells and distributes entertainment lighting, audio products and accessories under the federally registered American DJ® trademark: Registration Nos. 1,894,020, 2,671,305 and 3,047,295; and American Audio® trademark: Registration Nos. 2,520,699 and 3,964,197. American DJ's American DJ® and American Audio® trademarks and its American™ family of marks are distinctive of American DJ and famous.

40. Counter-Defendants have no license to use the American DJ® and American Audio® on their own products. Counter-Defendants' use of the "American Pro" and "American Pro Audio" marks was and is without American DJ's consent.

41. Counter-Defendants willfully and knowingly, without justification, and without privilege, imported, sold, offered for sale and/or distributed goods using the "American Pro" and "American Pro Audio" marks. As such, Counter-Defendants' use of the "American Pro" and "American Pro Audio" marks does cause and/or is likely to cause confusion, mistake, or deception among purchasers with American DJ's American DJ® and American Audio® marks.

42. Counter-Defendants intentionally used the “American Pro” and “American Pro Audio” marks, knowing the marks were confusing when used in connection with the importation, sale, offering for sale, and/or distribution of entertainment lighting and audio products by Counter-Defendants.

43. Counter-Defendants used the “American Pro” and “American Pro Audio” marks in connection with the importation, sale, offering for sale, and distribution of entertainment lighting and audio products for the purpose of enhancing the commercial value of their businesses and/or selling and/or soliciting purchases of their lighting and audio products.

44. Counter-Defendants, in connection with the advertisement and/or promotion of their lighting and audio products, by use of the “American Pro” and “American Pro Audio” marks, made false or misleading representations of fact about the origin and sponsorship of their products. Those advertisements and/or promotions deceived or tended to deceive a substantial segment of their audience, and the deception was material. Counter-Defendants’ statements appeared in commercial advertising or promotion, and American DJ has been and/or is likely to be injured as a result of the advertising.

45. Counter-Defendants’ conduct violated the Lanham Act and has damaged American DJ, including exposing American DJ to liability, injury to American DJ’s business reputation and goodwill, and/or dilution of the distinctive quality of American DJ’s federally registered American DJ® and American Audio® trademarks as a result of Counter-Defendants’ infringement. Due to Counter-Defendants’ willfulness, American DJ is entitled to a treble damage award pursuant to law.

46. In addition, American DJ is entitled to a monetary award in the amount of the Counter-Defendants’ profits due to Counter-Defendants’ unjust enrichment as a result of Counter-Defendants’ conduct and Counter-Defendants should be ordered to account for those

profits to American DJ.

47. Alternatively, American DJ is entitled to statutory damages against Counter-Defendants. Because Counter-Defendants' use of the American DJ® and American Audio® marks was willful, pursuant to statute penalties should be assessed per mark per type of goods and services sold, offered for sale, or distributed by Counter-Defendants.

48. In addition, American DJ is entitled to a monetary award to advertise to correct any misconceptions caused by Counter-Defendants' infringement.

49. In addition, American DJ is entitled to its attorney's fees and costs in accordance with law.

50. In addition, American DJ is entitled to an injunction barring Counter-Defendants from importing of products bearing the "American Pro" and "American Pro Audio" marks, pursuant to the Lanham Act § 42; 15 U.S.C. §1124.

51. In addition, American DJ requests appropriate injunctive relief such as restraining Counter-Defendants, their agents, servants, and employees, and all persons acting under in concert with, or for them, from using the "American Pro" and "American Pro Audio" marks, or anything similar, including particularly the American™ family of marks, in connection with the sale, offering for sale, and/or distribution of entertainment lighting and audio related equipment in the United States. Additionally, American DJ requests other appropriate relief, such as destruction of the infringing articles imported by Counter-Defendants and all labels, literature, and advertising bearing the "American Pro" and "American Pro Audio" marks, and further and necessary orders and relief from this Court in order to deter Counter-Defendants' conduct in the future.

SECOND CLAIM FOR RELIEF

(Deceptive And Unfair Practices Against All Counter-Defendants)

52. American DJ repeats and incorporates by reference into this claim each of the preceding allegations detailed in paragraphs 1 through 37.

53. Florida's Deceptive and Unfair Practices Trade Act § 501.201, et seq. prohibits unfair methods of competition, unconscionable acts or practices and unfair or deceptive acts or practices in the conduct of any trade or commerce.

54. Counter-Defendants have engaged, and continue to engage, in unfair, unlawful and/or deceptive business practices in violation of the Florida's Deceptive and Unfair Practices Trade Act as described in these counterclaims, including, but not limited to:

- a. Intentionally, systematically, unlawfully, and unfairly using the infringing "American Pro" and "American Pro Audio" marks which are confusingly similar to American DJ's federally registered, incontestable and famous American DJ® and American Audio® trademarks after they have become exclusively identified with American DJ's products following continuous commercial use by American DJ for decades throughout the United States;
- b. Adopting the infringing "American Pro" and "American Pro Audio" marks with the intent to actively conduct a bait and switch operation with American DJ's American DJ® and American Audio® trademarked entertainment lighting and audio products;
- c. Offering, selling, distributing and/or advertising entertainment lighting and audio products using the virtually identical "American Pro" and "American Pro Audio" marks and the www.americanpro-audio.com domain in a way likely to cause public confusion;
- d. Palming off of counterfeit goods by imitating the name, marks and trade dress of American DJ's goods, intending to compete with American DJ by

deceiving the public;

- e. Luring customers by marketing, advertising and offering for sale authentic American DJ® and American Audio® branded merchandise, and then selling unauthorized “American Pro” marked products, thereby usurping American DJ’s reputation and expected profits; and
- f. False advertising by the use of false or misleading statements which Counter-Defendants knew or should have known, were untrue and/or misleading (15 U.S.C. § 1111, et seq.).

55. The unfair, unlawful and deceptive conduct of Counter-Defendants is in violation of the law.

56. The acts of Counter-Defendants alleged herein were done in the course of business, and for a business purpose. As a proximate result of these unfair, unlawful and deceptive business practices, the public has been and continues to be deceived. American DJ is entitled to injunctive relief restraining Counter-Defendants, their agents, servants, and employees, and all persons acting under, in concert with, or for them, from committing or continuing any of the unfair, unlawful or deceptive business practices alleged herein, or any other business practice which unfairly harms American DJ, or which is likely to confuse or deceive the public.

57. As a further direct and proximate result of Counter-Defendants' unfair, unlawful and deceptive business practices, American DJ has suffered economic damages, which continue to accrue by the continuance of such wrongful conduct, and American DJ is therefore entitled to an award of compensatory damages according to proof.

58. Counter-Defendants have also been unjustly enriched by profits derived from sales attributable to their unfair, unlawful and deceptive business practices; Counter-Defendants

should be ordered to account for such profits and pay them over to American DJ.

59. The aforementioned unfair, unlawful and deceptive business practices by Counter-Defendants was oppressive and malicious, and done in conscious disregard of the rights of American DJ, entitling American DJ to an award of exemplary and punitive damages for such conduct, as allowed by law.

60. No complete remedy exists at law for the injuries suffered by American DJ herein insofar as further irreparable harm will result to American DJ from Counter-Defendants' continued or future violation of the Deceptive and Unfair Practices Trade Act absent injunctive relief. Therefore, American DJ requests appropriate injunctive relief.

THIRD CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing Against Show Import)

61. American DJ repeats and incorporates by reference into this claim each of the preceding allegations detailed in paragraphs 1 through 37.

62. The material terms of the Argentina Agreement entered into as alleged in paragraph 23 above were, as follows:

- a. That Show Import would acquire from American DJ at wholesale prices stage lighting and audio products for resale in Argentina;
- b. That the stage lighting and audio products sold by American DJ to Show Import would be of professional quality and free from material defects;
- c. That the stage lighting and audio products sold by American DJ to Show Import would be shipped in a commercially reasonable manner, including via container, and that Show Import would pay for the stage lighting and audio products acquired from American DJ "net 30 days";
- d. That the stage lighting and audio products sold by American DJ to Show

Import would be marked and marketed for resale with the American DJ® and American Audio® trademarks of American DJ, though only to advertise authentic American DJ products bearing its famous marks; and

- e. That Show Import would make reasonable efforts to resell the stage lighting and audio products acquired from American DJ in their respective markets, to promote the American DJ® and American Audio® trademarks of American DJ, and otherwise to act as dealers of American DJ's products.

63. The Argentina Agreement constitutes a valid and binding contract.

64. American DJ has fully performed each and every condition, covenant and obligation required on their part to be performed as per the Argentina Agreement, except for those acts that have been waived, prevented, delayed or excused by Show Import's breach thereof.

65. American DJ applied to register its American DJ® trademark in Argentina on or about January 26, 1999 (with registration granted on March 31, 2000). American DJ applied to register its American Audio® trademark in Argentina on or about August 14, 2002 (with registration granted on June 24, 2003). Consistent with these registrations, American DJ sold American DJ® and American Audio® branded lighting and audio products in Argentina.

66. As noted above, on or about January 6, 2004, American DJ and Show Import entered into the Argentina Agreement. At that time, Show Import acted in bad faith by embarking on a secret plan to cause to be reverse engineered or otherwise manufactured inexpensive lighting and audio products confusingly similar in appearance to the higher quality lighting and audio products of American DJ. At the same time, Show Import planned to and did mark these confederate products with the confusingly similar "American Pro" and "American Pro Audio" marks, applying for trademark registration of "American Pro" in Argentina on or

about February 12, 2005. Concurrently therewith, without the knowledge of American DJ, Show Import began using its dealer line of American DJ® lighting and American Audio® audio products to bootstrap and promote its “American Pro” lighting and audio products.

67. In or about October 2012, American DJ first discovered Show Import’s improper use of its American DJ® and American Audio® trademarks, on websites registered to Counter-Defendant Blasco, including www.macaio.com.ar and www.macaio-web.com. On these websites, Show Import advertises its inferior “American Pro” branded entertainment lighting and audio products side-by-side with American DJ’s renowned American DJ® and American Audio® brand products, knowing their association with American DJ’s famous trademarks deceived or tended to deceive a substantial segment of their audience as to the origin and sponsorship of “American Pro” products.

68. American DJ is at the leading edge of the entertainment lighting and audio industry. Many times American DJ is first in the lighting and audio industry to bring features to the market, providing customers with feature rich products at reasonable prices. For over 25 years customers of American DJ have come to expect superior quality and technological innovation from American DJ and its American DJ® and American Audio® brand products.

69. “American Pro” branded products overlap many of the same categories as American DJ® and American Audio® branded products, including stage lighting, club/DJ effects lighting, atmospheric products, stage lighting controllers, audio mixers, amplifiers and speakers.

70. Many “American Pro” and “American Pro Audio” branded products are nearly identical in name and appearance to American DJ’s products, which can only cause confusion between the brands. By way of example, American DJ manufactures and advertises a stage light called the PAR-64A, while Show Import advertises a near identical stage light called the Par 64;

American DJ also manufactures and advertises a club/DJ effects light called the JellyDome; Show Import advertises a confusingly similar club/DJ effect light, having almost the same features, called the JellyTEC.

71. While many “American Pro” and “American Pro Audio” branded products are visually similar to American DJ’s products, upon careful inspection it is evident that American DJ’s products are technologically superior.

72. For example, the “American Pro” branded “CuatroTEC” club/DJ effect light looks physically similar to the American DJ® “Quad Gem” DMX light. However, upon close inspection it is clear the “American Pro” branded CuatroTEC is missing a number of the innovative features in American DJ’s Quad Gem DMX, as the latter offers fewer LEDs, at half the expected life, fewer DMX modes, and fewer features. The American DJ product features are only capable because of the Quad Gem’s more sophisticated internal components, providing American DJ customers with more variety to create unique displays and color patterns.

73. The net effect of the above confusingly similar entertainment lighting and audio products is that customers inadvertently purchase “American Pro” branded products thinking the products are from American DJ. These customers cannot help but be unsatisfied with the lack of cutting edge features in the “American Pro” products and incorrectly direct their disappointment towards American DJ. These once loyal American DJ customers likely presume that American DJ® and American Audio® no longer stand for industry leading lighting and audio products. The effect on American DJ is substantial because, on average, these entertainment lighting and audio products sell for only a few hundred dollars, and customers rely more on the brand name and reputation than price.

74. Show Import’s acts and omissions related to the Agreements have substantially undermined and frustrated American DJ’s rights to benefit from the Agreements. American DJ

would never have entered into the Agreements had it known of the facts concealed by Show Import regarding their plan and intent to use the Agreements to foster their sale of inferior counterfeit products.

75. A contract includes an implied covenant of good faith and fair dealing. This covenant imposed on Show Import the duty to refrain from doing anything which would render performance of the terms of the Agreements impossible and the duty to do everything that the Agreements presupposed Show Import would do to accomplish the purpose of the Agreements. Show Import breached the implied covenant of good faith and fair dealing by using American DJ's famous American DJ® and American Audio® trademarks to advertise, promote and sell its inferior "American Pro" branded products.

76. Show Import has breached its duty of good faith and fair dealing owed to American DJ by other acts or omissions of which American DJ is presently unaware. Show Import engaged in such wrongful conduct with clear knowledge that their bad faith would be prejudicial to American DJ. American DJ will seek leave of court to amend this counterclaim when American DJ discovers the other acts or omissions of Show Import constituting such breach.

77. As a direct, proximate and legal result of Show Import's wrongful conduct, American DJ has suffered and will continue to suffer damages. These damages include, but are not limited to, sales lost by American DJ to Show Import for their infringing and improper use of American DJ's famous American DJ® and American Audio® trademarks, and loss of reputation of those marks.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment Against All Counter-Defendants)

78. American DJ repeats and incorporates by reference into this claim each of the

preceding allegations detailed in paragraphs 1 through 37.

79. Counter-Defendants, through the conduct alleged herein, have received the benefits of the use and exploitation of American DJ's famous American DJ® and American Audio® trademarks, its American™ family of marks and of American DJ's goodwill.

80. Counter-Defendants have unjustly retained the benefits of their use and exploitation of American DJ's famous American DJ® and American Audio® trademarks and of American DJ's goodwill at American DJ's expense.

81. As a direct, proximate and foreseeable result of the conduct and omissions alleged above, Counter-Defendants have been unjustly enriched through the use and exploitation of American DJ's trademarks and of its goodwill and American DJ has been deprived of money that was wrongfully paid to Counter-Defendants, which, absent Counter-Defendants' violations, would have otherwise been due to American DJ. American DJ is entitled to restitution of any and all such sums in an amount to be determined at trial.

82. As a direct and proximate result of the foregoing acts and conduct, American DJ has sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law, including without limitation the loss of consumer goodwill. Unless enjoined and restrained by this Court, Counter-Defendants will continue to engage in unlawful and wrongful conduct, in violation of the law. American DJ is entitled to preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, American DJ prays for judgment against Counter-Defendants as follows:

1. On the First counterclaim:
 - a. For an accounting by Counter-Defendants of all profits obtained from the sale of infringing goods, and for payment of the same to American DJ;

- b. Statutory penalties under the Lanham Act for counterfeit marks used by Counter-Defendants, including treble damages;
- c. Money damages, including but not limited to compensation adequate to pay American DJ the cost of advertising reasonably necessary to correct public confusion caused by Counter-Defendants' infringement;
- d. Attorney's fees and costs as allowed by law;
- e. Injunctive relief restraining Counter-Defendants, their agents, servants, and employees, and all persons acting under, in concert with, or for them, from using the "American Pro" and "American Pro Audio" marks or brand name in connection with the importation, offer, sale, distribution and/or advertising of entertainment lighting and audio products and related equipment; and
- f. Destruction of the infringing articles manufactured by Counter-Defendants and all labels, packaging, literature, and advertising infringing on the American DJ®, American Audio® and American™ marks or American DJ's brand name.

2. On the Second counterclaim:

- a. Compensatory damages for Counter-Defendants' unfair, unlawful and deceptive business practices according to proof;
- b. For an accounting by Counter-Defendants of all profits derived from their unfair, unlawful and deceptive business practices, and for payment of same to American DJ;
- c. Exemplary and punitive damages for unfair, unlawful and deceptive business practices as allowed by law;
- d. Attorney's fees and costs as allowed by law;

- e. Injunctive relief restraining Counter-Defendants, their agents, servants, and employees, and all persons acting under, in concert with, or for them, from using the “American Pro” and “American Pro Audio” marks; and
 - f. Other appropriate equitable relief, including the imposition of affirmative duties upon Counter-Defendants, which are reasonably necessary to protect American DJ’s American DJ®, American Audio® and American™ marks, now and in the future.
3. On the Third counterclaim:
- a. For a sum sufficient to compensate American DJ for all damages caused by Counter-Defendants’ breaches;
 - b. For an accounting by Counter-Defendants of all profits obtained from the sale of inferior “American Pro” goods using the American DJ® and American Audio® trademarks, and for payment of the same to American DJ; and
 - c. For interest at the maximum legal rate.
4. On the Fourth counterclaim:
- a. For restitution from Counter-Defendants, and each of them, for the amount of said unjust enrichment; and
 - b. A constructive trust over any sums by which Counter-Defendants have been so unjustly enriched.
5. On all counterclaims:
- a. For prejudgment interest according to law;
 - b. For American DJ’s costs incurred in this action; and
 - c. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Counterclaimant American DJ Supply, Inc. requests a trial by jury on all claims and defenses so triable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on July 26, 2013 we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner to those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Allan Joseph
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