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GARY E. JOHNSONS  
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DALLAS COUNTY TEXAS  
DEPUTY

JOHN DOE I, JOHN DOE II,  
THROUGH HIS MOTHER AS  
NEXT FRIEND OF JOHN DOE II,  
A VULNERABLE (NON COMPOS  
MENTIS) ADULT and JOHN DOE III,

Plaintiffs,

vs.

REVEREND NICHOLAS E. KATINAS,  
PASTOR(FORMERLY) OF HOLY  
TRINITY GREEK ORTHODOX CHURCH;  
HOLY TRINITY GREEK ORTHODOX  
CHURCH; THE GREEK ORTHODOX  
METROPOLIS OF DENVER BY AND  
THROUGH BISHOP ISAIAH OF DENVER  
IN HIS OFFICIAL CAPACITY, AND THE  
GREEK ORTHODOX ARCHDIOCESE  
OF AMERICA BY AND THROUGH  
ARCHBISHOP DEMETRIOS IN HIS  
OFFICIAL CAPACITY,

Defendants.

IN THE DISTRICT COURT

95th JUDICIAL DISTRICT

DALLAS, COUNTY TEXAS

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**PLAINTIFFS' RESPONSE TO DEFENDANTS' SPECIAL EXCEPTIONS**

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**TO THE HONORABLE KAREN GREN JOHNSON**

COME NOW Plaintiffs and file this Response to Defendants, Holy Trinity Greek Orthodox Church( Holy Trinity), The Greek Orthodox Metropolis of Denver by and through Bishop Isaiah in his Official Capacity (Denver Metropolis) and the Greek Orthodox Archdiocese of America's (GOAA) Special Exceptions to Plaintiffs' Third Amended Original Petition and would respectfully show the court as follows:

## I

### **Factual Background**

The Plaintiffs in this case were each sexually abused as minors by Defendant, Father Nicholas Katinas (Katinas), during his tenure as pastor of Defendant Holy Trinity in Dallas, Texas, which extended from approximately September 1978 until his suspension in July 2006. Both Katinas and Holy Trinity were under the control and supervision of the corporate arms of the Greek Orthodox Church, Defendant Denver Metropolis and Defendant GOAA, at the time of the events which are the bases of this lawsuit. Prior to his assignment in Dallas, Katinas was pastor of Assumption Church in Olympia Fields, Illinois. At that parish, Katinas sexually molested at least one underage boy, "DZ," who is not a party to this suit but is a witness. In late 2005, DZ formally notified the GOAA that he had been a victim of Katinas' sexual abuse. An investigation was conducted, resulting in Katinas' suspension. DZ insisted that the GOAA remove Katinas from the Dallas parish and notify parishioners because he was concerned that children were still at risk. Had DZ not insisted on Katinas' removal, this priest would, in all likelihood, be pastor at Holy Trinity to this very day.

Meanwhile, the first Plaintiff, John Doe I, also made a report of abuse to the GOAA. On April 27, 2007, Doe I filed suit against Katinas and the other Defendants in this case. Two additional John Doe Plaintiffs subsequently joined the lawsuit. However, after Katinas was removed but before the filing of this action, he quietly left the United States. He is believed to have found refuge in Rhodes, Greece. It is unlikely that he will voluntarily return to the United States, accept service and make himself available for examination. (His home in Richardson appears uninhabited). Nevertheless, the GOAA continues to provide him some financial support despite its belated and reluctant recommendation that he be defrocked for sexually abusing boys.

This lawsuit seeks actual and punitive damages for the acts and omissions of Defendants in harboring, concealing and recycling Katinas as a priest despite what Plaintiffs allege is a long history, well known to Defendants, of Katinas' sexual predation of minor boys, not just his exploitation of young adult males. Plaintiffs have plead negligence, gross negligence, fraudulent concealment, conspiracy and equitable estoppel, among other claims. Further, on the issue of punitive damages , Plaintiffs allege an established pattern and practice on the part of the Greek Orthodox Church, as represented by Defendants Denver Metropolis and GOAA, of covering-up its clergy's sex crimes against children, including those of this priest, Katinas, and failing to report those crimes to civil authorities , transferring priests to other parishes where they could damage additional children and sending them out of state and even country to avoid investigation and prosecution.

Defendants' Special Exceptions to Plaintiffs' live pleading principally complains of the customary use of the generic pseudonym "John Doe" and additionally complains of the pleading's "numerous defects, omissions, obscurity, duplicity, generality and other insufficiencies." (See Defendants' Special Exceptions, paragraph I, page 2).<sup>1</sup> Plaintiffs will rebut each of these arguments in turn.

## II

### **Legal Arguments and Authorities**

Plaintiffs' support their Response with the following documents, true and correct copies of which are attached hereto as indicated :

**Exhibit A:** Plaintiffs' Third Amended Original Petition;

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<sup>1</sup> . The Certificate of conference in Defendants Holy Trinity and the Denver Metropolis' Special Exceptions Motion is misleading. Mr. Miller did not discuss *any* specifics whatsoever of the Plaintiffs' pleading, a fact which is reflected in his motion. The only issue counsel asked about was, would the Plaintiffs replead using their "real" names? No other issue with the Plaintiffs' live pleading was discussed. Plaintiffs were not "opposed to repleading their case" as Mr. Miller states . He simply did not point to any particular paragraphs of the lengthy Petition he took issue with and still has not done so in his brief.

**Exhibit B:** Certified copies of Jane Doe and John Doe civil filings in cases for damages from Dallas County clerk, Gary Fitzsimmons.

**Exhibit C :** Local media articles regarding sex crimes;

**Exhibit D:**Eparchial Synod News press release, dated June 27, 2007 and GOAA press release dated February 22, 2007 announcing Katinas' suspension;

**Exhibit E:** Newspaper Articles from the National Herald(E1-E5)(Greek-American Newspaper);

**Exhibit F:** Declaration Under Penalty of Perjury of Mother of John Doe I and John Doe II with Exhibit 1 (*D Magazine article The Ugly Truth*, posted December 8<sup>th</sup>, 2006); Exhibit 2 (Denver Metropolis letter dated February 27, 2007; Exhibit 3: Criminal Court Transcript of testimony of Father Christopher Constantinide and Basil Xeros, *Cause No. F-05-73581M, State of Texas vs. Thomas G. Charalambopoulos*)

**Exhibit G:** Declaration Under Penalty of Perjury of John Doe I;

**Exhibit H:** Declaration Under Penalty of Perjury of John Doe III;

**Exhibit I:** Declaration Under Penalty of Perjury of "DZ";

**Exhibit J:** Affidavit of Mary Grant.

**A. Defendants' Special Exception Motion fails to meet the Requirements of Rule 91**

Defendants' Motion fails to "**point out intelligibly and with particularity**" the alleged defects in the pleading at issue. *Tex. R. Civ. Pro. 91* (emphasis supplied). Defendants do not specify which paragraphs or subparagraphs of the very detailed, comprehensive thirty-five page (35) pleading, *Plaintiffs' Third Amended Original Petition* are "defective, obscure, duplicitous, general or otherwise unclear" (**See Exhibit. A:** Plaintiffs' Third Amended Original Petition). Instead, Defendants disingenuously and globally state that the pleading is simply "defective" and ask the court to accept

its unsupported assessment and summarily dismiss this case. They offer no examples. They argue no proof.

However, when reviewing a trial court's dismissal on special exceptions, the court accepts as true all of the factual allegations set out in the challenged pleadings. *Aranda v. Insurance Co. of N. Am.*, 748 S.W. 2d 210, 213 (Tex. 1988). Plaintiffs' live pleadings in this case are anything but vague or general. Their petition is an extremely detailed document as to not only the factual but also the legal basis for these claims. Further, the "generality" of which defendants complain has diminished application in cases involving intimate sexual issues, as Defendant's counsel obligingly observes. (See *Defendants' Metropolis and Holy Trinity's Special Exceptions brief at page 5*). There have been many, many cases litigated in Dallas county using John Doe and Jane Doe pseudonyms for both Plaintiffs and Defendants. This is especially true and justly warranted in exceptionally sensitive cases such as this one, which centers on the sexual abuse of children, the consequences of which have plagued them well into adulthood. (See **Exhibit B**: certified copies of John Doe and Jane Doe civil filings from Dallas County clerk, Gary Fitzsimmons). Of these pseudonymous civil court filings in Dallas County, one hundred and twenty-four (124) are Jane Does and three hundred and one (301) are John Does, of which at least twenty-five (25) can be easily identified as sexual abuse cases, including the sexual abuse of minors by clergy and lay church employees. So long as the litigants know the identities of the Does, these types of cases clearly can be developed without denying fair play to anyone, certainly not the public. Even our own local media, both in print and on television, do not reveal the identities of sexual abuse victims.

This discretion is testimony that in our society the heinous crime of sexual abuse of children and vulnerable adults perpetrated in private and suffered in silence, is deemed so personal that to reveal their identities and risk unnecessarily inflicting on victims additional harm, both physical and emotional

is to be avoided .(See **Exhibit C**: Local media articles regarding sex crimes). Sex offenders are understandably publically registered for the protection of society. Their victims, understandably, are not. In an abundance of caution, therefore, Defendants' own vague and defective Special Exceptions Motion should be denied.

**B. Defendants' request for the court to "out" Plaintiffs identities to the public: a calculated ploy to re-victimize and intimidate victims of childhood sexual abuse**

Defendants complain that the use of what they term "fictitious" names by Plaintiffs is not permissible and that they will be prejudiced in preparing a defense in this case if the names of these Plaintiffs are not made public .( The more nearly correct term for the John Doe designation in this case is "pseudonymous " not "fictitious," because these Plaintiffs are genuine and their situations actual. They are not serviceable straw men in theoretical circumstances). The practice of allowing plaintiffs to use pseudo-names ,especially in these cases, is also well established in the federal courts, even though Rule 10(a) of the Federal Rules of Civil Procedure generally requires pleadings to include the names of the parties. In sexual abuse cases, however, federal statutes protect victims of childhood sexual abuse from publicly disclosing their identities in court proceedings. 18 U.S.C. §3509(d) and (e). Perhaps the best known examples of using pseudo names in the federal courts are abortion cases, such as *Roe v. Wade*, 410 U.S. 113 (1973).

Not only is there absolutely no legitimate public interest to be served in revealing the names of victims of childhood sexual abuse, public interest favors the use of pseudo names to conceal the birth names of victims in such cases where requiring plaintiffs to disclose their identities would deter the filing of other such meritorious cases. In short, there is a strong public interest in exposing sexual

predators and thereby protecting other children from sexual abuse by encouraging those who have been abused and silenced to come forward but not requiring them to do so publically under their birth names.

The determination of whether to permit use of a pseudonym is left to the sound discretion of the court. *Doe vs. Hall*, 579 S.E.2nd 838(Ga. App. 2003). No one factor is dispositive. A judge, therefore, should carefully review all circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff's identity in some types of cases should yield to the plaintiff's privacy concerns in the case before the court. *Southern Methodist Univ. Ass'n v. Wynne & Jaffe*, 599 F.2d 707 ( 5<sup>th</sup> Cir. 1979) at 713.

Relevant factors for allowing a plaintiff to proceed anonymously include:

- whether the asserted justification is merely to avoid annoyance and criticism that may attend any litigation or is to preserve **a matter of sensitive and highly personal nature**;
- where identification poses a **risk of retaliatory physical or mental harm** to the requesting party or even more critically **to innocent non- parties** and
- **the risk of unfairness to the opposing party** from allowing an action against it to proceed anonymously.

*James v Jacobson*, 6 F.3rd 233, 238(4th Cir. 1993).<sup>2</sup> The equation linking the public's right to attend trials and the public's right to know the identities of the parties are not perfectly symmetrical. Accordingly, there is no absolute bar to a party proceeding anonymously *.Doe v. Stegall* 653 F.2d 180, 185 (5<sup>th</sup>. Cir. 1981). Courts have permitted the use of pseudonyms which involve the presence of some social stigma or the threat of physical harm with the disclosure of their identities to the public record. *Doe v. Rostker*, 89 F.R.D 158, 161(N.D. Cal.1981).

#### **1. No Risk of Unfairness to Defendants:**

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<sup>2</sup>There are two additional factors noted that are not applicable to this Response: the ages of the persons whose privacy interests are sought to be protected and whether the action is against a government or private party.

Well before these Special Exceptions were filed, Plaintiffs' counsel provided the names, addresses and birth dates of Plaintiffs. Additionally, Plaintiffs have responded to reams of written discovery from Holy Trinity and the Metropolis Defendants, signed medical, tax, and employment authorizations and have anticipated that they will be deposed for hours by lawyers for the defense. The discovery process has thus far proceeded without one charge by Defendants that they have been impeded in any way by the public's not knowing the names of Katinas' victims. Therefore, Defendants cannot in good faith now claim unfairness since they know and have known for some time who the Plaintiffs are, where they live and details of how and when they were sexually abused. Moreover, they have access to very confidential and private records, so they will be able to duly test the credibility of these victims under oath.

In this regard Defendants' counsel creates a significant ambiguity that the court is invited to resolve. On the one hand, he declares:

“...since the Plaintiffs are seeking punitive damages, which are in the nature of a criminal punishment, the use of fictitious names violates the Confrontation clauses of the United States Constitution and the Texas Constitution.(Defendants ‘ Special Exceptions brief, page 3).

On the other hand, he disclaims:

“...this is a civil suit for damages, not a criminal proceeding.”(Defendants ‘ Special Exceptions brief, page 8).

Ambiguity or contradiction to the contrary, what he is clearly suggesting is that his clients' employee stands accused of having committed sex crimes against children and therefore has the right to confront and cross examine them under their birth names.(He already knows them well, both as names and individuals.) Plaintiffs would likewise be agreeable to exercise their right to confront their perpetrator and to depose and examine him. They are available: he is not. This situation is grossly unfair to Plaintiffs . They, too, have the right to confront Father Katinas, as Defendants' counsel would surely agree.



In summary, absolutely no legitimate purpose would be served by making these victims' identities public. Indeed, as demonstrated herein, to do so would present the very real danger of physical and emotional damage to these litigants, a danger that is needless. Since Defendants have cited no legitimate benefit they could derive from Plaintiffs being forced to expose their names to the public but Plaintiffs have provided ample evidence testifying to the damage that would likely result from Plaintiffs' being forced to publish their identities, one can only conclude that Defendants perceive the expected damage to Plaintiffs as a strategic benefit to them. The public naming of these victims being unnecessary, silencing them and others with the prospect of renewed injury and extended intimidation would seem to be their motivation. The attorneys for the Defendants and the Defendants themselves have adequate, even abundant personal information about these young men. Defendants' are not at a disadvantage in this regard. Withholding their names from the public would not pose a clear and present danger to the administration of justice. Revealing their names to the public would. Defendants' questionable request to "out" these victims should be denied.

## **2. Highly Sensitive and Personal Matters: Childhood Sexual Abuse**

The GOAA has only recently recommended that Katinas be defrocked because of his sexual abuse of minor boys. (See **Exhibit D**: Eparchial Synod News release, ). At the very least, this is a tacit confirmation that Katinas is , not just was, a sexual predator. Yet , Archbishop Demetrios tried to prevent the Katinas matter from being made public, confiding to a reporter: " What I am saying is that **it is a very sensitive and complex issue, and it thus needs to be treated with great caution** if it is published or whatever else." (See **Exhibit E**: Newspaper Article from the National Herald , designated herein as *E1*: titled *Former Pastor of Dallas Community Accused of Child Sex Abuse, page 1 , emphasis added*).

The Plaintiffs in this case were deeply wounded psychologically and spiritually by Father Katinas' misconduct. The details of the sexual abuse by Katinas is disturbing and graphically described in Plaintiffs' live pleading.( **Exhibit A**, Section IV) . Their case is at least as sensitive as the types of cases, noted by Defendants in which courts have permitted pseudonymous filings: "Birth control cases, Abortion cases, Welfare cases, Illegitimate children and cases involving Homosexuality." (*Defendant Brief at page 5*) . These cases all have in common sex and/or children. The case at bar has both.

### **3. Risk of Retaliatory Physical and Emotional Harm**

The John Does herein are emotionally vulnerable. Moreover, they are fearful of physical retaliation from persons who are still Katinas supporters. To such loyalists, Katinas remains one of the most prominent Greek Orthodox priests in the United States. (**See Exhibit E:** Various Newspaper Articles from the National Herald).<sup>3</sup> John Doe II and his Mother still live in this entrenched community. (**See Exhibit F:** Declaration Under Penalty of Perjury of Mother of John Doe I and John Doe II). The parish where she has worshiped for over twenty-five years has become threatening to her in reaction to a gossipy hint that one of her sons was a Katinas victim. Even in church she has been physically grabbed and verbally assaulted . (**Exhibit F**, paragraphs 3,4 and 5). She has been ostracized on one hand and on the other offered money to pressure her son to drop this suit. (**Exhibit F**, paragraphs 6, 7 and 8). Concerning these matters , she fears physical harm not only generally but also specifically because of the alleged criminal association of this one parish family (**Exhibit F**, paragraphs 5 and 9, **Ex.2** to her declaration).

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<sup>3</sup> [www.thenationalherald.com](http://www.thenationalherald.com), The National Greek Herald is the Greek American Newspaper distributed in English and Greek across the United States which has published several articles regarding Katinas and this litigation.

In the criminal trial( *The State of Texas vs. Thomas G. Charalambopoulos, Cause No. F05-73581-M, in the 194<sup>th</sup> Judicial District Court*) of the friend and employee of this family, both the current pastor of Holy Trinity, Father Constantinide and Basil Xeros, another official of the church, testified on behalf of parishioner and former board member Thomas Charalambopoulos( a.k.a. “Tommy C”), who was found guilty of gutting Cory Robinson in the VIP room of the Silver City Topless Club.

( See court transcript of punishment phase testimony of Basil Xeros and Father Christopher Constantinide, attached hereto as **Exhibit F, Ex. 3**). Both Constantinide and Xeros remain strong supporters of Defendant Katinas. Obviously, the Mother of John Doe I and John Doe II has cause for concern given this lurid association.

Her other son, John Doe I, also fears for his mother’s safety as well as for the safety of his own wife and children, especially if his identity is also made public. (See **Exhibit G: Declaration Under Penalty of Perjury of John Doe I**, paragraphs 1,2, 4, 5 and 6). The emotional toll on being “outed” until he is psychologically able has de-stabilized him (**Exhibit G**, paragraphs 3, 5 and 6).<sup>4</sup>

John Doe III, who resides in Chicago, Illinois with his wife and three -year-old daughter, still has many ties to the Olympia Fields Parish community where his family lived when Katinas was assigned there prior to his transfer to Dallas. He fears if his name is made public that the so- called “Greek Mafia” may physically retaliate against him or his family.(See **Exhibit H: Declaration Under Penalty of Perjury of John Doe III**, paragraphs 1, and 5 ). He also worries that his elderly mother and other family members whom he has not told about the abuse will then be confronted , rebuffed and ostracized (**See Exhibit H**, paragraph 4). His employment may also be impacted because he works in

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<sup>4</sup> Because of the mental incapacity of John Doe II, the brother of John Doe I, he is not competent to provide the court a Declaration. But one must ask, in all decency, what legitimate purpose there would be in exposing this mentally fragile person to public view and further injury?

a high-profile, primarily male area of the securities industry(See **Exhibit H**, paragraph, 3). Just having recently come to terms with his abuse has been painful for Doe III. He may not have come forward at all if a requisite of taking legal action against Defendants had been to endure a needless and perilous public “outing”. (See **Exhibit H**, paragraph 2).

Even the Katinas victim known as “DZ” , who is also from the Olympia Fields Illinois parish and whose case was settled prior to the filing of this lawsuit, does not want to be named in public documents at this time (See **Exhibit I: Declaration Under Penalty of Perjury of “DZ”**) --- nor was the Archdiocese ever anxious to have his name made public, but to the contrary. To date the GOAA has failed in its promise to DZ to expose Katinas’ sexual abuse of minors to the Olympia Fields parishioners and to seek out and offer help to any victims there. As with many survivors of sexual abuse, he continues to feel stigmatized and to live in shame .(**Exhibit I**, paragraph 3, 4 and 5). He believes that to force victims before they are psychologically ready to publically announce that they were molested by a priest is to re-victimize them and to discourage others from coming forward to initiate their own healing.(**Exhibit I**: paragraphs 7, 8, 11 and 12). Furthermore, DZ fears retribution and ostracization for his mother and sister, who still live in that community.(**Exhibit I**: paragraphs 9, and 10).

#### **4. Hostile Environment Fostered By Defendants**

The powder-keg climate of the Dallas and Olympia Fields parishes has been fostered by the mixed messages of hierarchical Defendants. In late February 2007, prior to the filing of this case, the Vice-Chancellor of Defendant GOAA, Father Michael Kontogiorgis, came to Holy Trinity and publically announced on behalf of the Archdiocese, “There is no doubt that Father Nicholas engaged in serious moral transgressions...the allegations were corroborated.”(See **Exhibit E**: Newspaper Article from the National Herald , designated herein as *E2*: titled *Dallas Greek Orthodox Priest Suspended*,

page 1 ).But by late May, after the lawsuit was filed, Defendant Metropolitan Isaiah of Denver told the Dallas congregation, “If he did [engage in serious moral transgressions], I don’t know. I have no information...*If there are victims....*”.(See **Exhibit E**: Newspaper Article from the National Herald , designated herein as *E3*: titled *Metropolitan Isaiah Supports Father Katinas Unequivocally, page 1*). Then , Archbishop Demetrios, head of the Defendant GOAA, placed Katinas under his personal protection and refused to allow his defrocking. (See **Exhibit E**: Newspaper Article from the National Herald , designated herein as *E4*: titled *Dallas Church responds to Lawsuit ,page 3 and E5: Synod: Send Katinas to Spiritual Court, page 1-2* ). Publishing the names of Katinas' victims in the wake of this official flip-flopping and with the flotsam and jetsam of the rumor mill swirling all around, could incite damaging retribution by parishioners who want to “ save the church” from scandal and protect its assets. So if they are “outed” as Defendants unconscionably wish, these victims stand to suffer further emotional harm and possible even physical attrition.

DZ, as well as the John Does who share with him the same terrible childhood history, are not alone in the experience of not wanting to be forced into the public area. The nationwide clergy abuse crisis of recent years has brought this particular litigation tactic to the forefront of the survivors support group movement. Mary Grant , one of the Regional Directors of the advocacy group SNAP( Survivors Network of Those Abused by Priests), has for over a decade been involved as a victim's advocate for clergy abuse cases all over the United States .<sup>5</sup> She has witnessed first-hand this unsavory litigation tactic of public “outing” employed by Church lawyers .(See **Exhibit J**: Affidavit of Mary Grant). As a clergy abuse victim, herself, Mary Grant has also confirmed through many of her fellow victims the devastating psychological effects that can result from their being forced to publically reveal their

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<sup>5</sup>. SNAP's website is [www.snapnetwork.org](http://www.snapnetwork.org) and its equivalent in the Greek Orthodox clergy cases is [www.pokrov.org](http://www.pokrov.org).

identities. (See **Exhibit J:** Affidavit of Mary Grant , paragraphs 3, 4,5,6, 7 and 8). Again, this tactic has become a staple of defense attorneys in these cases across the nation, but until now, not in Texas.

**III**  
**Prayer**

Plaintiffs pray that they be allowed to use these pseudonyms: John Doe I, John Doe II, Mother of John Doe I and II and John Doe III during the pendency of this litigation. Further, they pray that any future victims of Katinas who may join this suit be accorded this same deserved courtesy.

FOR THE REASONS STATED ABOVE, Plaintiffs pray that the Defendants' Special Exceptions to Plaintiffs' Third Amended Petition be denied and for such further relief as the court may deem appropriate.

RESPECTFULLY SUBMITTED:

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**ATTORNEY FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded via hand-delivery to the following counsel of record on this the 6<sup>th</sup> day of August 2007.

***Via Hand Delivery***

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Richard Miller  
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***Via Hand Delivery***

James W. Grau  
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Tahira Khan Merritt