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11 Attorneys for Plaintiffs
DENNIS MONTGOMERY, and the MONTGOMERY
12 FAMILY TRUST

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

16 DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST,

17 Plaintiffs,

18 vs.

19 ETREPPID TECHNOLOGIES, LLC, WARREN
20 TREPP, and the UNITED STATES
DEPARTMENT OF DEFENSE,

21 Defendants.
22

23 AND RELATED CASES.
24

) Case No. 3:06-CV-00056-PMP-VPC
) BASE FILE

) (3:06-CV-00145-PMP-VPC)

) **THE MONTGOMERY PARTIES'**
) **OPPOSITION TO MICHAEL J.**
) **FLYNN'S MOTION FOR ATTORNEYS**
) **FEES AND COSTS; MEMORANDUM**
) **OF POINTS AND AUTHORITIES;**
) **DECLARATIONS OF DENNIS**
) **MONTGOMERY AND TERI T. PHAM**

) [Request for Judicial Notice submitted
) concurrently]

25 Dennis Montgomery, Brenda Montgomery, and the Montgomery Family Trust, respectfully
26 submit this brief in opposition to the Motion for Attorney Fees and Costs filed in these consolidated
27 and related actions by attorney Michael J. Flynn:
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 After representing Dennis Montgomery, Brenda Montgomery and the Montgomery Family
5 Trust (“the Montgomery Parties”) for over 18 months in a variety of different matters from his
6 offices in California through the California law firm of Flynn & Stillman, Massachusetts attorney
7 Michael J. Flynn now seeks a summary order from this Nevada court awarding him in excess of
8 \$600,000 in legal fees purportedly billed by the firm of Flynn & Stillman and its California
9 attorneys. Not only does Mr. Flynn lack standing to bring this motion, but both the forum he has
10 selected and the summary procedure he has employed in an attempt to extract this significant
11 additional payment from the Montgomery Parties is entirely improper.

12 There is already pending in the Superior Court for the State of California an action,
13 Montgomery v. Flynn, Los Angeles Superior Court Case No. BC 375335 (“CA State Court
14 Action”) (Request for Judicial Notice (“RFJN”) No. 1), dealing with the attorney-client relationship
15 between Mr. Flynn and the Montgomery Parties, and an arbitration proceeding has already been
16 commenced in California against Mr. Flynn concerning his improper billing practices and the
17 parties’ fee dispute, pursuant to California Business & Professions Code Sections 6200 et seq.
18 (RFJN No. 2). Furthermore, Mr. Flynn’s attempt to transfer the CA State Court action to this Court
19 for adjudication has already been rejected by the District Court for the Central District of
20 California, and it will remain in the California State Court for adjudication. (RFJN No. 3). Even
21 assuming Nevada is the proper forum for resolution of this dispute, this Court very recently
22 confirmed that a summary proceeding is not the proper procedure for recovery of fees by an
23 attorney where the client disputes the amount of fees owed. See Ecomares Incorporated v.
24 Ovcharik, 2007 U.S. Dist. LEXIS 50491, *5-6 (June 8, 2007) (Cooke, J.). Mr Flynn’s motion
25 should accordingly be denied.

II.

SUMMARY OF FACTS

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2
3 As this Court is by now well aware, these related disputes concern the ownership and use of
4 certain technology created and developed by software engineer Dennis Montgomery, as well as the
5 management and disposition of the assets of eTreppid Technologies, LLC. Until August of this
6 year, the Montgomery Parties were represented in these related disputes by attorney Michael J.
7 Flynn and his colleagues in his California law firm of Flynn & Stillman. Throughout that time, Mr.
8 Flynn led the Montgomery Parties to believe that he was authorized to practice law in the State of
9 California. Among other things, he resides in California, and all of his pleadings filed in these
10 matters -- including his pleadings on this very motion for fees -- list a California address. See
11 Declaration of Dennis Montgomery ("Montgomery Decl."). All invoices were sent from an
12 address in California, and all payments were remitted to California. See Exhibit A to Montgomery
13 Decl. In addition, all of the other attorneys who appeared on the Flynn & Stillman invoices are
14 California attorneys. See Exhibit A to Declaration of Teri T. Pham. However, none of those
15 attorneys, including the law firm of Flynn & Stillman itself, are parties to this present motion.
16 Indeed, Mr. Flynn's former partner, Philip Stillman, has indicated that he is not aware of the
17 invoices and fees billed and paid in these matters, and does not even have copies of those invoices.
18 See Montgomery Decl. at ¶11

19 Following disputes between the Montgomery Parties and Mr. Flynn concerning his billing
20 practices and handling of these matters, Mr. Flynn filed a Motion to Withdraw from these
21 consolidated cases, 3:06-CV-00056 VPC and 3:06-CV-00145.¹ On August 1, 2007, the
22 Montgomery Parties terminated Mr. Flynn's representation and the Court subsequently granted the
23 parties' requests that Mr. Flynn be relieved as counsel in these matters.

24 On August 3, 2007, the Montgomery Parties filed a complaint for injunctive relief in the
25 Superior Court for the State of California against Mr. Flynn for his misconduct in connection with
26

27 ¹ Mr. Flynn has not sought to withdraw from the related search warrant action, In re 12720
28 Buckthorne Lane, Reno, Nevada et al., USDC Nev. Case No. 3:06CV-0263, although the
Montgomery Parties expect no objection to his substitution out of that matter.

1 their confidential and privileged information and client files, Montgomery v. Flynn, Los Angeles
2 Superior Court Case No. BC 375335. (RFJN No. 1) Mr. Flynn thereafter attempted to remove the
3 action to the United States District Court for the Central District of California, and sought to
4 dismiss and transfer it to this Court in Nevada. On August 22, 2007, the California District Court
5 rejected Flynn's attempt to remove the case and remanded it back to the California Superior Court.
6 It also denied the motion to dismiss and transfer. (RFJN No. 3). The Montgomery Parties
7 thereafter commenced an arbitration proceeding pursuant to California Business & Professions
8 Code Sections 6200 et seq. to resolve the parties' fee dispute and related issues. (RFJN No. 2).
9 Flynn now seeks to bypass the California courts and arbitration requirement by seeking a summary
10 adjudication of his fee dispute in this Court. Neither the facts or the law, however, support his
11 request and this motion should be denied.

12 III.

13 ARGUMENT

14 A. Flynn Lacks Standing to Assert This Claim for Fees.

15 As a preliminary matter, Mr. Flynn has made no showing that he personally is entitled to
16 recover the fees requested in his motion. As the purported fee invoices show, legal services were
17 allegedly rendered by multiple attorneys from the law firm of Flynn & Stillman, and just not Mr.
18 Flynn alone. See Exhibit A to Montgomery Decl. However, this motion has been brought by Mr.
19 Flynn in his personal capacity to recover *all* fees allegedly outstanding, and there is no indication
20 that those other attorneys or the law firm of Flynn & Stillman itself are aware of or support Mr.
21 Flynn's present request. Indeed, Mr. Flynn's own partner, Phillip Stillman, has suggested
22 otherwise. See Montgomery Decl. at ¶11. Accordingly, Mr. Flynn lacks standing to bring this
23 motion, and it should be denied for this reason alone.

24 B. California is the Proper Forum for This Attorney-Client Fee Dispute

25 As discussed above, it is a California attorney-client relationship that is at the heart of this
26 dispute, and as Mr. Flynn is well-aware, there is already an action pending in the California state
27 court governing the attorney-client relationship between Mr. Flynn and the Montgomery Parties.
28 Furthermore, there is already an arbitration proceeding pending against Mr. Flynn pursuant to

1 California law regarding this very fee dispute. There is no action pending before this Court
 2 governing this fee dispute, and as discussed below, Mr. Flynn is required to commence such an
 3 action under these circumstances before this Court may properly hear the matter -- along with any
 4 motion to dismiss for lack of jurisdiction and/or forum nonconveniens. As a mere fee dispute, this
 5 would only be a breach of contract action between non-Nevada residents, and there would be no
 6 subject matter jurisdiction. In addition, all of the documents and third party witnesses (the other
 7 Flynn & Stillman lawyers) are located in California, where the majority of the activities (the
 8 rendering and billing of legal services) took place. See 28 U.S.C. 1404(a); A.J. Industries, Inc. v.
 9 United States Dist. Ct., 53 F.2d 384, 389 (9th Cir. 1974).

10 Furthermore, a portion of the legal services for which Mr. Flynn now seeks fees include
 11 services performed by the Flynn & Stillman firm that are unrelated to these Nevada actions and
 12 concern the Montgomery Parties' other personal and business matters. See Montgomery Decl. at
 13 ¶9. For all of these reasons, this Court should deny the motion and allow the California court and
 14 arbitration tribunal to proceed with adjudication of this dispute.

15 **C. This Dispute Should Not Be Adjudicated in a Summary Proceeding.**

16 This Court has very recently held that where there is a dispute between an attorney and
 17 client concerning payment of fees, the attorney may not seek to adjudicate that issue by way of a
 18 motion in the underlying dispute, but must commence a separate action or await conclusion of the
 19 underlying action before adjudication of a perfected attorney's lien. See Ecomares Incorporated v.
 20 Ovcharik, 2007 U.S. Dist. LEXIS 50491, *5-6 (D. Nev. June 8, 2007) (Cooke, J.), adopted by
 21 Ecomares, Inc. v. Ovcharik, 2007 U.S. Dist. LEXIS 500335 (D. Nev. July 2, 2007). Despite, Mr.
 22 Flynn's attempt to distinguish the Ecomares decision, the case is directly on point.

23 There, a Nevada law firm filed a motion in the underlying case to convert its attorney's lien
 24 into a judgment while the action was still pending. The lien was based on a written agreement
 25 between the client and the firm. Id. at *3. In opposition to the motion, the client disputed the
 26 amount of fees owed and informed the court that she was pursuing a fee dispute resolution through
 27 the Nevada State Bar. Id. In denying the law firm's motion, this Court stated.

28 Where there is a dispute between the client and former counsel
 regarding the fee requested or the legal services rendered, Morse v.

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Eighth Judicial District Court, 65 Nev. 275 (1948) dictates a different result. In Morse, the court held that where there are such disputes between the attorney and client, the trial court should properly refuse to decide such issues in a summary proceeding in the pending case.

Id. at *5-6. The Court specifically distinguished the case from Gordon v. Stewart, 74 Nev. 115 (1958), relied upon by Mr. Flynn, in which the client expressly conceded that he had breached the fee agreement and that the attorney was entitled to recover in quantum meruit. Ecomares, 2007 U.S. Dist. LEXIS 50491 at *5.

Likewise, here, the Montgomery parties dispute that Mr. Flynn is entitled to any further fees and have commenced an arbitration proceeding in accordance with the California State Bar requirements for resolution of such fee disputes. Furthermore, there is no showing that Mr. Flynn has even perfected his purported lien. He has not provided any evidence to support his request for fees, much less a lien for \$600,000. Indeed, there is no written retainer agreement, and Mr. Flynn's declaration is noticeably void of any evidence that the parties agreed to the purported amount of fees owed. Therefore, this motion, just as in Ecomares, should be denied.

IV.

CONCLUSION

For all the foregoing reasons, the Montgomery Parties respectfully request that the Court deny Michael J Flynn's Motion for Attorney Fees and Costs.

Dated: September 10, 2007

Respectfully submitted,

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

By: 

Deborah A. Klar
Teri T. Pham
Attorneys for Plaintiffs DENNIS
MONTGOMERY and the MONTGOMERY
FAMILY TRUST

DECLARATION OF DENNIS MONTGOMERY

I, Dennis Montgomery, declare as follows:

1. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify thereto.

2. I am presently a resident of the State of Washington, although my wife and I previously resided in California, and we are in the process of relocating back to California within the next few weeks.

3. In January 2006, I was introduced to attorney Michael J. Flynn by my local counsel, Ronald Logar.

4. Mr. Flynn led me to believe at that time and throughout his representation that he was a California attorney, and I believed that I was engaging a California lawyer to represent me. Specifically, he told me he had a law firm, Flynn & Stillman, in California, and I met with him at his offices in Cardiff, California.

5. All of his invoices were sent from California, and all payments were remitted to California. True and correct redacted sample copies of Flynn & Stillman's invoices without description are attached to this declaration as Exhibit A.

6. In addition, all of the papers he filed with the Court listed a California address.

7. At no time did Mr. Flynn ever inform me that he was not and is not licensed to practice in the State of California, or that he is licensed to practice only in Massachusetts. I only learned of this after I retained new counsel.

8. I believe that Mr. Flynn resides in California with his fiance, attorney Carla DiMare, who has also appeared as an attorney in my case.

9. Mr. Flynn and the firm of Flynn & Stillman also represented me in other legal matters unrelated to the lawsuits in Nevada, such as business and contract issues, and the invoices also reflected time billed in connection with those matters.

10. I dispute the amount of fees billed by Mr. Flynn and the law firm of Flynn & Stillman in these matters, as well as his handling of these matters and my confidential privileged

1 information, and I have commenced a lawsuit and an arbitration proceeding in California under
2 California law to address these issues.

3 11. Mr. Flynn's partner or former partner, Philip Stillman, has informed me that he does
4 not know how much has been billed to me by Mr. Flynn and the law firm of Flynn & Stillman, that
5 he does not know how much has been paid by me to Mr. Flynn and the law firm of Flynn &
6 Stillman, and that he has not even seen or have copies of the invoices purportedly sent to me by
7 Mr. Flynn.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct.

10 Executed this 10 day of September, 2007, in Bellevue, WA

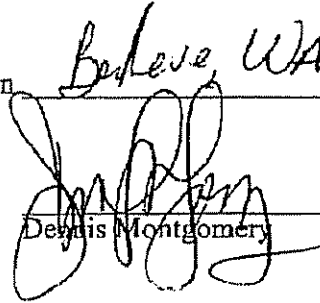
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13 _____
14 Dennis Montgomery
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EXHIBIT “A”

FLYNN & STILLMAN
P O. Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
January 01 – April 07, 2006
Montgomery/ [REDACTED]

Invoice Submitted to:

Invoice No. 001

[REDACTED]

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED

[REDACTED]

TOTAL INVOICE

[REDACTED]

TOTAL BALANCE DUE

[REDACTED]

FLYNN & STILLMAN

*P.O. Box 690, Rancho Santa Fe, California 92067
 Telephone 858-759-7000 Facsimile 858-759-0711*

STATEMENT OF PROFESSIONAL SERVICES
April 07 – May 31, 2006
Montgomery vs. eTrepid Technologies

Invoice Submitted to:

Invoice No. 002

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
 [REDACTED]
 [REDACTED]

TOTAL BALANCE DUE

[REDACTED]

FLYNN & STILLMAN
P O Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
June 01 – June 30, 2006
Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No. 003

Mr Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
[REDACTED]
[REDACTED]

FLYNN & STILLMAN
P.O. Box 690, Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
July 01 – July 31, 2006
Montgomery vs. eTrepid Technologies

Invoice Submitted to:

Invoice No. 004

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES
TOTAL COSTS ADVANCED
TOTAL INVOICE

[REDACTED]
[REDACTED]
[REDACTED]

FLYNN & STILLMAN
 P.O. Box 690, Rancho Santa Fe, California 92067
 Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
 Through October 31, 2006
Montgomery vs. eTrepid Technologies

Invoice Submitted to:

Invoice No. 006

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES [REDACTED]
TOTAL COSTS ADVANCED [REDACTED]
 (note: no costs for telephone, copying etc.)

TOTAL INVOICE [REDACTED]

TOTAL BALANCE DUE [REDACTED]

FLYNN & STILLMAN
P O. Box 690. Rancho Santa Fe, California 92067
Telephone 858-759-7000 Facsimile 858-759-0711

STATEMENT OF PROFESSIONAL SERVICES
Through November 30, 2006, 2006
Montgomery vs. eTreppid Technologies

Invoice Submitted to:

Invoice No. 007

Mr. Dennis Montgomery

ATTORNEY TIME KEEPER SUMMARY	HOURS	HOURLY RATE	TOTAL
Michael J. Flynn, Sr	[REDACTED]	[REDACTED]	[REDACTED]
Philip H. Stillman	[REDACTED]	[REDACTED]	[REDACTED]
Carla A. DiMare	[REDACTED]	[REDACTED]	[REDACTED]
Al Rava	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL LEGAL FEES [REDACTED]
TOTAL COSTS ADVANCED [REDACTED]
 (note: no costs for telephone, copying etc.)

TOTAL INVOICE [REDACTED]
TOTAL BALANCE DUE [REDACTED]

ATTORNEY TIME RECORD

RE:	Montgomery vs. eTreppid Technologies		
DATE	DESCRIPTION	ATTY	TIME
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DECLARATION OF TERI T. PHAM

I, Teri t. Pham, declare as follows:

1. I am an attorney licensed to practice in the State of California and admitted *pro hac vice* to appear before this Court. I am a partner with the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, counsel of record for Dennis Montgomery, Brenda Montgomery, and The Montgomery Family Trust in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached to this Declaration as Exhibit A are true and correct copies of information I printed from the State Bar of California website showing that attorneys Carla Di Mare, Al Rava and Philip Stillman are all licensed to practice in the State of California, with addresses in California.

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

Executed this 10th day of September, 2007, in Los Angeles, California.


Teri T. Pham

ATTORNEY SEARCH

Carla A DiMare - #182906

Current Status: Active

This member is active and may practice law in California

See below for more details

Profile Information

Bar Number	182906	Phone Number	(858) 775-0707
Address	P O Box 1668 Rancho Santa Fe, CA 92067-1668	Fax Number	(858) 756-2859
		e-mail	Not Available
District	District 9	Undergraduate School	Boston Coll; Chestnut Hill I
County	San Diego	Law School	New England SOL; Boston
Sections	None		

Status History

Effective Date	Status Change
<i>Present</i>	Active
6/10/1996	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline

Administrative Actions

This member has no public record of administrative actions

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ATTORNEY SEARCH

Alfred Gerard Rava - #188318

Current Status: Active

This member is active and may practice law in California

See below for more details

Profile Information

Bar Number	188318	Phone Number	(619) 238-1993
Address	The Rava Law Firm 3667 Voltaire St San Diego, CA 92106	Fax Number	(619) 374-7288
		e-mail	alrava@cox.net
District	District 9	Undergraduate School	Penn State Univ; Universit
County	San Diego	Law School	California Western SOL; S.
Sections	None		

Status History

Effective Date	Status Change
<i>Present</i>	Active
6/5/1997	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline

Administrative Actions

This member has no public record of administrative actions

Start New Search >

ATTORNEY SEARCH

Philip Harris Stillman - #152861

Current Status: Active

This member is active and may practice law in California

See below for more details

Profile Information

Bar Number	152861	Phone Number	(888) 235-4279
Address	Flynn & Stillman 224 Birmingham Dr Ste 1A4 Cardiff, CA 92007-1743	Fax Number	(888) 235-4279
		e-mail	Not Available
District	District 9	Undergraduate School	Brandeis Univ; Waltham M
County	San Diego	Law School	Boston Univ SOL; Boston I
Sections	Litigation		

Status History

Effective Date	Status Change
<i>Present</i>	Active
6/13/1991	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

This member has no public record of discipline

Administrative Actions

This member has no public record of administrative actions

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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP, and that on the 10th day of September, 2007, I caused to be served the within document described as **THE MONTGOMERY PARTIES' OPPOSITION TO MICHAEL J. FLYNN'S MOTION FOR ATTORNEYS FEES AND COSTS; MEMORANDUM OF POINTS & AUTHORITIES; DECLARATION S OF DENNIS MONTGOMERY AND TERI T. PHAM** on the interested parties in this action as stated below:

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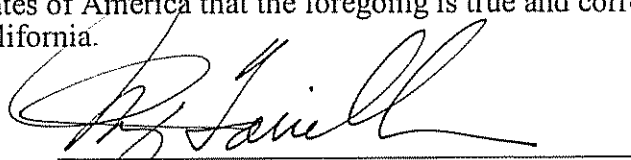
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and cdimare@worldnet.att.net
Former Attorney for Dennis Montgomery,
Brenda Montgomery & the Trustees of The
Montgomery Family Trust

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e-Mail: rlogar@renofamilylaw.com

[ELECTRONIC] By filing the document(s) electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document(s) to the persons listed above at their respective email address.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on 9/10/2007, at Los Angeles, California.



NANCY TORRECILLAS

PROOF OF SERVICE