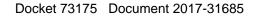
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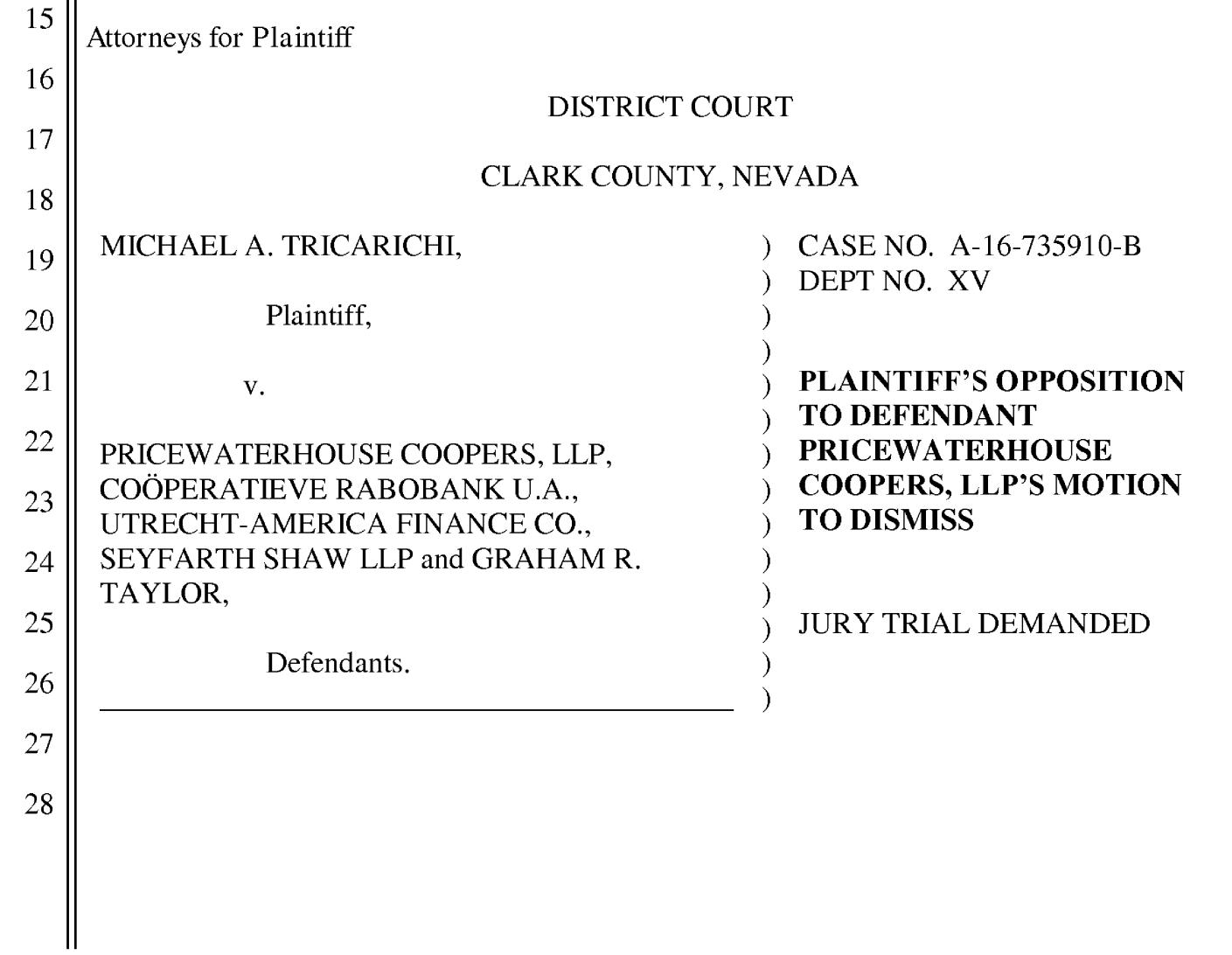


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POINTS AND AUTHORITIES

$2 \parallel I.$ **INTRODUCTION**

3 Confronted with the allegations of the Complaint showing its gross negligence and 4 misrepresentations in advising Plaintiff Michael Tricarichi, Defendant Pricewaterhouse Coopers 5 ("PwC") points the finger at Plaintiff, saying that he waited too long to bring his claims and that 6 another case in which PwC was not a party absolves PwC. Neither accusation is true. Plaintiff 7 brought his claims about six months after he incurred injury and thus well within the statute of 8 limitations. And the prior case to which PwC refers – while noting PwC's failings in advising 9 10 Mr. Tricarichi – did not decide the question of PwC's liability, because it did not have to. That 11 question is for this Court or a jury empaneled by this Court to decide. 12 PwC tries to get around the Complaint's allegations by asking this Court to take judicial 13 notice of certain documents. One of these is the engagement letter between Plaintiff and PwC, 14 which PwC cites to argue that a New York statute of limitations applies. Though the letter is 15

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| 16 | not properly considered on a motion to dismiss, it does not help PwC's statute of limitations |
| 17 | argument in all events. This is because the law of the forum – Nevada – applies to procedural |
| 18 | matters such as the statute of limitations, Plaintiff's claims are timely under Nevada law, and |
| 19 | Plaintiff's claims are also timely under New York law, assuming for the sake of argument that |
| 20 21 | such law applies. |
| 21 | |
| 22 | PwC also asks this Court to take judicial notice of the Tax Court opinion finding |
| 23 | Plaintiff liable for taxes, penalties and interest in connection with the transaction whereby |
| 24 | Plaintiff sold all his stock in a company called Westside Cellular to another company, Fortrend. |
| 25 | Plaintiff sold all his stock in a company called Westside Cellular to another company, Fortrend. PwC advised Plaintiff regarding the tax aspects of this transaction, telling him that the stock sale |
| 26 | was proper under the tax laws and advising Plaintiff that he could not be held liable for Westside's taxes. PwC's advice proved to be wrong. According to PwC, though, the Tax Court opinion says Plaintiff is nonetheless to blame. Not so. The Tax Court did not make the |
| 27 | Westside's taxes. PwC's advice proved to be wrong. According to PwC, though, the Tax Court |
| 28 | opinion says Plaintiff is nonetheless to blame. Not so. The Tax Court did not make the |
| | |
| | 1 |

| 1 | "findings" PwC says it did, and in any case, it is not appropriate for this Court to take judicial |
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| 2 | notice, on a motion to dismiss, of the factual or legal findings of another court, and thereby |
| 3 | deprive Plaintiff the right to proceed with his case before it has even started. |
| 4 | In short, Plaintiff's claims are timely, and Plaintiff is not precluded from bringing them |
| 5 6 | by the doctrine of collateral estoppel or otherwise. PwC's motion should be denied. |
| 7 | II. <u>FACTUAL BACKGROUND</u> |
| 8 | A. Plaintiff Tricarichi and Defendant PwC |
| 9 | Plaintiff, Michael Tricarichi, built a cellular telephone business from the ground up and |
| 10 | preserved that business through years of litigation necessitated by the illegal trade practices of |
| 11 | several larger, competing cellular providers. (Cmplt. $\P 1$) After those competitors were found |
| 12 | several larger, competing cellular providers. (Cmplt. \P 1) After those competitors were found liable for their anticompetitive actions, Mr. Tricarichi and his company, Westside Cellular, |
| 13 14 | resolved the damages owed for those actions via a substantial settlement. (Id. \P 27-28) As part |
| 14 | of the settlement, Mr. Tricarichi's company exited the cellular phone business. (Id.) |
| 16 | Faced with the question of what to do next, Mr. Tricarichi considered a number of |
| 17 | options, including investing in other ventures via Westside, of which he was the sole |
| 18 | options, including investing in other ventures via Westside, of which he was the sole shareholder. (Cmplt. ¶ 2) During this process, Mr. Tricarichi met with representatives of another company, Fortrend International, LLC ("Fortrend"), which offered to buy all his shares in Westside and employ Westside in Fortrend's debt-collection business. (Id.) Fortrend represented |
| 19 | company, Fortrend International, LLC ("Fortrend"), which offered to buy all his shares in |
| 20 | Westside and employ Westside in Fortrend's debt-collection business. (Id.) Fortrend represented that Westside's remaining assets would facilitate this business, that it would legitimately offset |
| 21 22 | that Westside's remaining assets would facilitate this business, that it would legitimately offset |
| 23 | Westside's contingent tax liabilities, and that in all events it would ensure that those tax |
| 24 | liabilities were satisfied fully. (Id.) As a result, Fortrend said, Mr. Tricarichi would realize a |
| 25 | greater net return on his investment in Westside than would otherwise be the case if |
| 26 | Westside were liquidated. (Id.) Fortrend assured Mr. Tricarichi that the proposed transaction, |
| 27 28 | including its tax aspect, was legitimate and in accordance with the tax laws. (Id.) Unbeknownst |
| 28 | to Plaintiff, Fortrend's representations and assurances were knowingly false. (Id.) |
| | |
| | 2 |

| 1 | Mr. Tricarichi retained a nationally recognized accounting firm with expertise in tax |
|---------------------|--|
| 2 | matters – Defendant PwC – to review the proposed transaction. (Compl. ¶ 3) PwC did so, |
| 3 | ultimately advising Mr. Tricarichi that the proposed stock sale transaction was legitimate for tax |
| 4 | purposes, and that Mr. Tricarichi had no ongoing exposure related to Westside once the |
| 5 | transaction with Fortrend was completed. (Id.) Unbeknownst to Mr. Tricarichi at the time, |
| 6 7 | PwC's advice in this regard was, at minimum, grossly negligent. (Id.) |
| | |
| 8 | B. Midco Transactions Generally |
| 8 9 | B. Midco Transactions Generally The transaction proposed by Fortrend and reviewed by PwC was what became known as |
| | The transaction proposed by Fortrend and reviewed by PwC was what became known as |
| 9 10 11 | The transaction proposed by Fortrend and reviewed by PwC was what became known as a "Midco" or "intermediary" transaction. Such transactions were widely promoted during the |
| 9 10 11 12 | The transaction proposed by Fortrend and reviewed by PwC was what became known as a "Midco" or "intermediary" transaction. Such transactions were widely promoted during the late 1990s and early 2000s by Fortrend and others, but actually constituted abusive tax shelters. |
| 9 10 11 | The transaction proposed by Fortrend and reviewed by PwC was what became known as a "Midco" or "intermediary" transaction. Such transactions were widely promoted during the |

| 16 | Midco-type transactions were generally promoted to shareholders – like Mr. |
|----------|---|
| 17 | Midco-type transactions were generally promoted to shareholders – like Mr. Tricarichi – of closely held C corporations with potentially large taxable gains. (Cmplt. ¶ 25) Promoters of Midco transactions targeted such shareholders and offered a purported solution to "double taxation " that is, the taxation of gains at both the corporate and |
| 18 | 25) Promoters of Midco transactions targeted such shareholders and offered a purported |
| 19 20 | solution to "double taxation," that is, the taxation of gains at both the corporate and |
| 20 21 | individual shareholder levels. (Id.) Generally speaking, Midco transactions proceeded as |
| 21 22 | follows: First, an "intermediary company," or "midco," affiliated with the promoter – |
| 22 23 | solution to "double taxation," that is, the taxation of gains at both the corporate and individual shareholder levels. (Id.) Generally speaking, Midco transactions proceeded as follows: First, an "intermediary company," or "midco," affiliated with the promoter – typically a shell company, often organized offshore – would purchase the shares of the target |
| | company, and thus its tax liability. (Id.) After acquiring the shares and this tax liability, the |
| | intermediary company would engage in a second step that was supposed to offset the |
| 26 | target's realized gains and eliminate the corporate-level tax (Id.) |
| 27 | target's realized gains and eliminate the corporate-level tax. (Id.) To draw Mr. Tricarichi and others like him into such transactions, Midco promoters |
| 28 | like Fortrend (which is now defunct) represented to the target company's shareholders that |
| | The Forthend (which is now defunct) represented to the target company's shareholders that |
| | 3 |

they would legitimately net more for their shares than would otherwise be the case absent 2 the intermediary transaction. (Cmplt. ¶¶ 15, 25) As happened with Plaintiff's transaction, 3 however, such representations often proved, years later, to be false, resulting in substantial 4 tax liabilities and penalties for Plaintiff and others. (Id. $\P 26$) 5 Plaintiff Becomes Ensnared in the Midco Transaction. **C**. 6 As noted above, prior to 2003, Plaintiff was the president and sole shareholder of 7 Westside, which purchased network access from major cellular service providers and resold that 8 9 access to its cell-phone customers. (Cmplt. § 27) Over time, Plaintiff learned that certain of 10 these providers were engaging in anticompetitive trade practices. (Id.) Westside therefore sued 11 those providers; prevailed on liability; and reached a settlement regarding damages, pursuant to 12 which Westside ultimately netted (after attorney fees and employee payments) proceeds of 13 about \$40 million. (Id. ¶ 27-28) In exchange, Westside was required to terminate its business 14 as a retail provider of cell phone service in June 2003 – effectively relinquishing its assets in 15

| 16 | return for the settlement proceeds. (Id. $\P 28$) |
|----------|--|
| 17 | Plaintiff asked the Hahn Loeser law firm to look into tax matters related to the |
| 18 | settlement. (Cmplt. ¶ 29) Because Westside was a C Corporation, there was a concern the |
| 19 | settlement proceeds could be subject to double taxation. (Id.) Plaintiff was introduced to |
| 20 | both Fortrend and another Midco promoter; each said it was in the distressed debt |
| 21 | |
| 22 | receivables business and wanted to purchase Westside for this business. (Id. ¶¶ 29-31) |
| 23 | Fortrend and the other promoter, Midcoast Credit Corp. ("Midcoast"), each made an |
| 24 | offer proposing essentially the same transaction: An intermediary company would borrow |
| 25 | money to purchase the stock of Westside. (Cmplt. \P 32) After the sale closed, the |
| 26 27 | intermediary company would merge into Westside, and the purchaser would employ |
| | Westside in its distressed-debt collection business. (Id.) The purchaser would fund its |
| 28 | operations with Westside's remaining cash (Fortrend represented that financing for its |
| | operations with westside s remaining cash (Fortrend represented that mancing for its |
| | 4 |

| 1 | distressed-debt recovery business was otherwise difficult to obtain), and legitimately offset |
|----------|---|
| 2 | Westside's contingent tax liabilities, which in all events, would be satisfied fully. (Id.) |
| 3 | Fortrend and Midcoast represented to Plaintiff that the stock purchase they were |
| 4 | each proposing would result in legitimate tax benefits and thus a greater net return to |
| 5 6 | Plaintiff than he would otherwise realize. (Cmplt. § 33) They assured Plaintiff that |
| 7 | they had successfully undertaken numerous other transactions like the one being |
| 8 | proposed to Plaintiff and that such transactions were proper under the tax laws. (Id.) |
| 9 | Unbeknownst to Plaintiff, Fortrend paid Midcoast to step away, and Plaintiff thus chose to |
| 10 | proceed further with Fortrend. (Id. ¶¶ 34-35) |
| 11 | D. Plaintiff Retains PwC to Vet the Proposed Transaction. |
| 12 13 | In April 2003, Plaintiff retained PwC to review the proposed transaction. (Cmplt. \P 37) |
| 13 | Plaintiff is unsophisticated in tax matters and was relying on PwC's expertise in deciding |
| 15 | whether to proceed with the transaction. (Id.) |
| 16 | Unbeknownst to Plaintiff, however, PwC had on at least one prior occasion brought |
| 17 | Fortrend to the table to facilitate a Midco transaction that PwC itself had advocated. (Cmplt. ¶ |
| 18 | 38) In particular, in late 1999, PwC advocated that a Midco transaction be used in the |
| 19 20 | 38) In particular, in late 1999, PwC advocated that a Midco transaction be used in the purchase of the Bishop Group Ltd. ("Bishop") by PwC's client Midcoast Energy Resources, Inc.; PwC approached Fortrend to serve as an intermediary; and a Fortrend affiliate in fact served as an intermediary, purchasing the Bishop stock in a Midco transaction that PwC helped negotiate. (Id.) PwC disclosed none of this to Plaintiff. (Id.) The Bishop Midco transaction was audited by the IRS starting in late 2003 (but before Plaintiff had reported the |
| 20 | Inc.; PwC approached Fortrend to serve as an intermediary; and a Fortrend affiliate in fact |
| 22 | served as an intermediary, purchasing the Bishop stock in a Midco transaction that PwC |
| 23 | helped negotiate. (Id.) PwC disclosed none of this to Plaintiff. (Id.) The Bishop Midco |
| 24 | transaction was audited by the IRS starting in late 2003 (but before Plaintiff had reported the |
| 25 | Westside stock sale on any tax returns), found deficient by the IRS in 2004, and confirmed by |
| 26 | the courts in 2008 and 2009 to be an illegal tax shelter. (Id.) |
| 27 28 | During the period April-August 2003, a team of PwC tax professionals set out to |
| | examine and advise Plaintiff regarding the stock sale transaction proposed by Fortrend. |
| | 5 |

(Cmplt. ¶ 39) While Plaintiff and Fortrend proceeded to discuss and negotiate a proposed 1 2 stock purchase agreement, PwC reviewed the terms, and considered the tax implications, 3 thereof as part of its engagement. (Id.) PwC personnel put between 150 and 200 hours 4 into this effort, for which PwC charged approximately \$48,000 in fees. (Id.) PwC 5 participated in various calls with the parties and/or their representatives, reviewed 6 transaction documentation, and undertook research. (Id.) PwC understood, among other 7 things, that Fortrend intended to offset Westside's contingent tax liability with deductions 8 9 associated with high basis / low value assets, and that Plaintiff was relying on Fortrend to 10 satisfy Westside's tax obligations. (Id.) 11 PwC further understood but failed to properly advise Plaintiff regarding IRS Notice 12 2001-16 and its significance for the Fortrend transaction. (Cmplt. ¶¶ 40, 56) Notice 2001-16, 13 which had been issued in January 2001, describes transactions where a corporation disposes 14 of substantially all of its assets and then the corporation's shareholders sell their stock to 15

| 16 | another party who seeks favorable tax treatment. (Id. \P 56) The notice states that any |
|----------------------|---|
| 17 | transactions that are the same as, or substantially similar to, those described in the Notice |
| 18 | are "listed transactions." (Id.) Listed transactions are deemed by the IRS to be abusive tax |
| 19 20 | are "listed transactions." (Id.) Listed transactions are deemed by the IRS to be abusive tax shelters. (Id.) Persons failing to report these tax shelters may be subject to penalties. (Id.) PwC failed to properly advise Plaintiff that Notice 2001-16 applied to Midco transactions described therein and to "substantially similar" transactions; that the term "substantially |
| 20 | PwC failed to properly advise Plaintiff that Notice 2001-16 applied to Midco transactions |
| 22 | described therein and to "substantially similar" transactions; that the term "substantially |
| 23 | similar" was broadly construed in this context; and that the proposed transaction and its tax |
| 24 | implications posed risk for Plaintiff. (Id. ¶¶ 56-58) |
| 25 | Notwithstanding the problematic nature of the transaction proposed by Fortrend, which |
| 26 | should have been apparent to PwC given its expertise in tax matters, PwC came to the |
| 25 26 27 28 | conclusion that the transaction did not fit the IRS definition of a Midco (or substantially |
| 20 | similar) transaction and that it was not a reportable transaction as defined by the IRS. (Cmplt. |
| | 6 |

| 1 | \P 53) PwC also came to the conclusion that Plaintiff would not be subject to transferee liability |
|--------|---|
| 2 | for Westside's taxes as a result of the Fortrend transaction. (Id.) PwC's examination of the |
| 3 | proposed transaction concluded with a determination that there was no reason not to go |
| 4 | forward with Fortrend's offer to purchase Plaintiff's Westside stock. (Id.) PwC advised |
| 5 | Plaintiff of its conclusions in or about August 2003. (Id.) |
| 6 7 | Relying upon PwC's advice, Plaintiff proceeded with the Fortrend transaction. |
| 8 | (Cmplt. ¶ 53) Had PwC advised Plaintiff otherwise, Plaintiff would not have proceeded with |
| 9 | the transaction. (Id.) Plaintiff and Fortrend executed the stock purchase agreement, and the |
| 10 | transaction closed, on September 9, 2003. (Id. ¶ 54) Thereafter, Westside's remaining funds, |
| 11 | rather than being used to facilitate Fortrend's debt-collection business, were drained by |
| 12 | Fortrend. (Id. ¶ 55) Westside did not engage in the debt-collection business as Fortrend had |
| 13 | |
| 14 | represented to Plaintiff it would. (Id.) In an attempt to offset Westside's tax liability on the \$40 |
| 15 | million in settlement proceeds from the network-access litigation, Fortrend had Westside claim |

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| 16 | a correspondingly large bad-debt deduction. Westside did not pay any taxes. (Id. ¶¶ 59-69) |
| 17 | E. Plaintiff is Left Holding the Bag. |
| 18 | The IRS audited Westside's 2003 tax return. (Cmplt. ¶ 75) At the conclusion of the |
| 19 | audit, the IRS disallowed the \$40 million-plus bad-debt deduction that Fortrend / Westside had |
| 20 | claimed. (Id.) The IRS sent a notice of deficiency to Westside determining a tax deficiency of |
| 21 22 | \$15,186,570 and penalties totaling \$6,012,777 under the tax code, but Westside – which had no |
| 23 | assets or resources by that point as a result of Fortrend's actions – did not pay any of these |
| 24 | amounts and did not petition the U.S Tax Court for relief. (Id. ¶¶ 75-76) |
| 25 | The IRS then proceeded with a transferee liability examination concerning Westside's |
| 26 | 2003 tax liabilities. (Cmplt. \P 77) Transferee liability is a method of imposing tax liability on |
| 27 | The IRS then proceeded with a transferee liability examination concerning Westside's 2003 tax liabilities. (Cmplt. ¶ 77) Transferee liability is a method of imposing tax liability on a person (here, Plaintiff) other than the taxpayer (here, Westside) that is directly liable for the tax. (Id.) The IRS determined that Plaintiff had transferee liability for Westside's tax |
| 28 | tax. (Id.) The IRS determined that Plaintiff had transferee liability for Westside's tax |
| | |
| | I 7 |

deficiency and penalties. (Id. ¶ 78) (Years before, Plaintiff had timely paid the taxes on the 1 2 long-term gain incurred as a result of selling his Westside stock.) (Id.) 3 Plaintiff petitioned the U.S. Tax Court for review of the IRS notice of transferee 4 liability. (Cmplt. § 79) The matter was litigated and proceeded to trial. (Id.) The Tax Court 5 found in October 2015 that – contrary to what PwC had told Plaintiff – the Fortrend transaction 6 was an improper Midco transaction, and Plaintiff was liable under transferee liability principles 7 for Westside's tax deficiency and penalties totaling about \$21.2 million, plus interest. (Id.) 8 9 III. ARGUMENT 10 Plaintiff's Claims Are Timely Under Both Applicable Nevada Law and the Α. New York Law that PwC Incorrectly Applies. 11 PwC labors to avoid Nevada law—the majority of its statute-of-limitations argument is 12 spent arguing that Nevada law does not apply, and its entire analysis of the applicable Nevada 13 14 statute is relegated to a footnote. But the Nevada Supreme Court has long held that statutes of 15

| 15 | limitations are procedural rules and therefore the law of the forum—Nevada—applies. |
|----------|--|
| 16 17 | Moreover, the New York choice-of-law clause in the engagement letter between Plaintiff and |
| | PwC does not cover procedural rules like the statute of limitations, nor did it require New York |
| 18 | |
| 19 | choice of forum. |
| 20 | Plaintiff's claims are timely under Nevada law because Plaintiff suffered no injury until |
| 21 | October 2015. The statute of limitations cannot have expired because: (a) the statute applies |
| 22 | only to actions "to recover damages," (b) there were no damages (and thus no possible suit "to |
| 23 | recover damages") until the adverse Tax Court decision in October 2015, and (c) as PwC also |
| 24 | fails to note in its motion, the parties have had tolling agreements in effect from when Plaintiff |
| 25 26 | first received notice from the IRS until the filing or this lawsuit. As a matter of basic logic, the |
| | statute of limitations under Nev. Rev. Stat. § 11.2075 could not have expired before a suit for |
| 27 | damages was possible or Plaintiff even received notice of the IRS' contrary position. |
| 28 | |
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Plaintiff's claims are also timely because the Nevada statute tolls the limitations period 1 2 "for any period during which the accountant or accounting firm conceals the act, error or 3 omission upon which the action is founded" (Nev. Rev. Stat § 11.2075(2)). Plaintiff expressly 4 alleges such concealment (e.g., Cmplt. ¶¶ 73-74). PwC cites the statute in its motion to dismiss, 5 but omits the tolling provision and makes no attempt to argue that Plaintiff's concealment 6 allegations are insufficient under the statute. (Mot. at 16 n.5.) 7 Moreover, regardless of concealment, issues of fact preclude dismissal under the only 8 9 subsection of the Nevada statute PwC cites in support of its motion—which provides that an 10 action is barred four years "after the completion of performance of the service for which the 11 action is brought." (Id.) Indeed, even if New York law applies, Plaintiff's claims are also timely 12 under New York law pursuant to the "continuous representation" doctrine, because the parties 13 expressly contemplated PwC would provide continuing services in the event of an IRS audit. 14 **Nevada Law Applies to the Statute of Limitations** 1. 15

| 15 | for Plaintiff's Claims. |
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| 16 | PwC argues that New York statutes of limitation apply based solely on a substantive |
| 17 | choice-of-law provision in the parties' engagement letter. At the outset, the Court should not |
| 18 | consider the engagement letter on PwC's motion to dismiss, as the Complaint does not |
| 19 20 | incorporate it by reference and it is not integral to Plaintiff's claims. PwC contends that the |
| 20 | engagement letter is "integral to Plaintiff's tort claims because it created the 'duty of Plaintiff to |
| 22 | use such skill, prudence and diligence as commonly possessed and exercised by tax and |
| 23 | business professionals in the fields of income taxes, tax savings transactions and business tax |
| 24 | consulting." (Mot. at 11 n.3.) But these duties are not specified in the engagement letter and are |
| 25 | not dependent on its specific terms. They arise because PwC undertook to provide professional |
| 26 | services to Plaintiff, and the engagement agreement is thus not "integral" to Plaintiffs' tort |
| 27 | services to r familin, and the engagement agreement is thus not integral to r familing off |
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| 1 | claims. Indeed, if the agreement is "central" to Plaintiff's claims, then the applicable statute of |
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| 2 | limitations should be six years. See Nev. Rev. Stat § 11.190(1)(b). |
| 3 | Regardless, Nevada law applies notwithstanding the choice-of-law provision. Under |
| 4 | well-established Nevada law, statutes of limitations are governed by the law of the forum, even |
| 5 | where the substance of the dispute is governed by another state's laws: |
| 6 | The rule is, that a personal contract by its terms to be performed in some place |
| 8 | other than that where the contract is made, is to be governed by the law of the place of performance; but this rule applies only to the rights and obligations |
| 8 9 | resting upon, or arising from, the contract; the law of the forum always governs the remedy in England and this country; and the Statute of Limitations applies |
| | only to a remedy, and not to a right or obligation. |
| 10 11 | Wilcox v. Williams, 5 Nev. 206, 211 (1869) (emphasis added); see also Asian Am. Entm't Corp. |
| 12 | v. Las Vegas Sands, Inc., 324 F. App'x 567, 568 (9th Cir. 2009) ("The relevant choice-of-law |
| 13 | rule, as established by the Nevada Supreme Court, is the rule of lex fori: i.e., that 'the Statute of |
| 14 | Wilcox v. Williams, 5 Nev. 206, 211 (1869) (emphasis added); see also Asian Am. Entm't Corp. v. Las Vegas Sands, Inc., 324 F. App'x 567, 568 (9th Cir. 2009) ("The relevant choice-of-law rule, as established by the Nevada Supreme Court, is the rule of lex fori: i.e., that 'the Statute of Limitations of the forum [will] govern the remedy") (quoting Wilcox); Spilsbury v. U.S. |
| 15 I | |

| 15 | Specialty Ins. Co., 2015 WL 476228, at *3 (D. Nev. Feb. 4, 2015) (same); Seely v. Illinois- |
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| 16 | |
| 17 | California Exp., Inc., 541 F. Supp. 1307, 1309 (D. Nev. 1982) ("The defense that a claim is |
| 18 | barred by the statute of limitations is a procedural matter governed by the law of the forum, in |
| 19 | this case Nevada law."). Contractual choice-of-law provisions govern only substantive issues, |
| 20 | not procedural issues like statutes of limitations. Tipton v. Heeren, 109 Nev. 920, 922, 859 P.2d |
| 21 | 465, 466 (1993) (Nevada law governed procedural issue despite contractual choice-of-law |
| 22 | provision specifying Wyoming law, which applies to substantive issues;) G & H Associates v. |
| 23 | Ernest W. Hahn, Inc., 113 Nev. 265, 272, 934 P.2d 229, 233 (1997 ("Statutes of limitation are |
| 24 | |
| 25 | procedural bars"). ¹ |
| 26 | |
| 27 | $\frac{1}{1}$ Other (substantive) issues to which the choice-of-law provision may apply are not yet before |
| 28 | the Court, and Plaintiff reserves the right to later contend that the choice-of-law provision does or does not govern other issues in this matter. |
| | |
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Moreover, the engagement letter's generic choice-of-law provision states only, in its 2 entirety, that "[t]his Agreement will be governed by the laws of the State of New York." Under 3 New York law, choice-of-law provisions cannot be read to include statutes of limitation unless 4 they expressly so provide. Portfolio Recovery Associates, LLC v. King, 14 N.Y.3d 410, 416, 927 5 N.E.2d 1059, 1061 (2010) ("Choice of law provisions typically apply to only substantive issues, 6 and statutes of limitations are considered procedural because they are deemed as pertaining to the remedy rather than the right. There being no express intention in the agreement that 8 9 Delaware's statute of limitations was to apply to this dispute, the choice of law provision cannot 10 be read to encompass that limitations period.") (citations omitted). As even New York law 11 provides that choice-of-law provisions do not include statutes of limitation unless they expressly 12 so state, the choice-of-law provision here was not intended to include statutes of limitations, and 13 did not so state.² 14

15 PwC vaguely asserts that the choice-of-law provision governs "Plaintiff's claims" against it, but makes no attempt to explain why it would govern the applicable statute of limitation. 16 Virtually all of the cases PwC cites to imply that a generic choice-of-law provision covers 17 statute-of-limitation issues have nothing to do with statutes of limitation. See cases cited in Motion at 11-14. The lone exception is a federal district court case in which the party 18 advocating Nevada's statute of limitations (notwithstanding a Delaware choice-of-law provision) "offered no argument or explanation why Nevada law should apply," and tried to 19 "improperly raise new arguments [in this regard] in its reconsideration motion." Izquierdo v. Easy Loans Corp., 2014 WL 2803285, at *2 (D. Nev. June 19, 2014) (emphasis in original). 20 Moreover, Izquierdo considered neither Wilcox nor other authority cited above supporting the 21 application of Nevada statutes of limitations, and is thus not persuasive. And contrary to PwC's suggestion otherwise (Mot. at 12 n.4), federal precedent is not persuasive authority in Nevada 22 on every issue of law (such as statutes of limitation) merely because the issue becomes relevant to a motion to dismiss and both Nevada and Federal procedural rules allow motions to dismiss 23 for failure to state a claim—the cases PwC cites to support this absurd proposition merely consider specialized Nevada procedural rules in light of federal precedent regarding their federal 24 analogues. See Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified 25 (Jan. 25, 2006) (considering the test for "alternate security" in lieu of a supersedeas bond to support a stay pending appeal, and relying on federal precedent because because NRCP 62(d) is 26 "substantially based on its federal counterpart, FRCP 62(d)"); Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53–54, 38 P.3d 872, 876–77 (2002) (considering whether Nevada courts 27 should exercise discretion in determining whether to allow jury trial despite earlier waiver of jury trial right, and looking to federal authority interpreting FRCP 39(b), which has a Nevada 28 analogue in NRCP 39(b)).

| 1 | Unsurprisingly, Judge Denton recently concluded that Nevada statutes of limitation |
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| 2 | applied regardless of a contractual choice-of-law clause. (See Ex. A, Dec. 3, 2013 Order in |
| 3 | Cantor G&W (Nevada) Holdings, L.P. v. Asher, Case No. A-11-646021, Dist. Ct., Clark Cty. |
| 4 | Nev. (writ denied)) Judge Denton held that "[t]he defense that a claim is barred by the statute of |
| 5 | limitations is a procedural matter governed by the law of the forum." (Id. $\P\P$ 9-10.) Judge |
| 7 | Denton similarly noted that "even under Delaware law [the law specified in the choice-of-law |
| 8 | clause], a choice of law provision will only include the statute of limitations of the chosen |
| 9 | jurisdiction if their inclusion is specifically noted." (Id. ¶ 11.) |
| 10 | 2. Plaintiff's Claims are Timely under Nevada Law. |
| 11 | As a threshold matter, Plaintiff had no damages prior to the October 2015 Tax Court |
| 12 | opinion imposing liability for Westside's tax deficiency. (See Cmplt. ¶ 79.) Because Nev. Rev. |
| 13 14 | Stat. § 11.2075, by its plain terms, only applies to actions "to recover damages," the limitations |
| 14 | period thus cannot have expired before October 2015. See Siragusa v. Brown, 971 P.2d 801, |
| 16 | 806 (Nev. 1998) ("[P]laintiffs should not be foreclosed from judicial remedies before they know |
| 17 | that they have been injured"). Moreover, PwC agreed in a series of tolling agreements to |
| 18 | waive any defense based on the expiration of the statute of limitations between January 19, 2011 |
| 19 | and May 1, 2016, and Plaintiff filed his Complaint on April 29, 2016. ³ PwC ignores all of this. |
| 20 21 | Plaintiff's suit is timely, and PwC's motion to dismiss should be denied. |
| 21 22 | PwC's sole argument that Plaintiff's claims are untimely under Nevada law is that: (a) |
| 23 | Subsection 1 of Nevada's statute of limitations for malpractice actions against accountants |
| 24 | provides that such actions must be commenced within "[f]our years after the completion of |
| 25 | performance of the service for which the action is brought," and (b) "PwC completed |
| 26 | $\frac{1}{3}$ $\frac{1}$ |
| 27 28 | ³ Commencing in October 2012, after the IRS sent Plaintiff a notice of transferee liability in June 2012, Plaintiff and PwC entered into a series of retroactive tolling agreements. Copies of the tolling agreements are provided as Exhibit B to this Opposition. Before that time, Plaintiff had no reason to proceed otherwise. |
| | 12 |

'performance of the service for which the action is brought' no later than August 2003." (Mot. 1 2 at 16 n.5, citing Nev. Rev. Stat § 11.2075(1).) Neither assertion is correct. First, PwC neglects 3 to note that subsection 2 of the statute provides: "The time limitation set forth in subsection 1 is 4 tolled for any period during which the accountant or accounting firm conceals the act, error or 5 omission upon which the action is founded and which is known or through the use of reasonable 6 diligence should have been known to the accountant or the firm." Nev. Rev. Stat § 11.2075(2). 7 Despite this express provision and a section of the Complaint titled "Defendants and Their Co-8 9 Conspirators Fraudulently Concealed Their Acts" (Cmplt. ¶¶ 73-74), PwC makes no attempt to 10 argue that subsection 2 of the statute is inapplicable or that the Complaint does not adequately 11 allege concealment.⁴ Nor could PwC so argue, because the Complaint alleges that PwC 12 concealed the acts, errors and omissions upon which the action is founded, including PwC's 13 previous advocacy of at least one other Midco transaction involving Fortrend and Rabobank 14 (who conspired to defraud Plaintiff). (Cmplt. ¶¶ 38, 73-74, 104 et seq.) As alleged in the 15

| 16 | Complaint, the concealed facts only came to light during or after the Tax Court trial. (Id. ¶¶ 73, |
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| 17 | 79). |
| 18 | At minimum, PwC's concealment of its acts, errors and omissions raises issues of fact |
| 19 | inappropriate for resolution on a motion to dismiss. It is well-established under Nevada law that |
| 20 | motions to dismiss on statute of limitations grounds should be denied where they raise questions |
| 21 | of fact to be determined by the jury or trial court after full hearing. See Millspaugh v. |
| 22 | |
| 23 | Millspaugh, 611 P.3d 201, 202 (Nev. 1980) (reversing trial court's dismissal of legal |
| 24 | |
| 25 | ⁴ Although the Complaint alleges fraudulent concealment, Plaintiffs need not even meet the standard for fraudulent concealment in order to qualify for tolling under Section 11.2075(2). |
| 26 | The Nevada Supreme Court has yet to interpret what constitutes "concealment" for purposes of |
| 27 | ⁴ Although the Complaint alleges fraudulent concealment, Plaintiffs need not even meet the standard for fraudulent concealment in order to qualify for tolling under Section 11.2075(2). The Nevada Supreme Court has yet to interpret what constitutes "concealment" for purposes of this tolling provision, but it has held that "concealment" for purposes of a virtually identical tolling provision (in the statute of limitations for actions against health care providers) requires |
| 28 | only an intentional act to keep another from learning a fact. Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. Adv. Op. 23, 277 P.3d 458, 464 (2012). |
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malpractice case as untimely because of fact question about when plaintiff should have 2 discovered attorneys' malpractice); Siragusa, 971 P.2d at 806 (holding that "[w]hen the plaintiff 3 knew or in the exercise of proper diligence should have known of the facts constituting the 4 elements of his cause of action is a question of fact for the trier of fact," such that "the time of 5 discovery may be decided as a matter of law only where uncontroverted evidence proves [when] 6 the plaintiff discovered or should have discovered the fraudulent conduct" (internal quotation 7 marks omitted)); Oak Grove Investors v. Bell & Gossett Co., 668 P.2d 1075, 1079 (Nev. 1983) 8 9 (placing the burden of demonstrating the absence of a genuine issue of material fact as to when 10 a party discovered or should have discovered the facts underlying a claim on the party seeking 11 summary judgment on statute of limitations grounds), disapproved on other grounds by 12 Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000). Plaintiff should thus at least be 13 allowed discovery regarding the full extent of PwC's concealment of the acts, errors and 14 omissions that caused Plaintiff's injuries. 15

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| 16 | Fact issues regarding when PwC's services were complete likewise preclude dismissal. |
| 17 | PwC notes that paragraph 39 of the Complaint alleges that "during the period of April-August |
| 18 | 2003, a team of PwC tax professionals set out to examine and advise Plaintiff regarding the |
| 19 | transactions proposed by Fortrend and Midcoast." Construing the Complaint liberally in |
| 20 | |
| 21 | Plaintiff's favor, this does not establish that PwC ceased providing services in August of 2003. |
| 22 | Vacation Vill., Inc. v. Hitachi Am., Ltd., 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). All the |
| 23 | more so as the Complaint alleges that PwC agreed to later work with Plaintiff to avoid the |
| 24 | imposition of any tax penalty (Cmplt. § 37), and the engagement letter provides that PwC would |
| 25 | "be available to assist [Plaintiff] in the event of an audit of any issue for which [it had] provided |
| 26 | services under this Agreement." (Eng. Ltr. at p. 94 of PwC appendix) |
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| 1 | 3. Plaintiff's Claims are Also Timely under New York Law. |
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| 2 | Although, as shown above, New York law does not apply, the parties' agreement for |
| 3 | PwC to later assist Plaintiff in connection with an IRS audit similarly makes Plaintiff's claims |
| 4 | timely by virtue of New York's "continuous representation" doctrine, under which: "where a |
| 5 | professional representation of a client continues on an ongoing basis as part of the same matter, |
| 6 | the statute of limitations begins to run only when the entire course of the representation has |
| / 8 | ended." MF Glob. Holdings Ltd. v. PricewaterhouseCoopers LLP, 43 F. Supp. 3d 309, 315 |
| 9 | (S.D.N.Y. 2014) (fact issues regarding continuous representation precluded dismissal; |
| 10 | allegations gave rise "to a reasonable inference that the parties anticipated continuous |
| 11 | representation"); see also Stokoe v. Marcum & Kliegman LLP, 24 N.Y.S.3d 267, 268 (N.Y. |
| 12 | App. Div. 2016) (affirming order denying motion to dismiss complaint: "Plaintiffs carried their |
| 13 | burden of demonstrating evidentiary facts showing that the continuous representation toll |
| 14 | |
| 15 | applied, based on the 'mutual understanding' set forth in the engagement letters that defendants |

| 13 | |
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| 16 | could be called upon in a government investigation to justify their audit findings.") |
| 17 | B. The Tax Court Decision Does Not Preclude Plaintiff's Claims Against PwC. |
| 18 | 1. Since PwC's Request for Judicial Notice Should Be Denied, |
| 19 | Its Corresponding Preclusion Arguments Should Also Be Rejected. |
| 20 | None of PwC's preclusion arguments can succeed if the Court denies PwC's Request |
| 21 | for Judicial Notice regarding the Tax Court opinion on Plaintiff's transferee liability. This is |
| 22 | because all of PwC's preclusion arguments assume that this Court will take judicial notice of |
| 23 | certain findings in the Tax Court opinion. As discussed in Plaintiff's Opposition to PwC's |
| 24 | request for judicial notice, which Plaintiff incorporates herein by reference, PwC's request is |
| 25 | |
| 26 | overreaching and should be denied. The Tax Court opinion does not preclude Plaintiff from |
| 27 | proceeding against PwC in this Court. |
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2. The Tax Court's Opinion Does Not Collaterally Estop Plaintiff's Claims Against PwC.

2

PwC starts its discussion of collateral estoppel correctly enough by noting that "[t]he 3 doctrine of collateral estoppel bars a party from re-litigating facts or issues that were 4 5 conclusively determined by a prior court." (Mot. at 17, citing Kahn v. Morse & Mowbray, 117 6 P.3d 227, 235 (Nev. 2005)) The discussion goes downhill from there, however, as PwC 7 proceeds to mischaracterize the facts and issue that the Tax Court determined. PwC's goal 8 here is to give the false impression that the Tax Court found Mr. Tricarichi solely responsible 9 for entering into the Fortrend transaction, and PwC without fault. It's a classic example of 10 "blame the victim," and it doesn't work. 11 According to PwC, the issue decided by the Tax Court was "whether Plaintiff knew that 12 13 the Fortrend Transaction was illegitimate when he decided to pursue it." (Mot. at 19) The 14 actual issue decided by the Tax Court was whether Plaintiff "had constructive knowledge that 15

| 13 | West Side's Federal and Ohio tax liabilities would not be paid," an issue that necessarily |
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| | encompasses what PwC knew in advising Plaintiff. Tax Ct. Op. at p.80 of PwC appendix |
| 17 | |
| 18 | (emphasis added). After misstating the issue, PwC contends that the Tax Court made various |
| 19 | factual findings about what Plaintiff, and Plaintiff alone, supposedly knew or did. (See Mot. at |
| 20 | 18.) PwC can make this contention, however, only by both misstating the issue and blatantly |
| 21 | mischaracterizing the Tax Court opinion, which actually reflects PwC's "front and center" |
| 22 23 | involvement in matters that it now tries to walk away from. As the Complaint indicates, PwC |
| | was a key adviser to Plaintiff when he was considering the Fortrend transaction. Accordingly, |
| 24 25 | PwC took part in the review of and decision to complete this transaction. PwC contends that |
| 26 | the Tax Court found Plaintiff solely blameworthy in this decision process, but that is not so. |
| 27 | The Tax Court expressly stated that Plaintiff's advisers, such as PwC, did not act appropriately |
| 28 | during this process. As the Tax Court stated, for example: |
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Neither petitioner **nor his advisers** performed any due diligence into 1 Fortrend or its track record. Neither petitioner **nor his advisers** performed any 2 meaningful investigation into the "high basis/low value" scheme that Fortrend suggested for eliminating West Side's accrued 2003 tax liabilities. Petitioner 3 and his advisers were clearly suspicious about Fortrend's scheme. But instead of digging deeper, <u>they</u> engaged in willful blindness and actively avoided 4 learning the truth. 5 Petitioner **and his advisers** knew that the transaction Fortrend was 6 proposing was likely a "reportable" or "listed transaction."... 7 *** ... [T]o relieve petitioner and his advisers of the duty to inquire, when 8 the surrounding circumstances cried out for such inquiry, would be to bless the 9 willful blindness the constructive knowledge test was designed to root out.... 10 Tax Ct. Op. at pp. 81, 82 of PwC appendix (emphasis added, citation omitted). Rather than 11 accurately quote such passages, PwC either avoids them altogether or studiously deletes the 12 Tax Court's references to Plaintiff's advisers – i.e., to PwC. So, for example, PwC says the 13 Tax Court found that "Plaintiff was 'clearly suspicious about Fortrend's scheme ..."; that 14 "[he] engaged in willful blindness"; and that "Plaintiff 'knew that the transaction Fortrend was 15

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| 16 | proposing was likely reportable''' – when, as set forth above, the Tax Court actually wrote that both Plaintiff and PwC thought, did and knew these things. (Compare Mot. at 9:17- 19 with Tax Ct. Op. at p. 81 of PwC appendix.) The Tax Court, of course, did not decide, as between Plaintiff and PwC, who was |
| 17 | wrote that both Plaintiff and PwC thought, did and knew these things. (Compare Mot. at 9:17- |
| 18 | 19 with Tax Ct. Op. at p. 81 of PwC appendix.) |
| 19 | The Tax Court, of course, did not decide, as between Plaintiff and PwC, who was |
| 20 | |
| 21 | ultimately to blame for Plaintiff's entry into the Fortrend transaction, because that was not the |
| 22 | Tax Court's job. The Tax Court's job was to decide whether taxes were owed to the U.S. |
| 23 | Treasury in the wake of the transaction. It is, however, the job of this Court, and/or a jury |
| 24 | empaneled by this Court, to look at matters as between Plaintiff and PwC and decide whether |
| 25 | PwC was grossly negligent in advising Plaintiff to go ahead with the Fortrend transaction, and whether PwC is liable to Plaintiff for the losses he incurred as a result. |
| 26 27 | whether PwC is liable to Plaintiff for the losses he incurred as a result. |
| 27 28 | The law has long recognized the difference between such points. Indeed, in Kahn v. |
| 20 | Morse & Mowbray, 117 P.3d 227 (Nev. 2005), the lead case that PwC cites regarding collateral |
| | 17 |

estoppel, the Nevada Supreme Court distinguished between the effect of entering into an 2 agreement or transaction, and the propriety of the advice that led a party to enter into that 3 agreement in the first place. In Kahn, the court addressed whether a prior court ruling that 4 plaintiffs were bound by an oral settlement agreement collaterally estopped plaintiffs from 5 proceeding with a claim that their attorneys had given them bad advice in connection with 6 entry into that agreement. The high court reversed the lower court's imposition of collateral 7 estoppel on this point: 8 9 [T]he district court did not address the factual issues underlying [plaintiffs'] assertion that [defendant] offered them bad advice.... The fact that [plaintiffs] 10 agreed to the terms [of the agreement] has nothing to do with the factual issues concerning whether [defendant] properly advised them as to those terms. 11 Kahn, 117 P.3d at 236. Like plaintiffs in Kahn, Plaintiff here received advice from 12 13 professionals regarding whether he should enter into an agreement. (See, e.g., Cmplt. ¶¶ 37-53, 14 53.) After one court ruled on the consequences of entering into that agreement, plaintiff 15

| 15 | brought claims in a second case alleging the professionals' advice leading up to the agreement |
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| 16 | was bad. Collateral estoppel does not apply to such claims in the second case. See Kahn. |
| 17 | was bad. Condicial estopper does not apply to such claims in the second case. See Kann. |
| 18 | A similar result obtains in tax-related cases. In U.S. v. Boyle, 469 U.S. 241 (1985), the |
| 19 | U.S. Supreme Court distinguished between a taxpayer's duties to the government under the tax |
| 20 | laws, and the duties owed to the taxpayer by his advisers. The Court there held that a |
| 21 | taxpayer's failure to timely file a tax return was not excused by the taxpayer's reliance on his |
| 22 | attorney. Citing Boyle, other courts have held that taxpayers may proceed against their |
| 23 | attorneys and accountants when the tax authorities find tax liabilities. For example, in Pair v. |
| 24 | Owner 2 A 2d 1062 (D C 2010) the court reversed dismissed of the terrescan plaintiffs? |
| 25 | Queen, 2 A.3d 1063 (D.C. 2010), the court reversed dismissal of the taxpayer plaintiffs' |
| 26 | attorney malpractice claim. As the court held: |
| 27 | Boyle concerned the duties an estate and its representative owed to the IRS. By contrast, the Pairs' claims of malpractice concern the duties a professional owes |
| 28 | to a client [Plaintiffs] are seeking "compensatory and consequential |
| | damages" through a malpractice claim [N]othing in Boyle suggests that a |
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taxpayer's non-delegable duty to the IRS relieves a professional from liability for negligent failure to perform the duties for which an estate has employed him. 2 Pair, 2 A.3d at 1066. See also Bick v. Peat Marwick and Main, 799 P.2d 94, 102 (Kan. App. 3 Ct. 1990) (affirming judgment against accounting firm on taxpayer's negligence claim). 4 5 Given this distinction between tax liability (which the Tax Court was considering) and 6 professional liability (which it was not), there is no reason for this Court to resolve this case 7 based solely on a few snippets from the Tax Court opinion (which PwC chooses to recite 8 repeatedly) regarding the dealings between Plaintiff and PwC. For example, a statement from 9 PwC to Plaintiff that a proposed transaction is "aggressive" (see Mot. at 2, 6, 9, 18) does not 10 necessarily absolve PwC from advising Plaintiff to proceed notwithstanding its "aggressive" 11 nature. Some "aggressive" tax structures are perfectly legitimate. See, e.g., In re ClassicStar 12 13 Mare Lease Litig., 727 F.3d 473, 489 (6th Cir. 2013) ("Plaintiffs were undoubtedly engaged in 14 an attempt to take advantage of the arcane and often labyrinthine nature of the U.S. Tax Code, 15

| 15 | but their project was a lawful one."). Others are not. Plaintiff retained PwC to advise him on |
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| 16 | A = A = A = A = A = A = A = A = A = A = |
| 17 | the subject, and – as Plaintiff has now learned – PwC failed in that task. Similarly, the fact that |
| 18 | Plaintiff had been successful in the cell-phone business and had some "familiarity with tax |
| 19 | concepts" (see Mot. at 10, 18) does not make him an expert in tax matters and allow PwC to |
| 20 | walk away from its gross negligence. See, e.g., ClassicStar, 727 F.3d at 479 (investment |
| 21 | but their project was a lawful one."). Others are not. Plaintiff retained PwC to advise him on the subject, and – as Plaintiff has now learned – PwC failed in that task. Similarly, the fact that Plaintiff had been successful in the cell-phone business and had some "familiarity with tax concepts" (see Mot. at 10, 18) does not make him an expert in tax matters and allow PwC to walk away from its gross negligence. See, e.g., ClassicStar, 727 F.3d at 479 (investment marketed to wealthy individuals recognized investors' need for professional advice regarding |
| 22 | its tax aspects). Again, Plaintiff retained PwC to provide expert advice and, as alleged in the |
| 23 | its tax aspects). Again, Plaintiff retained PwC to provide expert advice and, as alleged in the Complaint, PwC failed. The Tax Court did not hold otherwise or even decide the issue. As |
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| 25 | such, imposing conateral estopper nere would be wrong. See, e.g., Eureka red. Sav. and Loan |
| 24 25 26 | such, imposing collateral estoppel here would be wrong. See, e.g., Eureka Fed. Sav. and Loan Ass 'n v. Am. Cas. Co., 873 F.2d 229, 233 (9 th Cir. 1989) ("Collateral estoppel is inappropriate |
| 27 | if there is <u>any doubt</u> as to whether an issue was actually litigated in a prior proceeding.") |
| 28 | (emphasis added); Lanier v. Clovis Unified School Dist., 2012 WL 1355674 at *9 (E.D. Cal. |
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2012) (listing factors for determining whether issues are identical; finding no collateral 2 estoppel) (citing Resolution Trust Corp. v. Keating, 186 F.3d 1110, 1116 (9th Cir. 1999)). 3 While the foregoing is more than sufficient basis to deny PwC's motion, it should also 4 be noted that the tax litigation is not yet over. Plaintiff intends to appeal the Tax Court's 5 decision.⁵ If this Court were to grant PwC's motion and enter judgment, and the Ninth Circuit 6 were to reverse the Tax Court, this Court's judgment would also have to be reversed as a result. 7 See Butler v. Eaton, 141 U.S. 240, 243-44 (1891) (reversing judgment based on other judgment 8 9 that had also been reversed); In re Hedged-Investments Assocs., Inc., 48 F.3d 470, 473 (10th 10 Cir. 1995) (reversal of judgment on which defendant sought to base collateral estoppel made it 11 impossible to grant defendant's request); Erebia v. Chrysler Plastic Products Corp., 891 F.2d 12 1212, 1251 (6th Cir. 1989) ("Where the prior judgment, or any part thereof, relied upon by the 13 subsequent court has been reversed, the defense of collateral estoppel evaporates.") (citations 14 omitted). This further supports denial of PwC's motion. 15

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| 16 | 3. PwC's In Pari Delicto Argument Misconstrues Both That Legal Doctrine and the Claims Against PwC. |
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| 18 | "The equitable defense of in pari delicto, which literally means 'in equal fault,' is rooted |
| 19 | in the common-law notion that a plaintiff's recovery may be barred by his own wrongful |
| 20 | conduct." Pinter v. Dahl, 486 U.S. 622, 632 (1988). PwC argues that this defense applies here |
| 21 | because Plaintiff's fault is greater than PwC's. PwC maintains that Plaintiff's claims against it |
| 22 | are based on negligent, unintentional conduct, while Plaintiff himself is guilty of fraud. But |
| 23 | PwC leaves important descriptive qualifiers off the "fault" at issue on both sides of the equation. |
| 24 | |
| 25 | As a result, its analysis is exactly backwards: In truth, PwC is alleged to have committed gross |
| 26 | negligence (which is intentional misconduct), while Plaintiff is accused of constructive fraud |
| 27 | ⁵ Certain proceedings continued in the Tax Court after its October 2015 opinion issued, with the |
| 28 | Tax Court only recently ruling on the amount of interest due on the taxes it previously found Plaintiff liable for. See Tricarichi v. Commissioner, T.C. Memo 2016-132 (July 18, 2016). |
| | |
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| 1 | (which is <u>not</u> intentional misconduct). This matters because, as stated recently, "in pari delicto |
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| 2 | should not be applied where the plaintiff is guilty of simple negligence and the defendant is |
| 3 | guilty of either gross negligence or willful and wanton or intentional conduct." Long, Kaufman, |
| 4 | and Wunderlich, 12A Blue Sky Law § 9:138 (June 2016). |
| 5 | New York law, upon which PwC relies, recognizes the material difference between |
| 6 | |
| 7 | negligence and "gross negligence." As New York's highest court explained, "gross negligence' |
| 8 | differs in kind, not only degree, from claims of ordinary negligence. It is conduct that evinces a |
| 9 | reckless disregard for rights of others or 'smacks' of intentional wrongdoing." Colnaghi, U.S.A., |
| 10 | Ltd. v. Jewelers Protection Services, Ltd., 81 N.Y.2d 821, 823-24 (1993). Likewise, New York recognizes that "there are two varieties of fraud claims, actual and constructive." Grand Union |
| 11 | recognizes that "there are two varieties of fraud claims, actual and constructive." Grand Union |
| 12 | Mount Kisco Employees Federal Credit Union v. Kanaryk, 848 F. Supp. 446, 455 (S.D.N.Y. |
| 13 | 1994). "Constructive fraud requires the same showing as actual fraud, except for one crucial |
| 15 | Mount Kisco Employees Federal Credit Union v. Kanaryk, 848 F. Supp. 446, 455 (S.D.N.Y. 1994). "Constructive fraud requires the same showing as actual fraud, except for one crucial aspect – the element of the defendant's scienter, or knowledge of the falsity of his or her |

| 15 | aspece and crement of the defendant s sciencer, of knowledge of the fulsity of his of her |
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| 16 | representation, need not be proven." Id. See also Southern Industries, Inc. v. Jeremias, 66 |
| 17 | A.D.2d 178, 186 (N.Y. App. Div. 1978) ("[T]he transfer in question was made without an actual |
| 18 | intent to defraud and is invalid only under the constructive fraud provisions"). |
| 19 | Accordingly, because the parties are not equally at fault, the in pari delicto defense |
| 20 | |
| 21 | cannot help PwC here. Having committed intentional misconduct, PwC's culpability outweighs |
| 22 | Plaintiff's supposed unintentional (or "constructive") misconduct. Moreover, as PwC ignores |
| 23 | throughout its motion, the Tax Court's "constructive fraud" finding against Tricarichi was based |
| | on the actions and inactions of "petitioner and his advisers ," including PwC. Tax Ct. Op. at p. |
| 25 | 81 of PwC appendix. Thus, even in comparing PwC's negligent misrepresentation with "Tricarichi's" constructive fraud (neither of which requires intentional misconduct), the balance |
| 26 | "Tricarichi's" constructive fraud (neither of which requires intentional misconduct), the balance |
| 27 | still weighs against PwC because it bears responsibility for the constructive fraud as well. |
| 28 | <u>sun weigns agamst i we</u> because it bears responsibility for the constructive flatte as well. |
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Finally, even if PwC were correct about the general issue of fault, application of the in 1 2 pari delicto defense is not automatic. "[T]he courts should not be so enamored with the Latin 3 phrase 'in pari delicto' that they blindly extend the rule to every case where illegality appears 4 somewhere in the transaction." In re Amerco Deriv. Litig., 127 Nev. 196, 217 (2011) (citation 5 omitted). "[W]hether the defense of in pari delicto should apply here is an **issue of fact** for the 6 district court to decide following necessary discovery and briefing that properly evaluates the 7 factors to be considered for the defense." Id. (emphasis added) Among the factors to be 8 considered that would militate against applying the equitable defense: "[w]here, by applying the 9 10 rule, [1] the public cannot be protected because the transaction has been completed, [2] where 11 no serious moral turpitude is involved, [3] where the defendant is the one guilty of the greatest 12 moral fault, and [4] where to apply the rule will be to permit the defendant to be unjustly 13 enriched at the expense of the plaintiff, the rule should not be applied." Id. (citation omitted). 14 Here, even if the Court were inclined to engage in the fault balancing test, no discovery has been 15

| 16 | taken, and it is too early in the case to engage in the fact-specific endeavor of determining |
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| 17 | whether to apply the defense – much less to dismiss the case as a matter of law on this basis. |
| 18 | 4. PwC's Reliance Argument Is Premature and Misguided. |
| 19 | PwC's reliance argument is a rehash of its collateral estoppel argument, and it fails for |
| 20 21 | largely the same reasons. Contrary to PwC's argument and its misrepresentation of the Tax |
| 22 | Court opinion, the Tax Court did not give PwC a free pass or decide who, as between Plaintiff |
| 23 | and PwC, was to blame for Plaintiff's entry into the Fortrend transaction, because it did not |
| 24 | have to decide this. The Tax Court was deciding tax liability, not professional liability, and it |
| 25 | specifically referred to the actions of Plaintiff "and his advisers" – i.e., PwC – not just to the |
| 26 | actions of Plaintiff. Since the pertinent facts and legal standards for the tax claims and the |
| 27 28 | specifically referred to the actions of Plaintiff "and his advisers" – i.e., PwC – not just to the actions of Plaintiff. Since the pertinent facts and legal standards for the tax claims and the professional liability claims are not identical, a finding in one case does not necessarily transfer over to the other. For example, as noted above in the in pari delicto discussion, there is a |
| 20 | over to the other. For example, as noted above in the in pari delicto discussion, there is a |
| | 22 |

material difference between the mental states required to show constructive fraud (which was 2 at issue in the Tax Court) and gross negligence (which is at issue here). Accordingly, the Tax 3 Court opinion does not prevent Plaintiff from pleading and proving justifiable reliance in this 4 case. See, e.g., Corva v. United Svcs. Auto. Ass'n, 485 N.Y.S.2d 264, 266 (N.Y. App. Div. 5 1985) (reversing dismissal of claims because lower court made "erroneous assumption" that 6 standard for determining justifiable reliance in misrepresentation claim was same as standard 7 of reasonable care in negligence action); Johnson v. Proskauer Rose LLP, 9 N.Y.S.3d 201, 8 9 210-12 (N.Y. App. Div. 2015) (affirming denial of motion to dismiss misrepresentation claim 10 against tax-shelter advisers and finding that justifiable reliance is a fact-intensive question not 11 appropriate for determination on motion to dismiss); Cohan v. KPMG, LLP, No. 12 EV 014325 12 at 8 (Fulton Cty. Ga. Ct. Dec. 13, 2013) (holding, in tax-shelter case against accounting firm, 13 that "[i]t is for the jury to determine whether Plaintiff justifiably relied"). (Ex. C hereto) 14 As the foregoing cases indicate, it would be markedly premature to dismiss Plaintiff's 15

| 16 | claims at this stage without at least allowing him to develop a record regarding his reliance. As |
|----|--|
| 17 | the court in Corva noted, reliance is considered justifiable unless it is "utterly unreasonable." 485 N.Y.S.2d at 266. In other words, if a person is of "normal intelligence, experience and education, he may not put faith in representations which any such normal person would recognize at once as preposterous or which are shown by facts within his observation to be patently and obviously false" Id. Given the complex nature of the Fortrend transaction, it cannot be said, on a motion to dismiss and in light of the Complaint's allegations, that it was |
| 18 | 485 N.Y.S.2d at 266. In other words, if a person is of "normal intelligence, experience and |
| 19 | education, he may not put faith in representations which any such normal person would |
| 20 | recognize at once as preposterous or which are shown by facts within his observation to be |
| 21 | not anthe and abrianals, false. "Id Circan the communicy nations of the Eastmand transposition |
| 22 | patently and obviously false Id. Given the complex nature of the Fortrend transaction, |
| 23 | it cannot be said, on a motion to dismiss and in light of the Complaint's allegations, that it was |
| 24 | """ "" "" "" "" "" "" "" "" "" "" "" "" |
| 25 | person" would have recognized PwC's representations "at once as preposterous" or "patently and obviously false." These are issues of fact better addressed later in the case, and this is true regardless of whether Plaintiff was aware that the proposed transaction was "aggressive" from |
| 26 | and obviously false." These are issues of fact better addressed later in the case, and this is true |
| 27 | regardless of whether Plaintiff was aware that the proposed transaction was "aggressive" from |
| 28 | a tax standpoint. See Cohan, supra at 7 (in a transaction with complicated tax aspect, |
| | a tax standpoint. See Conan, supra at 7 (in a transaction with complicated tax aspect, |
| | 23 |

| 1 | knowledge of alleged fraud "should not be casually imputed" to the taxpayer, even if he |
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| 2 | "[c]learly understood this transaction conceptually as a strategy to minimize his taxes"); |
| 3 | Johnson, supra. |
| 4 | In the face of this common-sense approach, PwC cites a hodgepodge of cases that can |
| 5 6 | be readily distinguished, or that actually demonstrate Plaintiff's point. Consider the following |
| 7 | examples, which PwC cites to support its argument that Plaintiff "knew" or "should have |
| 8 | known" that PwC's representations were false: |
| 9 | • <u>Baraliu v. Vinya Capital, L.P., 2009 WL 959578 (S.D.N.Y. 2009)</u> : The court held |
| 10 | that plaintiff "should have known" about a certain regulation harmful to his case because he admitted in the complaint that he was, just like defendant, a |
| 11 | "sophisticated trader." Id. at *7. By contrast, Mr. Tricarichi is not, of course, a premier accounting firm with sophisticated tax expertise. |
| 12 | • Stolow v. Greg Manning Auctions Inc., 258 F.Supp. 2d 236, 249 (S.D.N.Y. 2003): |
| 13 | Plaintiff admitted in his complaint he was aware of the bid-rigging scheme that he was complaining about. Mr. Tricarichi makes no such admission in his pleading. |
| 14 | |
| 15 | • Arfa v. Zamir, 905 N.Y.S.2d 77, 78, 80 (N.Y. App. Div. 2010): Here, by the time |

| 15 | • <u>Arfa v. Zamir, 905 N.Y.S.2d 77, 78, 80 (N.Y. App. Div. 2010)</u> : Here, by the time |
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| 16 | the parties entered into the agreement at issue, "they had already developed an adversarial even bestile relationship" via which plaintiff had "alear potice of |
| 17 | adversarial, even hostile, relationship" via which plaintiff had "clear notice of [defendant's] dishonesty" giving rise to a need for heightened due diligence and inquiry. PwC does not suggest that the same was the case between itself and Mr. Triggright and the Complaint does not so allogo |
| 18 | Tricarichi, and the Complaint does not so allege. |
| 19 | • <u>Rodas v. Manitaras, 552 N.Y.S.2d 618 (N.Y. App. Div. 1990)</u> : Before buying a restaurant business, plaintiffs asked to review its books and records, but the request |
| 20 | was refused. There is no suggestion that Mr. Tricarichi was denied such due |
| 21 | diligence with respect to the Fortrend transaction. |
| 22 | Brakke v. Economic Concepts, Inc., 213 Cal. App. 4th 761 (Cal. Ct. App. 2013): PwC cites this case and two others⁶ for the proposition that "it is entirely |
| 23 | unreasonable for any person to rely on a prediction of future IRS enactment, |
| 24 | enforcement, or non-enforcement of the law by someone unaffiliated with the federal government," such as PwC. (Mot. at 24 n.9) In these cases, the defendant |
| 25 | advisers opined to the taxpayer plaintiffs that a certain tax structure would pass muster under the tax laws. See, e.g., Brakke, 213 Cal. App. 4 th at 768. Then, years |
| 26 | <u>after</u> the advice had been given, the IRS issued revenue rulings or regulations indicating that the structure was actually invalid. Id. (advice given in $2002/2002$. |
| 27 | indicating that the structure was actually invalid. Id. (advice given in 2002/2003; |
| 28 | ⁶ Patel v. Pacific Life Ins. Co., 2009 WL 1456526 (N.D.Tex. 2009); Chau v. Aviva Life and Annuity Co., 2011 WL 1990446 (N.D.Tex. 2011). |
| | |
| | 24 |

IRS revenue ruling in 2004); *Patel*, 2009 WL 1456526 at *4 (advice in 2003; regulations issued in 2005). In Mr. Tricarichi's case, by contrast, the IRS had <u>already</u> issued Notice 2001-16 – which indicated that the Fortrend transaction was improper for tax purposes – more than two years <u>before</u> PwC told Tricarichi to go ahead with the transaction. In other words, PwC was not "predicting the future." It was advising Mr. Tricarichi about an IRS pronouncement that had been around for more than two years. Mr. Tricarichi was thus entitled to rely on PwC's advice.

IV. <u>CONCLUSION</u>

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Now that PwC's advice has proven to be wrong, Mr. Tricarichi is entitled to seek redress

8 || from PwC in this Court, rather than have his case cut short, before it even starts, on an

9 || overreaching motion to dismiss.

WHEREFORE, for all the foregoing reasons, Plaintiff Michael A. Tricarichi respectfully

¹¹ requests that the Court DENY Defendant Pricewaterhouse Coopers' motion to dismiss.

SPERLING & SLATER, P.C.

Scott F. Hessell

Thomas D. Brooks (*Pro Hac Vice*) 55 West Monroe, Suite 3200 Chicago, IL 60603

HUTCHISON & STEFFEN, LLC Mark A. Hutchison Todd L. Moody Todd W. Prall 10080 West Alta Drive, Suite 200 Las Vegas, NV 89145

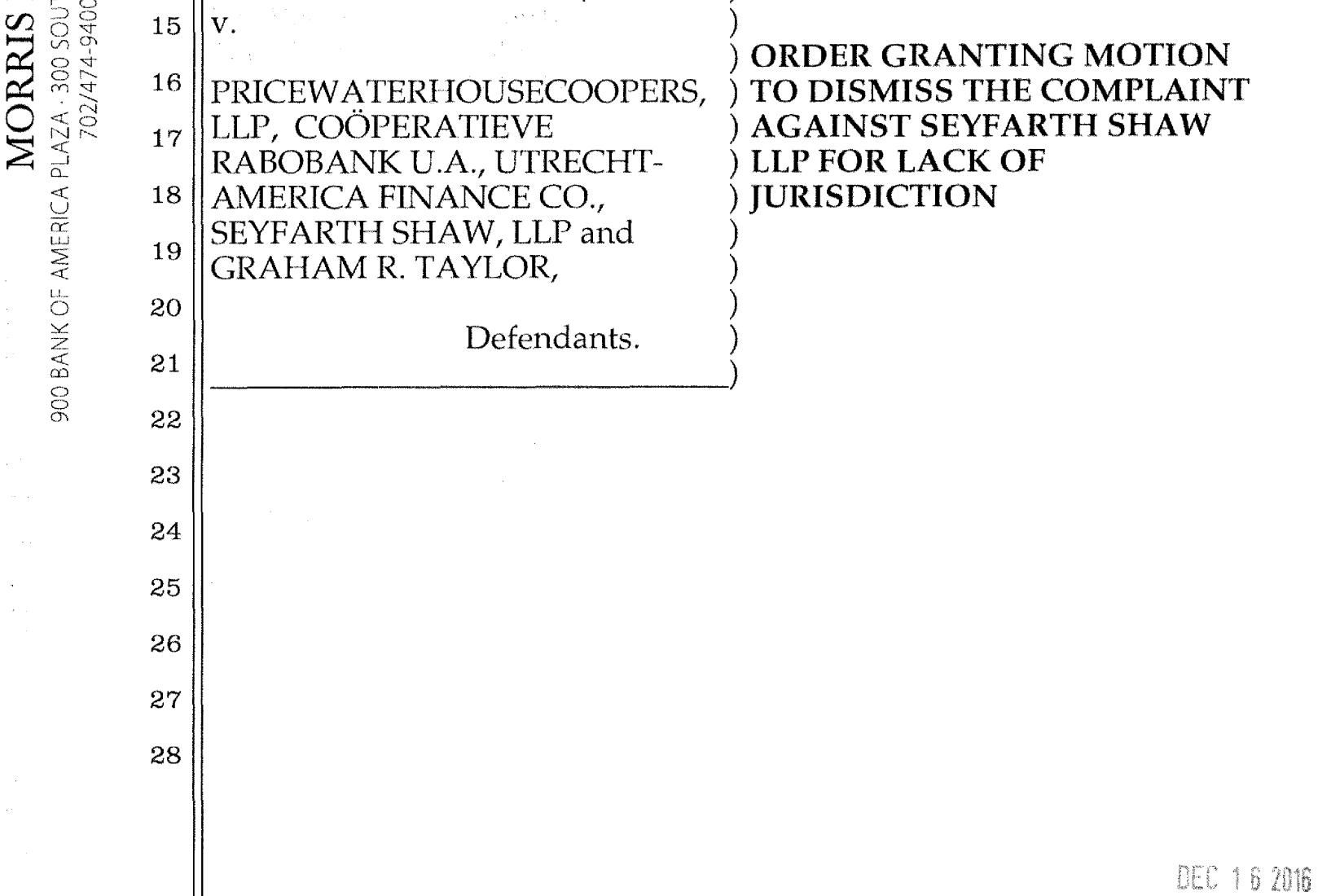
Attorneys for Plaintiff Michael A. Tricarichi

| 1 | CERTIFICATE OF SERVICE |
|------------|---|
| 2 3 | Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC |
| 4 | and that on this 26th day of August, 2016, I caused the document entitled PLAINTIFF'S |
| 5 | OPPOSITION TO DEFENDANT PRICEWATERHOUSE COOPERS, LLP'S MOTION |
| 6 | TO DISMISS to be served on the following by Electronic Service to: |
| 7 | ALL PARTIES ON THE E-SERVICE LIST |
| 8 | <u>/s/ Madelyn B. Carnate-Peralta</u> An employee of Hutchison & Steffen, LLC |
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| | Electronically Filed 12/23/2016 10:39:45 AM |
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| 1 2 3 4 5 | ORDG MORRIS LAW GROUP Steve Morris, Bar No. 1543 Email: sm@morrislawgroup.com Ryan M. Lower, Bar No. 9108 Email: rml@morrislawgroup.com 900 Bank of America Plaza 300 South Fourth Street |
| 6 | Las Vegas, Nevada 89101 Telephone: (702) 474-9400 |
| 7 | Facsimile: (702) 474-9422 |
| 8 | Attorneys for Defendant Seyfarth Shaw LLP |
| 9 | Seyfarth Shaw LLP |
| 10 | |
| 11 | DISTRICT COURT CLARK COUNTY, NEVADA |
| 12 | |
| 13 | MICHAEL A. TRICARICHI,) Case No. A-16-735910-B |
| 14 | Plaintiff,) Dept.: XV |

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| 1 | Defendant Seyfarth Shaw (Seyfarth) LLP's motion to dismiss for lack |
|----|---|
| 2 | of personal jurisdiction came on for hearing on November 16, 2016. Steve |
| 3 | Morris of Morris Law Group appeared and argued for Seyfarth; Mark A. |
| 4 | Hutchison of Hutchison & Steffen, LLC, in association with Scott F. Hessell |
| 5 | and Thomas D. Brooks of Sperling & Slater, P.C., appeared for Plaintiff, |
| 6 | Michael A. Tricarichi, to oppose the motion. Mr. Hutchison argued for |
| 7 | Mr. Tricarichi. |
| 8 | The Court, having read and considered the motion papers submitted |
| 9 | by the parties and heard and considered the arguments of their counsel, and |
| 10 | good cause appearing, grants Seyfarth's motion based on the following |
| 11 | reasons and summary of the allegations in the complaint and in the |
| 12 | uncontested information tendered by the parties to the Court in the exhibits |
| 13 | and affidavits submitted in support of and in opposition to the motion. |
| 14 | Seyfarth is an international law firm headquartered in Chicago, |
| | Illingia It is an appired under Illingia law as a limited lighility partnership |

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15 Illinois. It is organized under Illinois law as a limited liability partnership. The firm has offices in 10 locations in the United States, none of which is in 16 (or was in) Nevada. Seyfarth does not employ staff, attorneys, or agents 17 who are domiciled in Nevada, nor does the firm own or hold security in real 18 property in Nevada. It is not registered with Nevada's Secretary of State to 19 do business in Nevada. 20 Although Seyfarth attorneys have from time to time appeared in 21 Nevada federal district court on behalf of clients unrelated to this case, or 22 have acted as counsel in transactions involving Nevada real property not 23 related to this case, and one of Seyfarth's lawyers (since 2015) is a non- $\mathbf{24}$

- 25 || resident member of the Nevada Bar, none of Seyfarth's 850 attorneys has
- 26 been in Nevada in connection with any matter involving Plaintiff Tricarichi,
- 27 $\|$ who has never been a client of Seyfarth.
 - 2

| 1 | Against this background, Plaintiff contends that Seyfarth "facilitated" a |
|----|---|
| 2 | transaction to minimize federal income taxes that had its origins in Ohio in |
| 3 | 2003, when Plaintiff sold a cellular telephone business he operated in Ohio |
| 4 | and moved to Nevada. Seyfarth played no part in the transaction by which |
| 5 | Plaintiff's business, West Side Cellular, Inc. (West Side) was sold to another |
| 6 | entity. The "transaction" and the steps which followed it were later found |
| 7 | by the Internal Revenue Service to be a fraudulent tax avoidance scheme, of |
| 8 | which the Tax Court held Plaintiff had constructive knowledge sufficient to |
| 9 | impose liability on Plaintiff for the taxes owed by West Side. The |
| 10 | transaction began in Ohio and Seyfarth is alleged to have "facilitated" the |
| 11 | transaction by a former Seyfarth California partner, Graham Taylor, |
| 12 | rendering an opinion in 2003 to Millennium Recovery Fund in Ireland, |
| 13 | which involved a specific transaction which took place outside of Nevada in |
| 14 | 2001 and was unrelated both to this case and to Plaintiff Tricarichi. |
| 15 | Although the opinion expressly states it could only be relied on by |
| 16 | Millennium, Plaintiff alleges the opinion somehow "facilitated" the |
| 17 | transaction with him that the IRS later found was an abusive tax shelter. |
| 18 | None of the transactional activity Plaintiff alleges to have injured him took |
| 19 | place in Nevada or was directed to the state by Seyfarth. |
| 20 | The Court finds that the Plaintiff has not alleged facts that would |
| 21 | establish personal jurisdiction over Seyfarth in Nevada. First, Seyfarth, an |
| 22 | Illinois limited liability partnership with no offices in Nevada, is not subject |
| 23 | to general jurisdiction in Nevada because it is not "at home" here. <i>Viega</i> |
| 24 | Gmbh. Eighth Jud. Dist. Ct., 328 P.3d 1152, 1158 (2014); Daimler AG v. Bauman, |
| 25 | 134 S. Ct. 746, 751 (2014). |
| 26 | Second, Seyfarth is not subject to specific jurisdiction in Nevada. |
| 27 | Plaintiff has not shown that Seyfarth purposefully established contacts with |
| 28 | Nevada that resulted in injury to him, as <i>Walden v. Fiore</i> , 135 S. Ct. 1115, |
| | 3 |
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| 1 | 1121-23 (2014), requires. Accord, Baker v. Eighth Jud. Dist. Ct., 116 Nev. 527, |
|----|--|
| 2 | 533, 999 P.2d 1020, 1024 (2000) (same). The "minimum contacts' analysis |
| 3 | looks to the defendant's contacts with the forum State itself, not the |
| 4 | defendant's contacts with persons who reside there." <i>Id.</i> at 1122 (citing $Int'l$ |
| 5 | Shoe, 326 U.S. 310, 319, 66 S. Ct. 154, 159-60 (1945).) Plaintiff cannot be the |
| 6 | only link between Seyfarth and Nevada. <i>Id</i> . Rather, due process requires |
| 7 | that jurisdiction must be founded on the defendant's contacts with Nevada, |
| 8 | "not based on the 'random, fortuitous, or attenuated' contacts he makes by |
| 9 | interacting with other persons affiliated with the State." <i>Id.</i> citing <i>Burger</i> |
| 10 | <i>King</i> , 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). 'Put simply, however |
| 11 | significant the plaintiff's contacts with the forum may be, those contacts |
| 12 | cannot be 'decisive in determining whether the defendant's due process |
| 13 | rights are violated." <i>Id.</i> (quoting <i>Rush v. Savchuk</i> , 444 U.S. 320, 332, 100 S. Ct. |
| 14 | interacting with other persons affiliated with the State." <i>Id.</i> citing <i>Burger</i> <i>King</i> , 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated." <i>Id.</i> (quoting <i>Rush v. Savchuk</i> , 444 U.S. 320, 332, 100 S. Ct. 571, 579 (1980)). In this case, Plaintiff has not shown any conduct by Sewfarth in Nevada, or directed by Sewfarth to Nevada, that injured him |
| 15 | Soufarth in Novada or directed by Soufarth to Novada that injured him |

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Seyfarth in Nevada, or directed by Seyfarth to Nevada, that injured him 16 here.

Third, the same analysis applies to the intentional torts alleged against 17 Seyfarth (conspiracy, racketeering). Jurisdiction over Seyfarth as an 18 intentional tortfeasor must be based on intentional conduct that is alleged or 19 has been shown to have been directed to Nevada. Id. at 1123 (holding that 20 "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or 21attenuated contacts' or on the 'unilateral activity' of a plaintiff" with respect 22 to intentional tort claims). Plaintiff has not shown that Seyfarth 23 "purposefully enter[ed] the forum's market or establish[ed] contacts in the 24 forum and affirmatively direct[ed] conduct there, and [that his] claims arise 25 from that purposeful contact or conduct," as *Viega* requires to support $\mathbf{26}$ specific jurisdiction over an alleged tortfeasor. 328 P.3d at 1157. Plaintiff $\mathbf{27}$ has not made a prima facie showing that the opinion delivered to 28

| ut vinc, | Millennium in Ireland by defendant Graham Taylor was intended to have |
|-------------|---|
| 2 | an effect in Nevada or that Plaintiff was aware of the opinion when he |
| 3 | entered into the tax avoidance transaction with others in 2003 that the IRS |
| 4 | later found was fraudulent. Seyfarth's out-of-state activity "did not create |
| 5 | sufficient contacts with Nevada simply because [Seyfarth may have] |
| 6 | directed [its] conduct at [Plaintiff] whom [Seyfarth allegedly] knew had |
| 7 | Nevada connections." Walden, 134 S. Ct. at 1125. "Such reasoning |
| 8 | improperly attributes a plaintiff's forum connections to the defendant and |
| 9 | makes those connections 'decisive' in the jurisdictional analysis [and] |
| 10 | obscures the reality that none of [Seyfarth]'s conduct had anything to do |
| 11 | with Nevada itself." Id. (internal citation omitted). |
| 12 | Absent alleging a prima facie case that Seyfarth is "at home" in Nevada |
| 13 | or "affirmatively directed contact" with the state to deal with Plaintiff |
| 14 | Tricarichi, such as he fails to do by his conspiracy and racketeering claims, |
| 15 | he is not entitled to jurisdictional discovery before the Court rules on |
| 16 | Seyfarth's motion to dismiss for lack of jurisdiction. <i>Viega</i> , 328 P.3d at 1157, |
| 17 | 1160-61; <i>Daimler</i> , 134 S. Ct. at 751, 760 (insufficient facts alleged to support |
| 18 | either general or specific jurisdiction; absent such facts, no basis to allow |
| 19 | jurisdictional discovery); see also, Western States Wholesale Nat. Gas Litig., 605 |
| 20 | F. Supp. 2d 1118, 1140 (D. Nev. 2009) and <i>Menalco, FZE v. Buchan</i> , 602 F. |
| 21 | Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be |
| 22 | based on the actions of co-conspirators). |
| 23 | In light of these recent cases from our Supreme Court, the U.S. |
| 24 | Supreme Court, and the Nevada U.S. District Court, Plaintiff's reliance on |
| 25 | <i>Davis v. Eighth Jud. Dist. Ct.</i> , 97 Nev. 332, 629 P.2d 1209 (1981) is misplaced, |
| 26 | as <i>Walden</i> clearly confirms. <i>Davis</i> held that defendants who conspired out- |
| 27 | of-state could be subject to jurisdiction for injuries alleged to have occurred |
| 28 | in Nevada as a consequence of their acts elsewhere. <i>Walden</i> , however, |
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| 1 | appears to overrule <i>Davis</i> because, as the U.S. Supreme Court declared, |
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| 2 | "mere injury to a forum resident is not a sufficient connection to the forum |
| 3 | . The proper question is not where the plaintiff experienced a particular |
| | injury or effect but whether the defendant's conduct connects him to the |
| 5 | forum in a meaningful way." 134 S. Ct. at 1125. <i>See also id.</i> at 1122 (quoting |
| 6 | Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984) |
| 7 | ("[The] unilateral activity of another party or a third party is not an |
| 8 | appropriate consideration when determining whether a defendant has |
| 9 | sufficient contacts with a forum State to justify an assertion of |
| 10 | jurisdiction.")). |
| 11 | Thus, the opinion rendered by defendant Graham Taylor to |
| 12 | Millennium in Ireland that allegedly "facilitated" a transaction between |
| 13 | Plaintiff and others in an out-of-state conspiracy that Plaintiff says injured |
| 14 | him in Nevada does not appear to be consistent with <i>Walden's</i> holding that |
| 15 | "jurisdiction over an out-of-state intentional tortfeasor must be based on |
| 16 | intentional conduct by the defendant that creates the necessary contacts with |
| 17 | the forum." 134 S. Ct. at 1125. Moreover, even if <i>Davis</i> has survived <i>Walden</i> , |
| 18 | which is highly questionable to the Court, the circumstances alleged by |
| 19 | Plaintiff are distinguishable from the limited facts recited in the Davis |
| 20 | opinion, and still do not make out a prima facie case for jurisdiction under |
| 21 | <i>Viega, Daimler,</i> or <i>Walden</i> . The facts of this case are also distinguishable from |
| 22 | the post-Walden authority Plaintiff cites. See Best Chairs Inc. v. Factory Direct |
| 23 | Wholesale, LLC, 121 F. Supp. 3d 828 (S.D. Inc. 2015); First Cmty. Bank, N.A. v. |
| 24 | First Tennessee Bank, N.A., 489 S.W.2d 369 (Tenn. 2015); Khan v. Gramercy |
| 25 | Advisors, LLC, 2016 Ill. App. (4 th) 150435, 2016 Ill. App. LEXIS 425 Ill. App. |
| 26 | Ct. 2016). |
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| 1 2 3 3 4 5 3 4 5 7 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 | LLP, for lack of personal jurisdiction. IT IS SO ORDERED. Dated: <u>Descentor</u> (b. 2016 JOE HANDY, DISTRICT COURT JUDGE, Submitted by: MORRIS LAW GROUP By: Steve Morris, No. 1543 Ryan M. Lower, No. 9108 900 Bank of America Plaza 300 South Fourth Street Las Vegas, Nevada 89101 Attorneys for Defendant Seyfarth Shaw LLP |
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| Reviewed & Approved/Disapproved Dated: HUTCHISON & STEFFEN, LLC | L: Dated: $\sqrt{10/16}$ SNELL & WILMER L.L.P. |
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| By: | By: Patrick Byrne, Esq. Sherry Ly, Esq. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 Peter B. Morrison, Esq. (Pro Hac Vice) peter.morrison@skadden.com Winston P. Hsiao, Esq. (Pro Hac Vice) winston.hsia@skadden.com SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 300 South Grand Avenue, Suite 3400 Los Angeles, CA 90071-3144 Attorneys for Defendant PricewaterhouseCoopers LLP |
| | 8 |
| | By: |

Reviewed & Approved Disapproved: 1 2 Dated: 12/13/16 3 LEWIS ROCA ROTHGERBER CHRISTIE LLP 4 5 NV Bar#4078 By: 6 Dan R. Waite 7 3993 Howard Hughes Parkway Suite 600 8 Las Vegas, Nevada 89169 9 Attorneys for Defendant 10Coöperatieve Rabobank U.A. and ,^{pi} 11 Utrecht-America Finance Co. 12 13 14 15

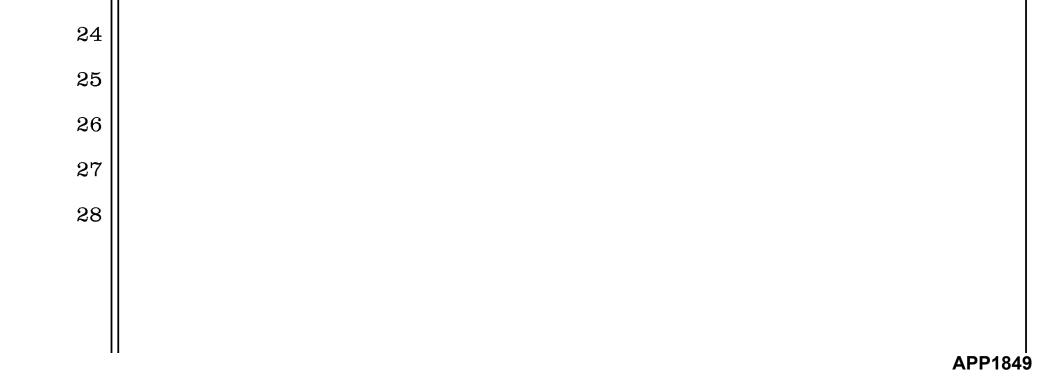
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NEOJ MORRIS LAW GROUP 1 Steve Morris, Bar No. 1543 2 Email: sm@morrislawgroup.com Ryan M. Lower, Bar No. 9108 3 Email: rml@morrislawgroup.com 900 Bank of America Plaza 4 300 South Fourth Street $\mathbf{5}$ Las Vegas, Nevada 89101 Telephone: (702) 474-9400 6 Facsimile: (702) 474-9422 $\mathbf{7}$ Attorneys for Defendant 8 Seyfarth Shaw LLP 9 10 DISTRICT COURT CLARK COUNTY, NEVADA 11 12MICHAEL A. TRICARICHI,) Case No. A-16-735910-B 13Dept.: Plaintiff, 14 v. **NOTICE OF ENTRY OF ORDER** 15PRICEWATERHOUSECOOPERS, 16 LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-17 AMERICA FINANCE CO., SEYFARTH SHAW, LLP and 18 GRAHAM R. TAYLOR, 19 Defendants. 20 $\mathbf{21}$ 22 23

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CLERK OF THE COURT

XV



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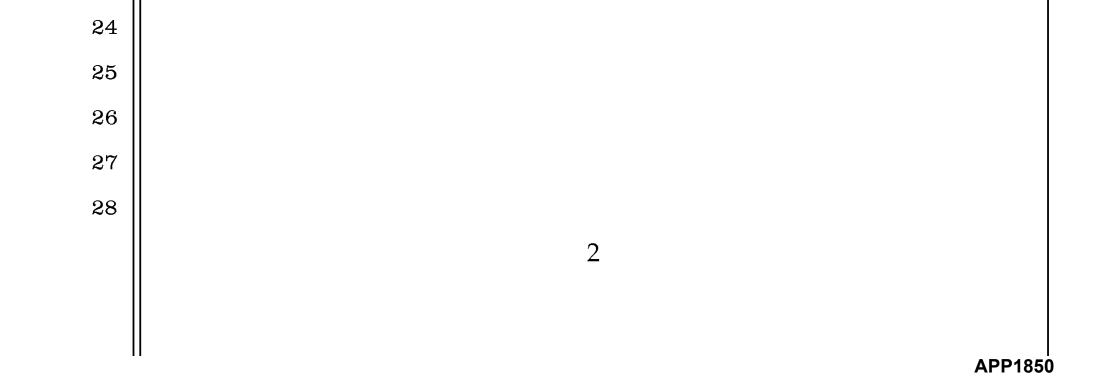
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PLEASE TAKE NOTICE that an Order Granting Motion to 1 Dismiss the Complaint Against Seyfarth Shaw LLP for Lack of Jurisdiction 2 was entered in this action on the 23rd day of December, 2016. A copy of the 3 Order is attached hereto as Exhibit A. 4 $\mathbf{5}$ MORRIS LAW GROUP 6 7By: <u>/s/ STEVE MORRIS</u> 8 Steve Morris, Bar No. 1543 Ryan M. Lower, Bar No. 9108 900 Bank of America Plaza 9 10 300 South Fourth Street Las Vegas, Nevada 89101 11 12 Attorneys for Defendant Seyfarth Shaw LLP 1314 15



| 1 | CERTIFICATE OF SERVICE Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of | | | |
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| 2 | | | | |
| 3 | Nevada Electronic Filing Procedures | , I certify that I am an employee of | | |
| 4 | MORRIS LAW GROUP, and that the | following documents were served via | | |
| 5 | electronic service: NOTICE OF ENT | TRY OF ORDER | | |
| 6 | TO: | | | |
| 7 | Mark A. Hutchison | Patrick Byrne, Esq. | | |
| 8 | Todd L. Moody Todd W. Prall | Sherry Ly, Esq. SNELL & WILMER L.L.P. | | |
| 9 | HUTCHISON & STEFFEN, LLC | 3883 Howard Hughes Parkway, | | |
| 10 | 10080 West Alta Drive, Suite 200 | Suite 1100 | | |
| 11 | Las Vegas, Nevada 89145 | Las Vegas, Nevada 89169 pbvrne@swlaw.com | | |
| 12 | Scott F. Hessell (<i>Pro Hac Vice</i>) Thomas D. Brooks (<i>Pro Hac Vice</i>) | sly@swlaw.com | | |
| 13 | SPERLING & SLATER, P.C. | Peter B. Morrison, Esq. | | |
| 14 | 55 West Monroe, Suite 3200 | (Pro Hac Vice) | | |
| | Chicago, IL 60603 | peter.morrison@skadden.com Winston P. Hsiao, Esq. | | |
| 15 | Attorneys for Plaintiff | (Pro Hac Vice) | | |
| 16 | | winston.hsiaoskadden.com SKADDEN, ARPS, SLATE, | | |
| 17 | Dan R. Waite | MEAGHER & FLOM LLP | | |
| 18 | LEWIS ROCA ROTHGERBER | 300 South Grand Avenue, Suite 3400 | | |
| 19 | CHRISTIE LLP 3993 Howard Hughes Parkway | Los Angeles, CA 90071-3144 | | |
| 20 | Suite 600 | Attorneys for Defendant | | |
| | Las Vegas, Nevada 89169 | PricewaterhouseCoopers LLP | | |
| 21 | Attorneys for Defendant | | | |
| 22 | Coöperatieve Rabobank U.A. and | | | |
| 23 | Utrecht-America Finance Co. | | | |
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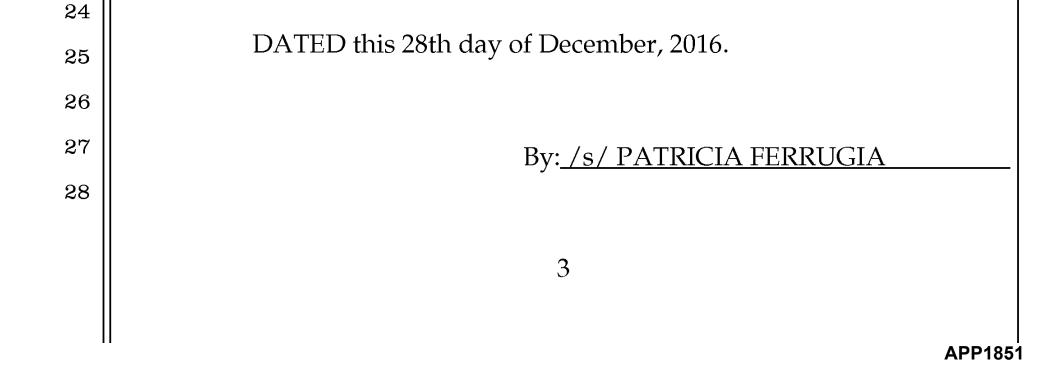


EXHIBIT A

EXHIBIT A



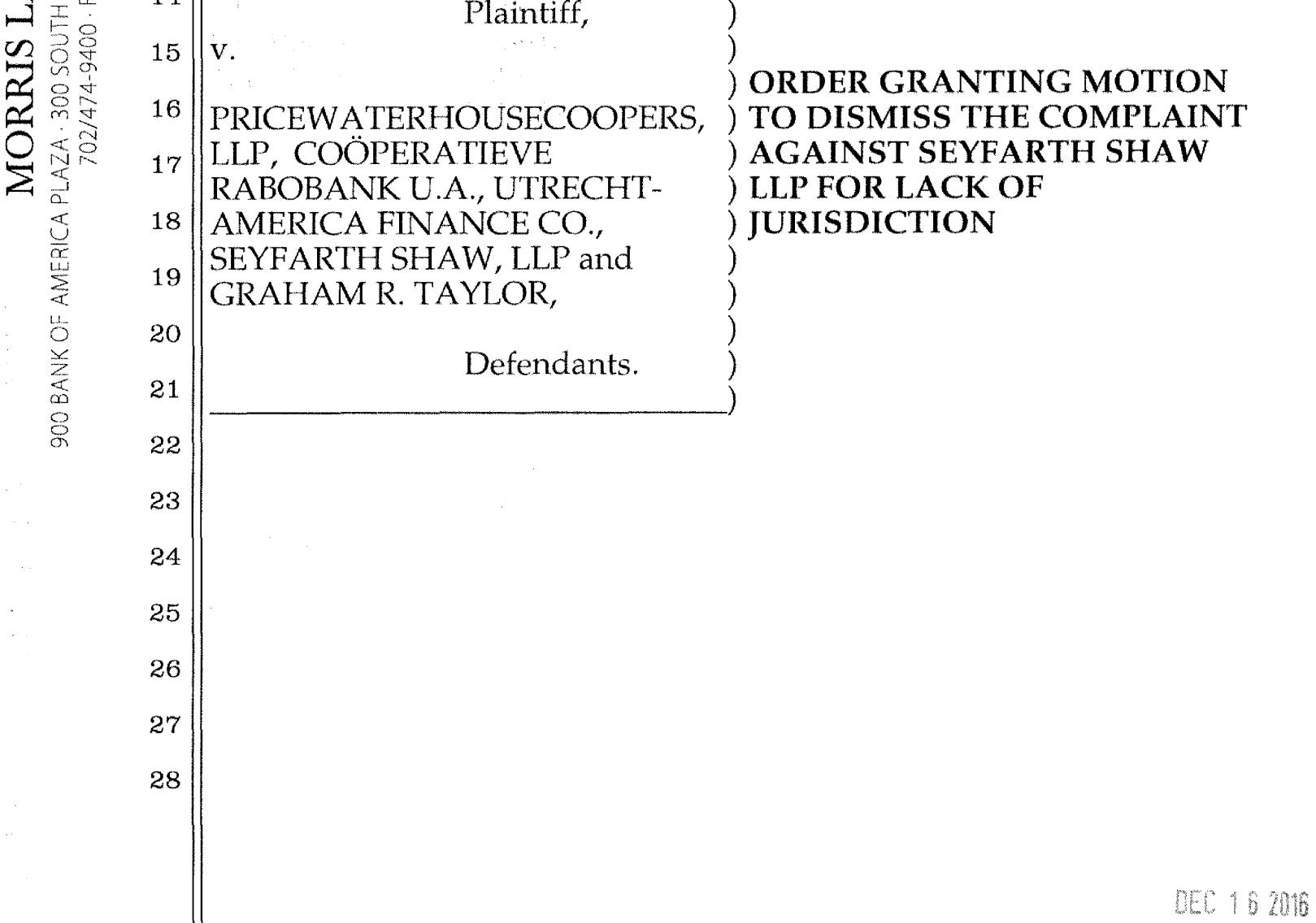
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| 8 9 | Attorneys for Defendant Seyfarth Shaw LLP |
| 10 11 12 | DISTRICT COURT CLARK COUNTY, NEVADA |
| 13 14 | MICHAEL A. TRICARICHI,) Case No. A-16-735910-B) Dept.: XV Plaintiff,) |

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APP1853

| 1 | Defendant Seyfarth Shaw (Seyfarth) LLP's motion to dismiss for lack | |
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| 2 | of personal jurisdiction came on for hearing on November 16, 2016. Steve | |
| 3 | Morris of Morris Law Group appeared and argued for Seyfarth; Mark A. | |
| 4 | Hutchison of Hutchison & Steffen, LLC, in association with Scott F. Hessell | |
| 5 | and Thomas D. Brooks of Sperling & Slater, P.C., appeared for Plaintiff, | |
| 6 | Michael A. Tricarichi, to oppose the motion. Mr. Hutchison argued for | |
| 7 | Mr. Tricarichi. | |
| 8 | The Court, having read and considered the motion papers submitted | : |
| 9 | by the parties and heard and considered the arguments of their counsel, and | |
| 10 | good cause appearing, grants Seyfarth's motion based on the following reasons and summary of the allegations in the complaint and in the | |
| 11 | reasons and summary of the allegations in the complaint and in the | 1 |
| 12 | uncontested information tendered by the parties to the Court in the exhibits | |
| 13 | and affidavits submitted in support of and in opposition to the motion. | |
| 14 | Seyfarth is an international law firm headquartered in Chicago, | ł |
| 4 5 | Illinois It is acconized under Illinois law as a limited liability partnership | |

Illinois. It is organized under Illinois law as a limited liability partnership.
The firm has offices in 10 locations in the United States, none of which is in
(or was in) Nevada. Seyfarth does not employ staff, attorneys, or agents
who are domiciled in Nevada, nor does the firm own or hold security in real
property in Nevada. It is not registered with Nevada's Secretary of State to
do business in Nevada.

21 Although Seyfarth attorneys have from time to time appeared in $\left\| \cdot \right\|_{1}$

22 Nevada federal district court on behalf of clients unrelated to this case, or

- 23 || have acted as counsel in transactions involving Nevada real property not
- 24 || related to this case, and one of Seyfarth's lawyers (since 2015) is a non-
- 25 || resident member of the Nevada Bar, none of Seyfarth's 850 attorneys has
- 26 been in Nevada in connection with any matter involving Plaintiff Tricarichi,
- 27 $\|$ who has never been a client of Seyfarth.
- 28

| 1 | Against this background, Plaintiff contends that Seyfarth "facilitated" a | |
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| 2 | transaction to minimize federal income taxes that had its origins in Ohio in | |
| 3 | 2003, when Plaintiff sold a cellular telephone business he operated in Ohio | |
| 4 | and moved to Nevada. Seyfarth played no part in the transaction by which | • |
| 5 | Plaintiff's business, West Side Cellular, Inc. (West Side) was sold to another | |
| 6 | entity. The "transaction" and the steps which followed it were later found | |
| 7 | by the Internal Revenue Service to be a fraudulent tax avoidance scheme, of | |
| 8 | which the Tax Court held Plaintiff had constructive knowledge sufficient to | |
| 9 | impose liability on Plaintiff for the taxes owed by West Side. The | |
| 10 | transaction began in Ohio and Seyfarth is alleged to have "facilitated" the | |
| 11 | transaction by a former Seyfarth California partner, Graham Taylor, | |
| | rendering an opinion in 2003 to Millennium Recovery Fund in Ireland, | |
| 13 | which involved a specific transaction which took place outside of Nevada in | |
| 14 | 2001 and was unrelated both to this case and to Plaintiff Tricarichi. | - |
| 15 | Although the opinion expressly states it could only be relied on by | |
| 16 | Millennium, Plaintiff alleges the opinion somehow "facilitated" the | |
| 17 | transaction with him that the IRS later found was an abusive tax shelter. | |
| 18 | None of the transactional activity Plaintiff alleges to have injured him took | |
| 19 | place in Nevada or was directed to the state by Seyfarth. | |
| 20 | The Court finds that the Plaintiff has not alleged facts that would | : |
| 21 | establish personal jurisdiction over Seyfarth in Nevada. First, Seyfarth, an | |
| 22 | Illinois limited liability partnership with no offices in Nevada, is not subject | í |
| 23 | to general jurisdiction in Nevada because it is not "at home" here. <i>Viega</i> | 1 |
| 24 | Gmbh. Eighth Jud. Dist. Ct., 328 P.3d 1152, 1158 (2014); Daimler AG v. Bauman, | |
| 25 | 134 S. Ct. 746, 751 (2014). | |
| 26 | Second, Seyfarth is not subject to specific jurisdiction in Nevada. | |
| 27 | Plaintiff has not shown that Seyfarth purposefully established contacts with | |
| 28 | Nevada that resulted in injury to him, as <i>Walden v. Fiore</i> , 135 S. Ct. 1115, | |
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| 1 | 1121-23 (2014), requires. Accord, Baker v. Eighth Jud. Dist. Ct., 116 Nev. 527, |
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| 2 | 533, 999 P.2d 1020, 1024 (2000) (same). The "minimum contacts' analysis |
| 3 | looks to the defendant's contacts with the forum State itself, not the |
| 4 | defendant's contacts with persons who reside there." <i>Id.</i> at 1122 (citing $Int'l$ |
| 5 | Shoe, 326 U.S. 310, 319, 66 S. Ct. 154, 159-60 (1945).) Plaintiff cannot be the |
| 6 | only link between Seyfarth and Nevada. <i>Id</i> . Rather, due process requires |
| 7 | that jurisdiction must be founded on the defendant's contacts with Nevada, |
| 8 | "not based on the 'random, fortuitous, or attenuated' contacts he makes by |
| 9 | interacting with other persons affiliated with the State." <i>Id.</i> citing <i>Burger</i> |
| 10 | <i>King</i> , 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however |
| 11 | significant the plaintiff's contacts with the forum may be, those contacts |
| 12 | cannot be 'decisive in determining whether the defendant's due process |
| 13 | rights are violated." <i>Id.</i> (quoting <i>Rush v. Savchuk</i> , 444 U.S. 320, 332, 100 S. Ct. |
| 14 | interacting with other persons affiliated with the State." <i>Id.</i> citing <i>Burger</i> <i>King</i> , 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated." <i>Id.</i> (quoting <i>Rush v. Savchuk</i> , 444 U.S. 320, 332, 100 S. Ct. 571, 579 (1980)). In this case, Plaintiff has not shown any conduct by Sevfarth in Nevada, or directed by Sevfarth to Nevada, that injured him |
| 15 | Soufarth in Nevada or directed by Soufarth to Nevada that injured him |

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here.

Third, the same analysis applies to the intentional torts alleged against 17 Seyfarth (conspiracy, racketeering). Jurisdiction over Seyfarth as an 18 intentional tortfeasor must be based on intentional conduct that is alleged or 19 has been shown to have been directed to Nevada. *Id.* at 1123 (holding that 20 "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or $\mathbf{21}$ attenuated contacts' or on the 'unilateral activity' of a plaintiff" with respect 22 to intentional tort claims). Plaintiff has not shown that Seyfarth 23 "purposefully enter[ed] the forum's market or establish[ed] contacts in the 24 forum and affirmatively direct[ed] conduct there, and [that his] claims arise 25 from that purposeful contact or conduct," as *Viega* requires to support 26 specific jurisdiction over an alleged tortfeasor. 328 P.3d at 1157. Plaintiff $\mathbf{27}$ has not made a prima facie showing that the opinion delivered to 28

| 1 | Millennium in Ireland by defendant Graham Taylor was intended to have |
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| 2 | an effect in Nevada or that Plaintiff was aware of the opinion when he |
| 3 | entered into the tax avoidance transaction with others in 2003 that the IRS |
| 4 | later found was fraudulent. Seyfarth's out-of-state activity "did not create |
| 5 | sufficient contacts with Nevada simply because [Seyfarth may have] |
| 6 | directed [its] conduct at [Plaintiff] whom [Seyfarth allegedly] knew had |
| 7 | Nevada connections." Walden, 134 S. Ct. at 1125. "Such reasoning |
| 8 | improperly attributes a plaintiff's forum connections to the defendant and |
| 9 | makes those connections 'decisive' in the jurisdictional analysis [and] |
| 10 | obscures the reality that none of [Seyfarth]'s conduct had anything to do |
| 11 | with Nevada itself." Id. (internal citation omitted). |
| 12 | Absent alleging a prima facie case that Seyfarth is "at home" in Nevada |
| 13 | or "affirmatively directed contact" with the state to deal with Plaintiff |
| 14 | Tricarichi, such as he fails to do by his conspiracy and racketeering claims, |
| 15 | he is not entitled to jurisdictional discovery before the Court rules on |
| 16 | Seyfarth's motion to dismiss for lack of jurisdiction. <i>Viega</i> , 328 P.3d at 1157, |
| 17 | 1160-61; <i>Daimler</i> , 134 S. Ct. at 751, 760 (insufficient facts alleged to support |
| 18 | either general or specific jurisdiction; absent such facts, no basis to allow |
| 19 | jurisdictional discovery); see also, Western States Wholesale Nat. Gas Litig., 605 |
| 20 | F. Supp. 2d 1118, 1140 (D. Nev. 2009) and <i>Menalco, FZE v. Buchan</i> , 602 F. |
| 21 | Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be |
| 22 | based on the actions of co-conspirators). |
| 23 | In light of these recent cases from our Supreme Court, the U.S. |
| 24 | Supreme Court, and the Nevada U.S. District Court, Plaintiff's reliance on |
| 25 | <i>Davis v. Eighth Jud. Dist. Ct.</i> , 97 Nev. 332, 629 P.2d 1209 (1981) is misplaced, |
| 26 | as Walden clearly confirms. Davis held that defendants who conspired out- |
| 27 | of-state could be subject to jurisdiction for injuries alleged to have occurred |
| 28 | in Nevada as a consequence of their acts elsewhere. <i>Walden</i> , however, |
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| 1 | appears to overrule <i>Davis</i> because, as the U.S. Supreme Court declared, |
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| 2 | "mere injury to a forum resident is not a sufficient connection to the forum |
| 3 | . The proper question is not where the plaintiff experienced a particular |
| 4 | injury or effect but whether the defendant's conduct connects him to the |
| 5 | forum in a meaningful way." 134 S. Ct. at 1125. See also id. at 1122 (quoting |
| 6 | Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984) |
| 7 | ("[The] unilateral activity of another party or a third party is not an |
| 8 | appropriate consideration when determining whether a defendant has |
| 9 | sufficient contacts with a forum State to justify an assertion of |
| 10 | jurisdiction.")). |
| 11 | Thus, the opinion rendered by defendant Graham Taylor to |
| 12 | Millennium in Ireland that allegedly "facilitated" a transaction between |
| 13 | Plaintiff and others in an out-of-state conspiracy that Plaintiff says injured |
| 14 | him in Nevada does not appear to be consistent with <i>Walden's</i> holding that |
| 15 | "jurisdiction over an out-of-state intentional tortfeasor must be based on |
| 16 | intentional conduct by the defendant that creates the necessary contacts with |
| 17 | the forum." 134 S. Ct. at 1125. Moreover, even if <i>Davis</i> has survived <i>Walden</i> , |
| 18 | which is highly questionable to the Court, the circumstances alleged by |
| 19 | Plaintiff are distinguishable from the limited facts recited in the Davis |
| 20 | opinion, and still do not make out a prima facie case for jurisdiction under |
| 21 | <i>Viega, Daimler,</i> or <i>Walden</i> . The facts of this case are also distinguishable from |
| | the post-Walden authority Plaintiff cites. See Best Chairs Inc. v. Factory Direct |
| 23 | Wholesale, LLC, 121 F. Supp. 3d 828 (S.D. Inc. 2015); First Cmty. Bank, N.A. v. |
| 24 | First Tennessee Bank, N.A., 489 S.W.2d 369 (Tenn. 2015); Khan v. Gramercy |
| 25 | Advisors, LLC, 2016 Ill. App. (4 th) 150435, 2016 Ill. App. LEXIS 425 Ill. App. |
| 26 | Ct. 2016). |
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| Now, for the foregoing reasons, the Court grants Seyfarth's motion to dismiss and by this order dismisses the complaint against Seyfarth Shaw, LLP, for lack of personal jurisdiction. ILP, for lack of personal jurisdiction. IT IS SO ORDERED. Dated: Desember (b, 2016 Bated: Desember (b, 2016 MORRIS LAW GROUP By: Morris, No. 1543 Ryan M. Lower, No. 9108 900 Bank of America Plaza 300 South Fourth Street |
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APP1859

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| 900 BANK OF AMERICA PLAZA · 300 SOUTH FOURTH STREET · LAS VEGAS, NEVADA 89101 702/474-9400 · FAX 702/474-9422 | $ 1 \\ 2 \\ 3 \\ 4 \\ 5 \\ 6 \\ 7 \\ 8 \\ 9 \\ 10 \\ 11 \\ 12 \\ 13 \\ 14 \\ 15 \\ 16 \\ 17 \\ 18 \\ 18 $ | Reviewed & Approved/Disapproved Dated: | : Dated: <u>J2/12/16</u> SNELL & WILMER L.L.P. By: <u>J</u> Patrick Byrne, Esq. Sherry Ly, Esq. 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 Peter B. Morrison, Esq. (Pro Hac Vice) peter.morrison@skadden.com Winston P. Hsiao, Esq. (Pro Hac Vice) winston.hsia@skadden.com SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 300 South Grand Avenue, Suite 3400 Los Angeles, CA 90071-3144 Attorneys for Defendant PricewaterhouseCoopers LLP |
| | 18 19 20 | Dated: LEWIS ROCA ROTHGERBER CHRISTIE LLP | |
| | 21 22 23 24 25 | By: Dan R. Waite 3993 Howard Hughes Parkway Suite 600 Las Vegas, Nevada 89169 | |
| | 26 27 28 | Attorneys for Defendant Coöperatieve Rabobank U.A. and Utrecht-America Finance Co. | |
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APP1860

Reviewed & Approved Disapproved: 1 2 Dated: 12/13/16 3 LEWIS ROCA ROTHGERBER CHRISTIE LLP 4 5 NV Bar#4078 By: 6 Dan R. Waite 7 3993 Howard Hughes Parkway Suite 600 8 Las Vegas, Nevada 89169 9 Attorneys for Defendant 10 Coöperatieve Rabobank U.A. and şi 11 Utrecht-America Finance Co. 12 13 14 15

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to be held, or be given personally or by belegram or twiephone, at least two days before the day on which the meeting is to be held.

Section 6. <u>Sucram</u>. A majority of the members of the board of Directors then in office shall constitute a quorum at all meetings thereof. In the absence of a guarum of the board of Directors a majority of the members present may adjourn the meeting from time to time outil a quorum is present and no notice of any such adjournment peed be given.

Section 7. Action by Written Consent. Any action which May be authorized or taken at a mosting of the directors, may be taken of authorized without a mosting by writing or writings signed by all of the directors who would be estimited to marine of a meeting of the directors beld for the purpose of such action, which writing or writings shall be filled with or enterned upon the records of the Corporation.

ARTICLE LIT.

COMMERCIES

Section 1. <u>Standing Committees</u>. The Board of Directors may by resolution provide for such standing or special committees to consist of such number of Directors as it deems desirable, and discontinue the same of its pleasure. Each Committee shall have such powers and perform such duties as may be assigned to it by the Board of Directors, encept that the Soard of Directors may not delegate any of the suthority of the Directors to any committee unless it consists of three or more Directors.

Section 1. <u>Encodive Committee</u>. An Executive Committee may be appointed only by the vote of a mejority of the antire Shard, and shall consist of three or some Directors who each shall serve at the pleasure of the Board of Directors. Except as otherwise provided by law, by these regulations or by resolution adopted by a majority of the outire board of Directors, the Executive Committee shall possess and may exercise during the intervals between the sections of the Soard, all of the powers of the Board of Directors in the management of the business, affairs and property of the Committee in the management of the Board of Directors. A majority of the Executive Committee shall possible a formal of the transaction of business.

APPICLE IV

OPFICES AND OFFICERS

Section 1. <u>Cillers - Bumber</u>. The officers of the Corporation shall be a Freedent, a Becretary and a Treasurer who may on may not be Directors. The Board of Directors may from time to time. It its discretion, appoint any or all of the following: a Chairman of the Board, who must be a member of the Scard of Directors, one or more Vice Freedents one of whos may be designated frequence vice. Freedents one of whos tay be designated frequence vice.

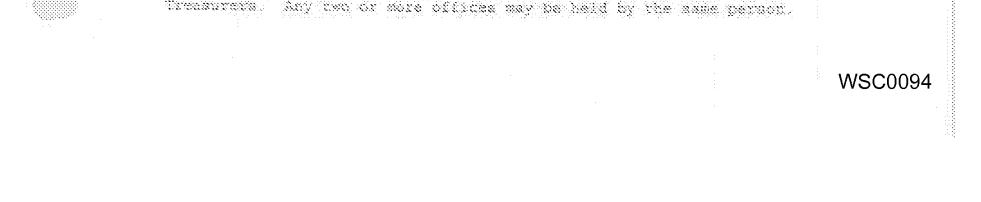


EXHIBIT 1-J Docket No. 23630-12 Page 93 of 209

Docket 73175 Document 2017-31685



Bection 2. Election and Term of Gifics, Vacancies, All officers of the Corporation shall be elected annually by the Roard of Directors at the first meeting of the Board of Directors held after the ansual secting of shareholders, and each offices shall oxid offices until his successor shall have been duly elected or until he shall realge of shall have been duly elected or until he shall realge of shall bave been removed. At said meeting, the Board of Directors shall also designate and appoint such subordinate conficers and amployees as it shall determine. If any vacancy shall occur in any office of the Corporation, such vacancy may be filled by the Roard of Directors in its discretion.

Section 3. <u>Removal</u>. Officers and employees elected or appointed by the Board of Directors may be removed, with or without cause, at any time by action of the Board of Directors.

DUTTES AND POWERS OF OFFICERS

The officers of the Corporation shall have such powers and duties as may be prescribed by the Board of Directors and in the absence of each prescription, such powers and duties as are cusposarily exercised by such comparate officers. The Chairman of the Board, if one is appointed, shall be the chief executive officer of the comparation unless the Board of Directors prescribes substwise.

ARTICLE VI.

THDERSIPICATION

The Obsporation shall indemnify each Director and Officer, such former Director and Officer, and each person who is surving or has surved at its request as a Director, trustee of Officer of another enterprise (and the heirs and personal representatives of each such Director, trustee and Officer; and may indemnify any employes or egent, any former employee or agent, and any person who is serving on has served at its request as an employee or agent of any other enterprise (and the heirs and personal representatives of each such mappinges and served at its request as an employee or agent of any other enterprise (and the heirs and personal representatives of each such employee and served at its request as an employee of each such employee and bisent) to the fullest extent from time to time permitted by the laws of the State of Ohio in the event any of such persons shall be made, or be threatened to be made, a party to any action, suit of proceeding, whether original, civil, administrative or investigative)

ASUNCLE VIE

CERTIFICATE FOR SHARES

Section 1. <u>Issuance of Cartificates</u>. The Board of Directors shall provide for the Leauence and transfer of the Cartificates of capital shares of the Corporation, and prescribe the form of such certificates.

Section 2. <u>Transfer of Shares</u>. The shares of the Corporation shall be transferable only upon its books and by the holdars thereof in person or by their duly authorized attorneys or

lessi renizentatives, and spon such transfer the old certificates

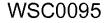


EXHIBIT 1-J Docket No. 23630-12 Page 94 of 209



Shall be surrendered to the Corporation by the delivery thereof to the person in theres of the share transfer books and ledgers or to such other person as the Board of Directors may designate for such purpose, and new certificates shall thereupon be issued.

.....

Section 3. <u>Addresses of Shareholders</u>. Every shareholder shall furnish the Secretary with an address at or to which notices of mentings and all other notices may be sorved upon of mailed to him and in default thereof, notices may be addressed to him at the office of the Corporation.

Eaction 4. Closing of Transfer Books, Eacond Date, The Spard of Directors shall have power to close the share transfer books of the Corporation for a period not exceeding sixty (60) days and not less than seven (7) days prior to the date of any meeting of shareholders; provided, however, that in lieu of closing the share transfer books as aforessid the Eosrd of Directors may fix a date not excessing sixty (60) days and not less than seven (7) days prior to the date of any such meeting as the time as of which shareholders entitled to notice of and to yote at such meeting shall be determined, and all persons who were holders of record of the or were noting shares at such time and he others shall be entitled to notice of and to yote at such meeting.

The Roard of Directors shall also have the power to close the share transfer books of the Corporation for a period not exceeding sixty (60) days preceding the data fixed for the payment of any dividend or the making of any distribution or for the delivery of any swidence of right or evidence of interest, provided, however, that in lieu of closing the chars transfer books as alorestaid the Board of Directors may fix a date not exceeding sixty (60) days preceding the date fixed for the payment of any such dividend or the making of any such distribution or for the delivery of any auch evidence of right or interest as a record date for the delivery of any auch evidence of right or interest as a record date for the delivery of any auch evidence of tight of interest, and in such case only shareholders of record at the date so fixed shall be entitled to receive auch dividend, distribution or evidence of right or interest.

The Board of Directors shall fix no record data which is prior in time to the date upon which such record data is fixed.

Section 5. Lost, Stoles and Destroyed Cartificates. The Section of Circctors may couse a new certificate of shares to be issued in the place of any lost, stoles or destroyed certificate but the person secking to have such new certificate issued shall furnish proof by affidivit or otherwise, as the based may require, of benership of the shares represented by such lost, stolen or destroyed certificate and the facts which tend to prove such loss, theft or destruction. The board of Directors may also require such person to ecoust and deliver to the Corporation a bond, with or without substies, in such sum as the Board of Directors may direct, indemnifying the Corporation against any clais that may be made against it by reason of the issue of such new certificate. The Board of Directors may also, in its discretion, refuse to issue such new certificate, except pursuant to a pourt order.



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ANNIGUE STITE.

ADENIMENTE

These Regulations may be altered or amended by the affirmative vote of the bolders of record of the shares estitling them to exercise a majority of the voting power of the corporation of each proposal at any regular or special meeting of the chareholders if notice of such proposed alteration or amendment be contained in a notice of the meeting, or without meeting by the written consent and suthorization of the holders of record of shares estitling them to exercise a majority of the voting power of the Corporation of such proposal. If these acquistions are altered or amended without a meeting, the societary of the Corporation shall mail a copy of such change to each holder of shares who would have been estitled to vote thereon and did not participate in adoption thereof.



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TAB 4

EXHIBIT 1-J Docket No. 23630-12 Page 97 of 209



ACTION SY DIRECTORS. VITEOUT MEETING OF

PREFINE OFFICEAR, TRO.

The undersigned, being the Directors of Vertride Cellular, Inc., an Ohio Etrebration (the "Corporation"), do heraby in writing and without a wenting, pursuant to Section 1701.34 of the Ohio Revised Code, consent to and edopt the Tallowing resolutions:

> SESOLVED, that the officers of the Corporation shall be as follows, and the person whose same is set apposite each such office is elected to such office to serve until the first matting of the Board of Directors following the next senuel shareholder's meeting:

President - Michael Tricerichi Vice President - Sarbara Tricerichi Trussures - Sarbara Tricerichi Secretary - Michael Tricerichi

EXECUVED, that the form of cartificate for shares attached becaus an Exhibit 6 is soopted as the definitive form of such cartificate to be used by this Corporation.

MESOLVED, that this Corporation chall not have any seal.

BESOLVED, that the fiscal year of the Corporation shall and on December 31 of each year.

RESIVED, that the Corporation it hereby authorized and directed to upon a corporate backing account on behalf of the Corporation in the form attached herero as Exhibit 5. the resolutions of which are hereby incorporated by reference:

IN SITEESS WEEECP, the undersigned have berownro affired their signatures of of the 13th day of March, 1968:

Trickrichi 361

Barbara Tricarichi





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TAB 5

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WEST SIDE CELLULAR, INC.

SECRETARY'S AND INCUMBENCY CERTIFICATE

1. Michael Tricarichi, hereby certify that:

- I am the duly elected, qualified and acting President and Secretary of West Side Cellular, Inc., an Ohio corporation (the "Corporation");
- Attached to this Certificate as <u>Exhibit 1</u> is a true, complete and correct copy of the Articles of Incorporation of the Corporation, which Articles have not been repealed or amended and remains in full force and effect as of the date hereof.
- Attached to this Certificate as <u>Exhibit 2</u> is a true, complete and correct copy of the Code of Regulations of the Corporation, which Code of Regulations has not been repealed or amended and remain in full force and effect as of the date hereof;
- 4. Attached to this Certificate as <u>Exhibit 3</u> is a true, complete and correct copy of a resolution adopted by the Board of Directors of the Corporation dated September 8, 2003, which resolution was duly adopted in accordance with the Articles of Incorporation and Code of Regulations of the Corporation, has not been repealed or amended, and remains in full force and effect as of the date hereof;

 The corporate record book of the Corporation reflects all actions taken by and minutes of meetings of the Board of Directors and Shareholders of the Corporation and is otherwise complete.

6. The following persons are, as of the date hereof, duly elected, qualified and acting officers of the Corporation holding the offices of the Corporation set forth below opposite their names, and the signature of each such officer (where set forth hereon) is such officer's true and genuine signature.

| NAME | OFFICE | SIGNATURE |
|--------------------|---------------------------------|----------------------|
| Michael Tricarichi | President and Secretary | |
| Barbara Tricarichi | Vice President and Treasurer | <u>falle Greense</u> |



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IN WITNESS WHEREOF. I have herebuilo set my hand on behalf of the Corporation this _____day of September, 2003.

Michael Tricaneni Prosident and Scorelary

I. Barbara Tricarichi, Vice President and Treasurer of the Corporation, do hereby certify that Michael Tricarichi is the duly qualified, acting and elected President and Secretary of the Corporation and the signature set forth in the foregoing Certificate is his genuine signature.

Barbara Tricarichi

Vice President and Treasurer



EXHIBIT 1-J Docket No. 23630-12 Page 101 of 209



<u>Ladex to Exhibits</u>

Exhibit 1. Certificate of Incorporation

Exhibit 2 Code of Regulations

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Exhibit 3. Resolution of Board of Directors of West Side Cellular, Inc. regarding Stock Purchase Agreement



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TAB 6

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United States of America State of Ohio Office of the Secretary of State

I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show WEST SIDE CELLULAR, INC., an Ohio corporation, Charter No. 720734, having its principal location in Cleveland, County of Cuyahoga, was incorporated on March 14, 1988 and is currently in GOOD STANDING upon the records of this office.



Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 2nd day of September, A.D. 2003

Quereth Bachingel

Ohio Secretary of State





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TAB 7

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Sent directly to John P. McNabola post-closing.





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TAB 8

EXHIBIT 1-J Docket No. 23630-12 Page 107 of 209





Sent directly to John P. McNahola post-clasing.







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TAB 9

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RESIGNATION

l. Barbara Tricarichi, do hereby tesign my positions as Director, Vice President and Treasurer and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been clocked, such resignation to be effective as of September 9, 2003.

<u>B. J. Cont</u> Burbara Tricarichi







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RESIGNATION

 Michael Tricarichi, do hereby resign my positions as Director, President and Secretary and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.

Michael I'ncarichi



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RESIGNATION

I, Michael Tricarichi, do hereby resign my positions as Director, President and Secretary and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.

Michael Tricarichi



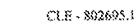




EXHIBIT 1-J Docket No. 23630-12 Page 113 of 209



RESIGNATION

I, Barbara Tricarichi, do hereby resign my positions as Director, Vice President and Treasurer and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003

Barbara Tricarichi







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| WEST SIDE CELLULAR Balance Sheet <u>Aogcist 21, 2003</u> ASSE7S | | | | |
|--|---|-------------------|--|--|
| | | | | |
| Total Current Access | | 40,537,150,89 | | |
| pubortà aug gidubustit | | | | |
| Coul Property and Equipment | | 0.000 | | |
| Hiler Assista | | | | |
| Wat Other Assets | | - 60.00 | | |
| intel Aneres | | 49,377.186.89 | | |
| LIABILITIES AND CAPITAL | | | | |
| WORNELISISSION CORVED WORNERS COMP CORVED PERSONAL PROP. TAXES | 2,133,93 3,645,83 | | | |
| otal Current Lightliftes | | 5.77438 | | |
| ong-Term Lidvilitins | | | | |
| oud Long-Term Liebflikies | | <u>iii (1000)</u> | | |
| otal Elabilities | | 3,779:73 | | |
| Spiial SPITAL STOCK ETAINED BARNDECS CURRENT St Diceme | 5,000.00 <1,342,691,42× 41,909,063,56 | | | |
| etal Capital | 1 | 46, 371, 371, 14 | | |
| | | | | |

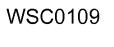


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WEST SIDE CELLULAR Income Statement For the Eight Momme Ending Acquest 31, 2013

| Réivernes | Year is Daia | |
|---|--|-------------------------------|
| SALES ABTREE BECLERUISC & PLONES | 1.387.236.34 | 2.08% |
| SALES-INTRES | 65,858,240,68 | 43, 368 |
| DATEX BET INCLUSE. | | \$3.8% } |
| Total Constants | \$\$.341,338,33 | 1988.00 X |
| Cite en Sistes | | |
| CON AGE TIME | 289.1920.88 | 6.839 |
| COS-CELLOLAR, PRONE | 1993997.42 | |
| COS OTHER | | 2005-00 2005-00 2005-00 |
| COS DEALER COMMISCIONS | 4,435,835,53 | 1.76% 6.88% |
| | | |
| Total Cargine Sales | a gat inc as | 8.88 S |
| Gross Profit | 60.439.220.25 | 95.52% |
| Expenses | | |
| SALAPIES | \$315,695,48 | 13:50% |
| PATROLE TA SEE | 188.865 33 | 8.233 |
| ENDLOYSE BENEPITS | F. 342.84 | 0.83% |
| EXPLOYER WILFARE | 2947.48 | 10.001 |
| NEVER TUSING | 122.333.86 | \$ 184 |
| NEURANCE. | S.478.62 | 1.01 St |
| SALES PERMITIONS | 1999 - | |
| RECEIPTING | | 3. \$9 E |
| VERMELE STATETIEN ANTE | | 8 629 8 |
| LEARNS MERICES | 24.368.23 | 8.0488 |
| IN THE MUSIC MERCER | 63.2.65 | 8 858 |
| en ang panganan ang pang pang pang pang p | 8.853.89 | 8388% |
| TRAVEL - CELENET MICH | | 0.000 |
| STREAMENTERS | | 0.02% |
| ELEPTENT | | 8.935 |
| STATACE. | | 9.82% - 3.82% |
| STAR & SERBSCRITTERDER | 145-191 <u>2-194</u> 1331-193 | 8.99% - |
| | 3,388,32 | |
| AISCELLANDERS | | 3.63% X X 44 |
| en e | 13 A 3 4 3 7 3. 87 3 4 6 28: | 0.0195 States |
| nan dina majinten ameri Nan dina majinten ameri | | 0.02% |
| oson angenes propins a describe de la constanción. DEPREESA VRON | | 2.93 |
| energen in den en e | | 3.6375 |
| | | |
| PRIOT & COLLECTIONS | | 8.884 |
| CANE, CEAECEE | 16,173,88 | 0.0285 |
| ACOUSINELA, PEES | 8.488.386.92 | |
| INROPARTS BELING PRES | 28.332.32 | 0.0476 |
| HENRY MAINTENANUE | S.548-99 | 0.63% |
| SYCTEM MARYTERANCE | | <u> 0.08%</u> |
| STOPMENT LEASE | 2,748,33 | 33,685 |
| | | 2 <i>96</i> 93 |
| TIPSCINAL PROPERTY TAX | | 3,63% |
| ISSE E XVENCES | 8,5186,878,41 | 12.15% |
| ALES TAX INSCOONTS | × 868 (\$2- | (3.56°); |
| BADVEORS ON SALE P.A. | S8,643 55 | 9 CS*% |
| etate include tax | | 3.395 |
| Inut Expenses | 18.590.217.92 | 22 3434 |





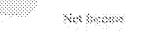




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| | Net Income per Booke | | 41,909,062.58 |
|----------------------|--|--------|-----------------------------------|
| Add Add Dockot | 50%. Entertainment Expense Depreciation Sati Detit | | 316.03 4,204.05 (26,500.00) |
| | Total adjustments to income (M1) | | (35,479,83) |
| | Taxable Income Before NCL NOL Carry Forward | | 41,833,582,83 (1,257,638,00) |
| | Net Taxable Income | \x | 40,635,944,04 |
| | Federal Tax State Tax | 35.00% | 14,222,580,82 |
| | First \$50,000 | 0.51% | 285.00 |
| | Over \$50,000 A.paal | 8,58% | 3,449,905,20 597,321,28 |
| | State & Local Tax reduction | | (1,416,593,54) |
| | Next taxes | | 16,683,378,83 |
| | Fortrend provision | | 6,372,004,44 |
| | Cash balanca as of 09/03/03 | | 40.571,371,14 |
| | Net cash payout to Mike Triesricht | | 25,199,356,70 |









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NON-CONFIDENTIALITY CERTIFICATE

September 9, 2003

Reference is hereby made to acquisition by Nob Hill Huddings LLC, a corporation, of the capital stock of West Side Cellular, hic., an Ohio corporation and the transactions relating thereto (collectively, the "Transactions").

Each of the undersigned hereby agrees, confirms, represents and certifies that (i) their disclosure of the structure or tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the benefit of any third party. whether or not such understanding or agreement is legally binding, (ii) they do not know or hirse any reason to know that the details regarding the Transactions are projected from disclosure or use in any other manner. (iii) they have not requested from or imposed on any of the parties involved in the Transactions or any other third party any express or implied understanding or agreement of confidentiality whether or not such understanding or agreement is legally binding. (iv) they have not taken and will not take my action that would (a) cause the disclosure of the structure or tax appects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Temphetjons to be protected from disclosure or use in any other mander, (v) they have not failed to take and will not, in the future, fail to take any action if such failure would (a) empte the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner and (vi) neither Cooperatieve Contrale Reiffeisen-Bocrenleenbank H.A., "Rabobank Nederland", New York Branch, Unseld-America Finance Co. or any of their affiliates has made or provided any statement, oral or written, to such party for to such party's knowledge, my third party i as to the peterdial tax companyiences of the Transactères.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without fimitation, (A) attorney-elient privilege (including work product). (B) confidentiality requirements applicable to banks in general or (C) federal or state accurities laws or (ii) applying to the financial performance or condition of any of the undersigned or any of their assets.



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5. S

Bre lla Rhill

Name: John P. McNabola Title: President

WEST SIDE CELLUILAR, INC.

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| Title: | |

MICHAEL TRR: ARICHE

By: Name: Michael Tricarichi

COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH

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UTRECHT-AMERICA FINANCE (3)

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NOB HILL HOLDINGS, INC.

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By: Title:

WEST SIDE CELLULAB, INC. <u>pars</u> Ma

COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH

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UTRECHT-AMERICA FINANCE CO.

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WSC0114

APP1720

PORTREND INTERNATIONAL LLC

By: Title:

KLINK & ASSOCIATES, INC.

Br. <u>Ala Da J Mar</u> This Propilar & Brocks

HARN LÓBSER & PARKS

n m Follow PARTNER By: Titler Michael Triearichi

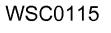




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FORTREND INTERNATIONAL LLC

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KLINK & ASSOCIATES, INC.

By Clanks Aller ?

HAHN LOESER & PARKS

Michael Tricarichi



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WSC0116

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CROSS-RECEIPT

Reference is made to the Stock Purchase Agreement, dated as of September 9, 2003 (the "Agreement"), by and among Nob Hill Holdings, Inc., a Delaware corporation ("Buyer"), and Michael Tricarichi, an individual ("Seller"), as sole shareholder of West Side Celhdar, Inc., an Ohlo corporation ("Company"). Capitalized terms used but not otherwise defined herein aball have the meanings ascribed to such terms in the Agreement.

- 1. Buyer hereby acknowledges that the documents to be delivered by Seller to Buyer pursuant to Section 7.2 of the Agreement, including but not limited to the corporate minute book for West Side Cellular, Inc., are in form and substance satisfactory to Buyer and have been delivered to, and/or the delivery of each has been waived by, Buyer and further acknowledges the receipt from Seller of a certificate representing the Shares.
- 2. Soller hereby acknowladges that documents to be delivered by huyer to Seller pursuant to Section 7.4 of the Agreement are in form and substance satisfactory to Seller and have been delivered to, and/or the delivery of such has been valved by. Seller and higher acknowledges the readja from Buyer of a wire transfer of immediately available funds in the aggregate amount of US\$34,621,594.06, and a check made payable to Michael Triebrichi in the amount of US\$57,777.77, representing payment in full for the Shares.
- 3. Bayer and Seller, each acknowledges that the other party has performed and complied with all agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with by it on or before the Closing Date.

This cross-receipt may be exernited in one or more counterparts, each which shall be deemed an original and all of which together shall be considered one and the same cross-receipt.

[Remininder of page intentionally left blank; signature page follows,]



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IN WITNESS WHEREOF, the parties hereto have caused this cross-receipt to be executed by their respective duly authorized officers as of the date first written above.

SELLER MICHAEL TRICARICHI Σy:

BUYER: NOB HILL HOLDINGS, INC.

SS.S. By:

Name: John P. McNabola Title: President





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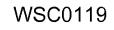


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ASSIGNMENT AND ASSUMPTION OF LEASE

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THIS ASSIGNMENT AND ASSUMPTION OF LEASE is dated this 24/3 day of August, 2003, by and between WESTSIDE CELLULAR, INC. D/B/A CELLNET OF OHIO, an Ohio corporation, having an address at 22632 Mercantile Road, Beachwood, Ohio 44122 ("Assignor") and LXV OROUP LLC., an Ohio limited liability corporation, having an address at 23632 Mercantile Road, Beachwood, Ohio 44122 ("Assignee").

LEASE. Robert 1. Broida, Trustee d/b/a Memantile Associates ("Landlord"), as landlord, and Assignot, as tenant, entered into that certain Lease dated February 1, 1995 as extended and/or amended (the "Lease") for certain premises located at 23632 Mercantile Road, Beachwood, Ohio 44122, as more particularly described in the Lease (the "Premises").

2. <u>ASSIGNMENT OF LEASEHOLD INTERPST</u>. For good and valuable consideration received, the Assignor hereby transfers, grants and assigns the Lease as of the Effective Date (as hereinafter defined), together with all of Assignor's right, title and interest therein and thereinder, as tenant, as well as all appurtenances thereto and all related documents pertinent thereto, to the Assignee, its successors and assigns.

3. <u>EFFECTIVE DATE</u>. This Agreement shall be effective as August 1, 2003 (the "Effective Date").

4. <u>ASSUMPTION OF LIABILITY</u>. The Assignee hereby assumes from and after the Effective Date the timely and true performance of all the rents, terms, covenants, conditions and provisions of the Lease hereby assigned and accruing or to be performed on or other said Effective Date, all with the full force and effect as if the Assignee had executed the Lease originally as tenam named therein and shall render performance of the same directly to the Landiord.

5. <u>ADJUSTMENTS IN RENT</u> The parties shall adjust the reat and any additional rest due for the month in which the Effective Date occurs, on a per diem basis, as of the Effective Date. This paragraph shall survive the Effective Date.

6. <u>REPRESENTATIONS</u> Assignor certifies that as of the date hereof the Lease is in full force and effect. Assignor is not in default or breach of any of the provisions of the Lease; no event has constructed which with the passage of time or the giving of notice or both, would constitute an event of default by Assignor under the Lease; and the Lease constitutes one entire rental agreement between Lindlerd and Assignor for the Premises and has not been amended, modified, supplemented or superseded except as expressly set forth in this Assignment and Assignment and Assignment of Lease;

7. <u>SUCCESSORS AND ASSIGNS</u>. The covenants, conditions and provisions constant in this Agreement shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.



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IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption of Lease to be properly executed as of the day and year first above written.

ASSIGNOR

ASSIGNEE

WESTSIDE SELLULAR, INC.

-Esy . dist. Name Sines in Galigona Dille roffererer

LXV OROLD LLC \mathbb{R}^{n}

Name Sugar de Constant Tille Theory cases

ACCEPTED AND APPROVED,

MERCANITLE ASSOCIATES

Ma Lynner. Sy: and Standard Name:

Title:

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September 9, 2003

Nob Hill Holdings, Inc. 50 Francisco Street San Francisco, California 94(33 Attro-John P. McNabola

Re: Sale of All of the Issued and Outstanding Shares of West Side Cellular, Inc.

Ledles and Gentlemen:

We have acted as special counsel to West Side Cellular, Inc., an Ohio corporation ("West Side Cellular"), and Michael Tricarichi, as the sole shareholder of West Side Cellular ("Seller"), in connection with the transactions that are the subject of that certain Stock Purchase Agreement dated as of September 9, 2003 (the "Stock Purchase Agreement"), by and between Seller and Neb Hill Holdings, Inc., a Delaware corporation ("Nob Hill"). All capitalized terms used in this opinion without definition have the respective meanings given to them in the Stock Purchase Agreement. This opinion is rendered to you at the request of Seller:

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental anthorities referred to belaw:

The Stock Purchase Agreement;

Acticles of Incorporation of West Side Cellular;

The Code of Regulations of West Side Cellular,

Such other records, certificates, documents and instruments, as we have deemed necessary or appropriate to review in order to review the opinions expressed hereig.

In condering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

A. All documents submitted to us as originals are complete and authentic, all copies of documents submitted to us conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factural

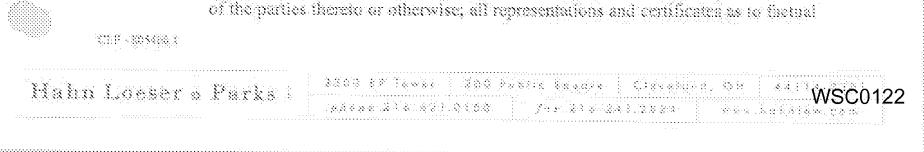


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Hahn Loeser + Parks (

Nob Hill Holdings, Inc. Sapterative 9, 2003. Page 2

matters dated prior to or on the date hereof upon which we have relied are and remain securate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fined

- B. All parties (except Seller) to the Stock Purchase Agreement (i) have doly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and meli sugreements are valid, binding and enforceable obligations of such parties. All parties (except Seller) to the Stock Purchase Agreement have complied with all legal requirements applieable to them in entering into and performing the Stock Purchase Agreement (and all applieable exhibits thereto) in order to carry out the transactions contemplated thereby.
- C. The conduct of the parties to the Stock Purchase Agreement has conformed to all requirements of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property of security interest transferred or created as part of, the Stock Purchase Agreement.
- D. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally valved.
- E. Nob Hill has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Nob Hill, and constitutes the legal, valid and binding obligation of Nob Hill.
- F. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) between Nob Hill and Seller or Seller and third parties, and there is no usage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the respective rights and obligations of Seller hereander, or (ii) have any effect on any of the opinions set forth in this letter.
- G. The representations and warranties of each party to the Stock Parchase Agreement (including Seller) are true and complete.
- H. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase.





Agreement and related documents or related thereto



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Nob Hill Haldings, Inc. Soptember 9, 2003 Page 3

- 1. We have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Parchase Agreement (including, without limitation, any examination of documents in our files or otherwise made available to us by West Side Cellular in connection with matters unrelated to the Stock Parchase Agreement), and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of West Side Cellular in connection with the Stock Parchase Agreement or otherwise. In basing the opinions set forth herein on "our knowledge," the words "our knowledge" are intended to be limited to the acrual knowledge of the atorneys within our firm who have been directly involved in the transaction contemplated under the Stock Parchase Agreement.
- J. In rendering the opinious expressed below, we have relied, with your consent, as to fastual matters solely upon the statements, representations and warranties of the various parties contained in the above-listed documents and upon a certificate executed by Seller and the President of West Side Cellular (the "Certificate"). We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental upborities as to matters concerning the due incorporation, valid existence and good standing of West Side Cellular.
- K. In addition, notwithstanding anything contained in this letter to the contrary, with your consent, we expressly disclaim any optition as to the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto. We understand that all parties to the Stock Purchase Agreement and their respective related parties have cought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

Based upon and subject to the foregoing, as of the date and time one minute prior to actual constitutuation of the transaction contemplated by the Stock Purchase Agreement (the "Opinion Date"), we are of the opinion that:

- A. West Side Cellular is a corporation incorporated, validly existing, and m good standing under the laws of the Sune of Ohio
- B. Seller has the requisite power and authority to excepte and deliver the Stock Purchase Agreement and to perform all of his obligations under the Stock Purchase Agreement.
- C. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Seller.
- D. No notice to, action of, or filing with any governmental agency or regulatory body



is required to authorize the execution and densery of the Shick Parchase



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Hahn Lobser & Parks)

Nob Hill Huldings, m. September 9, 2009 Page 4

Agreement by Seller,

The authorized capital space of West Side Cellular consists of seven hundred and \mathbb{R}^{+} fifty (750) shares of voting common stock, no per value, of which one hundred (100) shares are outstanding as of the date of this opinion. To our knowledge and based on the Certificate, all such outstanding shares were validly issued and ourstanding, fully paid and nonassessable, and there are no other securities of West Side Cellular of any class issued, reserved for issuance or otherwise ourstanding. To our knowledge and based on the Certificate, there are no options, offers, warrants, conversion rights, subscriptions or agreements or rights of any kind to subscribe for or to purchase, or commitments to issue (either formal or informal, firm or contingent) shares of capital stock or other securities of West Side Cellular (whether dem, equity or a combination thereof) or obliganting West Side Cellular to grani, extend or enter into any such agreement or commitment. To our knowledge and based on the Certificate, there are no commitments, agreements or other arrangements relating to the shares of common stock of West Sule Cellular currently issued and ouistanding and such shares are not subject to any pledges, security interests, liens, encumbrances, claims or equitable interests.

We have not been requested to opine, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the laws of the State of Ohio without reference to conflict of laws principles, to present judicial interpretations thereof, and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this latter and are rendered exclusively for your benefit in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indiroctly any general proposition or for any other purpose. We hereby disclaim any obligation to bottly any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opproves contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no connect for the addressee has expressed in writing oppoions which are contrary to the optimis set forth in this letter, in which event these opinions are not to be telled upon initil we have had an opportunity to consider the matters further.







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This opinion has been rendered to you at the request of West Side Cellular and Seller, and may be relied upon by you only. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each idstance.

Very traly years,

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IRREVOCABLE STOCK POWER

Thint, I. Michael Triearichi, for value received, have bargamed, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto Nob Hill Holdings, Inc., One Hundred (100) shares of non-voting common stock of West Side Cellular, Inc., an Ohio corporation, standing in my name on the books of the company as evidenced by stock certificate number 1 and do hereby constitute and appoint

my true and lawful attorney, irrevocable for me and in my name and stead, to assign, transfer and set over, all or any part of the said stock, and for that purpose, to make and execute all necessary ters of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that its said attorney, or his substitute or substitutes shall lewfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereinne set his hand as of this 9th day of September, 2003.

Michael Triearichi



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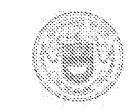


State of Delaware Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF DTATE OF THE STATE OF DELAWARE, DO HEREEY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "NOB BILL HOLDINGS, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF NOVEMBER, A.D. 2001, AT 9 O'CLOCH N.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS



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AUTHENTICATION: 1449630

12ATE: 11-15-01



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STATE of DELAWARE CERTIFICATE of INCORPORATION A STOCK CORPORATION

STATE OF CELEMARE UCCUPETANT OF STATE CIVISTON OF COMPORATIONS FILED 39.00 SM 11/15/2001 910578331 - 3357365

* Pirst: The manne of this Corporations is Nats 4711 Hald read Trees

Second: its registered office in the State of Delaware is to be located at <u>I. E. at ST</u>.
 Letter de constrain <u>Tress T</u> Street, in the City of <u>Delaware</u>.
 County of <u>Ke. at</u> 750 Code <u>MIIA</u>. The registered egent in there is a strenge diversit is <u>NaTionan I. Rogics Terred</u> Agent 75, <u>Terres</u>.

 Third: The purpose of the conjonation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

· Fifth: The nume and mailing address of the incorporator are as (allows:

Name Patrice Wollson Mailine Address 220 Anchron S. Litera I., 2 & d 5 Som Francisco, at 250 Code 94111

(Incorporator)

NAM Clype or Franc)

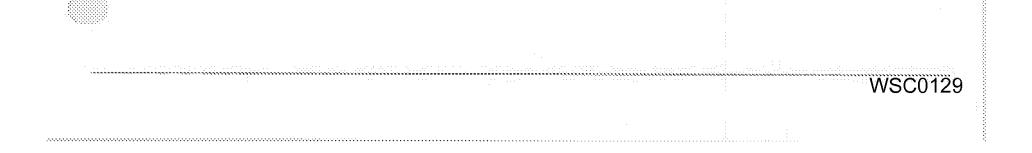


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BYLAWS OF NOB HILL HOLDINGS, INC.

(hereinafter called the "Corporation")

ARTICLEI

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

ARTICLE II MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware is shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or is a duly executed waiver of notice thereof.

Section 2. Annual Meetings. The Annual Meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the mockholders shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting. Written notice of the Annual Meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation, Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of a nurjority of the Roard of Directors er at the request in writing of stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at auch meeting.

Section 4. Quarum. Except as otherwise provided by law or by the Cartificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled



to vote thereat, present in person or represented by proxy, shall constitute a quorum at all

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meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without active other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally actived. If the adjournment is for mere than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question brought before any meeting of stockholders shall be decided by the vote of the bolders of a majority of the stock represented and entitled to vote thereat. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat hold by such stockholder. Such votes may be cast in person of by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, to its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, any require that any votes cast at such meeting shall be cast by written ballet.

Section 6. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation, may be taken without a meeting without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote therein were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unantimous written consent shall be given to those stockholders who have not consented in writing.

Section 7. List of Stackholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, aranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also he produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any clockholder of the Corporation who is present.

Section 8. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 7 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.



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ARTICLE III DIRECTORS

Section 1. Number and Election of Directors. The Board of Electors shall consist of not less than one not more than five members, the exact number of which shall initially be fixed by the Incorporates and thereafter from time to time by the Board of Directors. Except as provided in Section 2 of this Article, directors shall be elected by a plarality of the votes cast at Annual Meetings of Stockholders, and each director so elected shall bold office until the next Annual Meeting and until his successor is duly elected and qualified, or until his earlier resignation or removal. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders.

Section 2. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 3. Duties and Powers. The bosiness of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there he one, the President, or any one director. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than berty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting from time to time, without of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Actions of Board. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent therein in writing,

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and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

Section 8. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors to set at the absence to replace the absent or disqualified member, the member or members thereof present at any meeting and act disqualified from voting, whether or not be or they constitute, a quorum, may unminimously appoint another member of the Board of Directors to set at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the meangement of the board and authority of the Board of Directors and report to the board of Directors when required.

Section 9. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors for a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 10. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction are disclosed or solely because his or their votes are counted for such purpose if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or sub-board of Directors or transaction by the affirmative votes of a majority of the disintercated directors, even though the disinterested directore be less than a quomine or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or an good faith authorizes the contract or transaction by the affirmative votes of a majority of the disintercated directors, even though the disinterested directore be less than a quomine or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or an alternative votes of a majority of the disintercated directors, even though the disinterested directore be less than a quomine or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or an alternative vote of the contract or transaction are disclosed or an alternative vote and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or



transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract

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or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may also choose a Chainman of the Board of Directors (who must be a director) and one or more Vice Presidents. Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at us first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or ustil their earlier resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a nationity of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be filled by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, provies, waivers of octice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the time of and on behalf of the Corporation by the President or any Vice President and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. He shall be the Chief Executive Officer of the Corporation, and except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also



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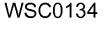


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perform such other duties and may exercise such other powers as from time to time may be assigned to him by these Bylaws or by the Board of Directors.

Section 5. Fresident. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when an authorized by these Bylaws, the Board of Directors or the President. In the ubsence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the sockholders and the Board of Directors. If there be no Chairman of the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duries and may exercise such other powers as from time to time may be assigned to him by these Bylawa or by the Board of Directors.

Section 6. Vice Presidents. At the request of the President or in his absence or in the event of his inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President or the Vice Presidents if there is more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to tune may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the crockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose mother afficer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary of any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be atested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept



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Section 8. Treasurer: The Treasurer shall have the custody of the corporate fands and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the order of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Hoard of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation, if required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, mancy and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 9. Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be uny, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of bit disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duries and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureries as thall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papera, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLEN

STOCK

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chairman of the Board of Directors, the President or a Vice President and (ii) by the Treasurer or an Assistant



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Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 2. Signatures. Where a certificate is countersigned by (i) a transferagent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, manifer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his attorney lawfully constituted in writing and upon the corrender of the certificate therefor, which shall be canceled before a new certificate shall be issued.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to express consent to corporate action or allotment of any rights, or entitled to express consent to corporate action or allotment of any rights, or entitled to express consent of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record date for the meeting provided, however, that the Board of Directors may fix a new record date for the adjourned uncering.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.





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ARTICLE VI NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VII GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in each, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by each officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have insertised thereon the name of the Corporation, the year of its organization and the word "Delaware". The seal may be used by causing it or a flickimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by





reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is



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or was serving at the request of the Corporation as a director, officer, employee or ageni of another corporation, partaership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fince and antounts paid in actilement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and to a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *noto controllere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best corporation, and, with respect to be in or not opposed to the best interests of the convolution, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Power to Indonally in Actions, Soirs or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procore a judgment in its favor by reason of the fact that he is or was a director, officer, employee or signal of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attomicys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably beheved to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be lighte to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despire the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which the Coart of Climitery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum constating of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal coursed in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys) fees) actually and reasonably incorred by him in connection therewith, without the necessity of authorization in the specific case.

Section 4. Courd Faith Defined. For purposes of any determination under



Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a





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manner he reasonably believed to be in or not opposed to the bast interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his conduct was unlawful, if his action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to him by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal coursed for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appointer or other expert selected with reasonable care by the Corporation or another enterprise. The term if another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any scay the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article vIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections I and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has men the applicable standards of conduct set forth in Sections I or 2 of this Article VIII, as the case may be. Neither a contrary determination in the spanific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director, officer, employee or agent seeking indemnification pursuant to this Section 5 shall be given to the Corporation prompily upon the filing of such application. If successful, in whole or in part, the director, officer, employee or agent seeking indemnification shall also be entitled to be paid the expense of prosecuing such application.

Section 6. Expenses Payable in Advance. Expenses incurred in defending or investigating a threatened or pending action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in his official capacity and as to action in mother capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VIII





shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not

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be deemed to preclude the indemnification of any person who is not specified in Sections 1 or 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture; trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him to any such capacity, or arising out of his status as such, whether or out the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had centinued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or way a director or officer of the Corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, parmership, joint venture, must, employee henefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting of surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Arocle VIII, references to "fines" shall include any excles taxes assessed on a person with respect to an employee henefit plan; and references to "serving at the request of the Corporation" shall metade any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee henefic plan, its participants or beneficiaries; and a person who acted in good faith and in a manner lie receptuably believed to be in the interest of the participants and beneficiance of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best increase of the Corporation" as referred to in this Article VIII.

Section 10. Survival of Indonuification and Advancement of Expenses. The indomnification and invancement of expenses provided by, or granted parsuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inner to the benefit of the hairs, executors and administrators of such a person.

ARTICLE IX AMENDMENTS

Section 1. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of stockholders or Board of Directors as the case may be All such amendments must be approved by either the holders of a majority of the outstanding

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capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 2. Entire Board of Directors. As used in this Article IX and in these Bylaws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

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CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

I. That I am the dudy decred and acting Secretary of NOB HILL. HOLDINGS, INC., a Belaware corporation, and

2. That the foregoing bylaws, comprising 13 pages, constitute the bylaws of said corporation as duly adopted and ratified by action of the sole director taken on August 1, 2003.

IN WITNESS WHEREOF, I have hereunjo subscribed my name and affixed the seal of said corporation this 1" day of August, 2003.

2 and the

John P. McNabola



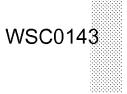


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Certificate of incumbency of Noti Hill Hotdings, Inc.

The undersigned, the Secretary of Nob Hill Holdings, Inc., a Delaware corporation (the 'Company'), hereby certifies as follows:

- 1. Attached hereto as <u>Exhibit A</u> is a true, correct and complete copy of the Company's Certificate of Incorporation (the 'Articles') as in effect on the data hereof. There has been no amendment, to the Articles since the Articles were filed with the Secretary of State of the State of Celevare nor has any action been taken, or, to the best of my knowledge, contemplated by the Board of Directors (the 'Board') or the shareholders of the Company for the purpose of effecting any further amendment or modification thereof.
- 2 Attached hereto as <u>Exhibit B</u>, is a true, correct and complete copy of the Company's Bylaws as in effect on the date hereof.
- 3 Attached herein as <u>Exhibit C</u> is a true, correct and complete cripy of a resolution adopted by the Board of Directors of the Company dated August 22, 2003, which resolution was adopted in accordance with the Certificate of Incorporation and Bylaws of the Company, has not been appealed or amended, and remains in full force and aftent as of the date hereof.
- A. The persons named below are the duly elected, qualified and acting officers of the Company, helding the office or offices set forth opposite their respective names below, and the signatures set forth opposite their names below are such persons' genuine signatures.

-Marates 07866

Signatura

dolto P. MoNabola

President/Treasurer/Secretary

IN WITNESS WHEREOF, I have hereunio set my hand this Striday of September, 2003.

John P. MeNehola Secretary



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PAGE 1

The First State

1. HARRIET SMITH WINDSON, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NOR HILL HOLDINGS, INC." IS DOIN INCORPORATED UNDER THE LARS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SOURTH DAY OF SEPTEMBER, N.D. 2003.

AND I DO BEREBY FURTHER CERTIFY THAT THE SALD "NOB HILL HOLDINGS. INC." WAS INCORPORATED ON THE PIPTEERIH DAY OF NOVEMBER, A.D. 2001.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND T DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE SUBM FILED TO DATE.



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WRITTEN CONSENT OF THE SOLE DIRECTOR OF NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

<u>Stock Purchase</u>

WHEREAS, the Company wishes to purchase all of the issued and outstanding shares of stock of West Side Cellular, Inc., an Ohio corporation (the "Stock Purchase");

WHEREAS, there has been presented to the director for his review a draft of the Stock Purchase Agreement (the "Stock Purchase Agreement") between the Company and the Sellers.

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the Stock Purchase is in the best interest of the Company, and it is further

RESOLVED, that the Stock Purchase be and hereby is, authorized and approved; and it is further

RESCUVED, that any officer of the Company be and it hereby is, authorized, for and on behalf of the Company, to negotiste such terms and conditions of the Stock Porchase Agreement as they may deem appropriate, and to execute and deliver (i) the Stock Purchase Agreement, with such changes from the text of the draft agreement referred to above as may appear to them, in their sole discretion, necessary or appropriate and (ii) all other documents, instruments, certificates, agreements or written obligations of the Company as may be desired or required in connection with the Stock Purchase; and it is further





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RESOLVED, that the execution by an officer of the Company of any document authorized by the foregoing resolutions or any document executed in the accomplication of any action or actions so authorized shall be the enforceable and binding act and obligation of the Company; and it is further

RESOLVED, that all acts transactions, or agreements undertaken prior to the adopted of these resolutions by any of the officers or representatives of the Company, in the name of the Company, and for the account of the Company, in connection with the foregoing matters, are hereby ratified, confirmed, adopted and approved by the Company as acts of the Company.

(remainder of page left intentionally blank)



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This Written Consent shall be filed with the minutes of the proceedings of the Board of Directors. This Written Consent shall be effective as of the date first set finth above,

- the build

John P. Mohlabela

(Signature page to Director Consum) - SPA - Mino Hill Holdings, Inc.)





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WRITTEN CONSENT OF THE SOLE DIRECTOR OF NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director (the "Director") of Noh Hill Holdings, inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopte the following resolutions by unanimous written consumt, effective as of the date set forth above:

Consent to Borrow

WHEREAS, the Company is contemplating entering into the Stock-Purchase Agreement between the Company and the Seller (as defined in the Stock Purchase Agreement) dated as of September 9, 2003 (the "Stock Purchase Agreement"); and

WHEREAS, there has been presented to the Director for his review a Promissory Note in favor of Utrecht-America Finance Co. ("UAFC") in an amount sufficient to satisfy the obligations under the Stock Purchase Agreement (the "Note"), along with a Security and Assignment Agreement, pursuant to which the Company pledges certain collateral to UAFC as security for the Note (the "Security Agreement").

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that any officer of the Company be and hereby is, authorized, for and on behalf of the Company, to negotiate such additional terms and conditions of the Note and Security Agreement as he or site may deem appropriate, and to execute and deliver (i) the Note and Security Agreement with such changes from the text of the drafts referred to above as may appear to him or her, in their sole discretion, necessary or appropriate and (ii) all other documents, instruments, certificates, agreements or written obligations of the Company as may be desired or required in connection with the Stock Parchase Agreement, Note and Security Agreement, and it is further





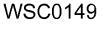


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RESOLVED, that the execution by an officer of the Company of any document authorized by the foregoing tesolutions or any document executed in the accomplishment of any action or actions so authorized shall be the enforceable and binding act and obligation of the Company; and it is further

RESOLVED, that all acta, transactions, or agreements undertaken prior to the adoption of these resolutions by any of the officers or representatives of the Company, in the name of the Company, and for the account of the Company, in connection with the foregoing matters, are hereby ratified, confirmed, adopted and approved by the Company as acts of the Company.

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[Signature page to Consent - Nob Hill - Rabo loan]



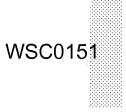


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WRITTEN CONSENT OF THE SOLE DIRECTOR OF NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director (the "Director") of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Rabo Account

WHEREAS, the Company wishes to open a bank account at Rabobank in New York (the "Bank"), and to designate the Bank as a depository of funds of the Company; and

WHEREAS, the Company wishes to appoint authorized representatives with respect to such account;



NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the Company open an account at the Bank, which is hereby designated as the depository of the funds of the Company; that the usual and customary printed forms of resolutions prepared and currently being used by the Bank, a copy of which is ordered annexed to this Written Consent, be, and the same hereby is, adopted as the resolutions of the director as though set forth at length, and such form shall be prepared as to provide for the making and endorsing of all checks and other commercial papers of, and the making of any loans by, and the transaction of all business for, the Company with said depository by the following representatives of the Company:

> John P. McNabola Alice Dill Wendland







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This Written Consent shall be filed with the minutes of the proceedings of the Company. This Written Consent shall be effective as of the date set forth above.

DIRECTOR

John P. McNabola



[Signature page to Consent - Nob Hill - Rabo account]





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WRITTEN CONSENT OF THE SOLE DIRECTOR OF NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date and forth above:

Business Bank Account

WHEREAS, the Company wishes to open a bank account at Business Bank of California in San Francisco (the "Nink"), and to designate the Bank as the depository of certain and specific securities and/or finds of the Company; and

WHEREAS, the Company wishes to appoint authorized representatives with tespect to such account.



NOW, THEREPORE, IT IS HEREBY

RESOLVED, that the Company open an account at the Bank, which is hereby designated as the depository of the funds of the Company: that the usual and customary printed forms of resolutions prepared and currently being used by the Bank, a copy of which is ordered attacked to this Written Conacti, be, and the same hereby is, adopted as the resolutions of the director as though set forth at length, and such form shall be prepared as to provide for the making and endowing of all checks and other commercial papers of, and the making of any loans by, and the transaction of all business for, the Company with said depository by the following representatives of the Company:

Scan McNabola Alice Dill Wendland

RESOLVED FURTHER, that the Company hereby states that there shall be a main address (the "Main Address") for the Company, and that the Bank is directed to send original statements to the Main Address, as shown below:

Main Address C/O John P. McNabola Powell & McNabola 50 Francisco Street San Francisco, CA 94133 (415) 591-0100 x 594 (415) 399-9212 -- lax







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RESOLVED FURTHER, that all acts, transactions, or agreements undertaken prior to the adoption of these resolutions by any of the officers or representatives of the Company, is the name of the Company, and for the account of the Company, is connection with the foregoing matters, are hereby natified, confirmed, adopted and approved by the Company as acts of the Company,

[Remained of page left intentionally blank]



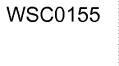


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This Written Consent shall be filed with the minutes of the proceedings of the Company. This Written Consent shall be effective as of the date set forth above.

DIRECTOR

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John P. McNabola



[Signature page to Consent - Nob Hill - Business Bank account]



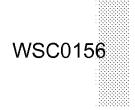


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WRITTEN CONSENT OF THE SOLE DIRECTOR OF WEST SIDE CELLULAR, INC

an Ohio corporation

September 9, 2003

The undersigned, being the sule director (the "Director") of West Side Cellular,

Inc., an Ohio corporation (the "Company"), hereby takes the following actions and adopts the

following resolutions by unanimpus written consent, effective as of the date set forth above:

Election of Officers and Conhorization

WHEREAS, the Director of the Company deems it to be in the best interests of the Company to replace all incumbent officers and to appoint new officers in their place, and

WHEREAS, the Director of the Company has neceived and reviewed a draft copy of a Company Joinder (file "Joinder"), to be executed by an officer of the Company; and

WHEREAS, THE Director bas authorized the president of the Company, John P. McNabola, to execute the Joinder on behalf of the Company and to deliver the executed Joinder to the former shareholders of the Company...

NOW, THEREFORE, BE IT

RESOLVED, that all incumbent officers of the Company are hereby removed from office, cifective immediately, and be it

RESOLVED FURTHER, that the following persons are hereby appointed to the positions set forth opposite their names to serve until their successors shall be duly qualified and elected

President Treasurer Scoretary

John P. McNabola John P. McNabola John P. McNabola

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WSC0157

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This Written Consent shall be filed with the minutes of the proceedings of the



......

Board of Directors. This Written Consent shall be effective as of the date set forth above.

SOLE DIRECTOR

John F. McSisbela



[Signature page to Director Consent - New Officers - West Side Cellular, Inc.]

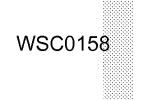


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WRITTEN CONSENT OF THE SOLE SHAREHOLDER OF WEST SIDE CELLULAR, INC. An Obio corporation

September 9, 2003

The undersigned, being the sole shareholder of West Side Cellular, Inc., an Ohio corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by written consent, effective as of the date set forth above:

ELECTION OF DIRECTOR

WHEREAS, the sole shareholder of the Corporation deems it to be in the best interests of the Corporation to replace all incumbent directors of the Corporation;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that all incurabent directors are hereby removed from their current positions effective immediately, and be it

RESOLVED FURTHER, that John P. McNabola is hereby appointed as the director of the Corporation to serve until his replacement is duly qualified and elected.

[The remainder of this page is intentionally left blank.]





WSC0159

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This Written Consent shall be filed with the minutes of the proceedings of the sharebolders of the Corporation. This Written Consent shall be effective as of the date first above written

MILLENNIUM RECOVERY FUND

John P. McNabisla, Director





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NON-CONFIDENTIALITY CERTIFICATE

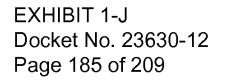
September 9, 2003

Reference is hereby made to sequisition by Nob Hill Holdings LT.C. a corporation, of the capital stock of West Side Cellular, Inc., an Ohio corporation and the transactions relating thereto (collectively, the "Transactions").

Each of the undersigned hereby agrees, comfirms, represents and certifies that (i) their disclosure of the structure or tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the benefit of any third party. whether or not such understanding or agreement is legally binding. (ii) they do not know or have any reason to know that the details regarding the Transactions are protected from disclosure or use in any other manner, (iii) they have not requested from or imposed on any of the parties involved in the Transactions or any other third party any express or implied understanding or aureement of confidentiality whether or not such understanding or agreement is legally binding. (iv) they have not taken and will not take any action that would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner, (v) they have not failed to take and will not, in the future, fail to take any action if such fulfare would (a) cause the disclosure of the structure of tax aspects of the Transactions to be limited in any way by an express or implicit understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner and (vi) neither Cooperatieve Centrale Radfleisen-Boerenleenbank B.A., "Rabobank Nederland", Ness Vork Branch, Utrecht-America Finance Co. or any of their affiliates has made or provided any statement, oral or written, to such party (or to such party's knowledge, any third party) as to the potential tax consequences of the Transactions.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without limitation, (A) attorney-elient privilege (including work product). (B) confidentiality requirements applicable to banks in general or (C) federal or state securities laws or (ii) applying to the financial performance or condition of any of the understanted or my of their assets.

STRUCTIONS OF BUILDON CONSTRAINTY CONTINUES.





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Name: John P. McMabola Title: President

WEST SIDE CELLULAR, INC.

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| - C. 198, 2000. | |

MICHAEL TRICARICHI

By: Name: Michael Tricarichi

COÕPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANR B.A., "RABOBANK NEDERLAND", NEW YURK BRANCH

By: Taile:

Bý)_____ Tišlo:

UTRECHT-AMERICA FINANCE CO.

B_{\$Y} Title:

By: TREE



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NOB HILL HOLDINGS, INC.

WEST SIDE CELLUL AR, INC. MAES 1. Statisty 833) i ri . Xunni in

COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH

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FORTREND INTERNATIONAL LLC

By:_____ Tille:

KUNE & ASSOCIATES, INC.

By <u>Charles I NCi</u>G Me goodland & Oracko,-

HAIIN LOESER & PARKS

Bv: Title 1941 - 1946 A A A T IV E WHERE AND A STREET, ST

.III. Michael Tricarichi



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FORTREND INTERNATIONAL LLC

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KLOVK & ASSOCIATES, INC.

By Charles & NU. 2

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STRUCTERSONDE NEUDERN CONSTRUCTION STATES CERTIFICATE

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1-131 - 141/111 - 1-755

Nob Hill Holdings, Inc.

September 9, 2003

Chris Eleritanci Rabobank International New York Branch 243 Bark Avenue New York, NY 10167-0062

Doar Mr. Korflandi:

We have by instruct you to execute the following transferat

\$ 34,821.554.65 Antonnis 3 8 (

Bank of New York ABA #021-0000.18

Creditary

Rabo<u>bank Ned</u>erland, New York Branch Acces. 8-833

Further Crain to: Michael Tricericht Escrev Account; 8445 ¥ 1999

Reference: Stock purchase price

Please debit our account at your Bank 3 SES.3.

Thank you for your attantion to this matter.

Very mily yours,

. Pale

John F. Martinstin President





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CROSS-RECEIPT

Reference is mode to the Stock Parchase Agreement, dated as of September 9, 2003 (the "Agreement"), by and among Nob Hill Holdings, Inc., a Delaware corporation ("Bayer"), and Michael Tricarichi, an individual ("Selfer"), as sole sharebolder of West Side Celhular, Inc., an Ohio corporation ("Company"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

- 1. Buyer hereby acknowledges that the documents to be delivered by Seller to Buyer pursuant to Section 7.2 of the Agreement, including but not limited to the corporate minute book for West Side Cellular, Inc., are in form and substance satisfactory to Buyer and have been delivered to, and/or the delivery of such has been waived by, Buyer and further acknowledges the receipt from Seller of a centificate representing the Shares.
- 2. Seller hereby acknowledges that documents to be delivered by Buyer to Seller pursuant to Section 7.4 of the Agreement are in form and substance satisfactory to Seller and have been delivered to, and/or the delivery of such has been waived by. Seller and further acknowledges the receipt from Buyer of a wire transfer of immediately available funds in the aggregate amount of US\$34,621,594.06, and a check made payable to Michael Tricarichi in the amount of US\$377,777.77, representing payment in full for the Shares.
- 3. Boyer and Seller, each acknowledges that the other party has performed and complicit with all agreements, oblightions and conditions contained in the Agreement that are required to be performed or complied with by it on or before the Closing Date.

This cross-receipt may be executed in one or more counterparts, each which shall be deemed an original and all of which together shall be considered one and the same cross-receipt.

[Remainder of page intentionally left blank; signature page follows.]



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IN WITNESS WHEREOF, the parties hereto have caused this cross-receipt to be executed by their respective duly authorized officers as of the date first written above.

SELLER MICHAEL TRICARICHI 89

BUYER NOB HILL HOLDINGS, INC.

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Name: John P. McNahola Title: President





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ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the Settlement Agreement and Release C'Agreement") entered into by and between Westside Cellular, Inc. d/b/a Celluet and Cincinnati SMSA Limited Parmership, Ameritech Mobile Communications, Inc., and Ameritech Mobile Communications LLC in the case of *Westside Cellular*, *Inc. d/b/a Celluet of Ohio/o New Part, et al.* The undersigned agrees to alide by the "Confidentiality" provisions contained in the Agreement.

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John P. McNabola on behalf of Nob Hill Holdings, Inc.



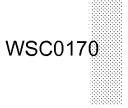


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ACKNOWLEINGMENT

The undersigned heraby acknowledges receipt of the Settlement Agreement and Release ("Agreement") entered into by and between Westside Collubr, Inc. d/b/a Cellnet and New Par, Celleo Partnership and Vodafone Americas, Inc. in the case of *Westside Cellular, Inc. d/b/a Cellnet of Ohio v. New Par, et al.* The undersigned agrees to abide by the "Confidentiality" provisions contained in the Agreement.

ALLI

John P. McNatiola on behalf of Noh Hill Holdings, Inc.



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Klink & Associates, Inc. 1734 Geneville Avenue, Unit 6 Los Angeles, CA 90035

September 9, 2003

Michael Tricerichi, as the sole shareholder of West Side Cellular, Inc. 341 Arbour Gardens Las Vegas, Nevada 89148:

Re: Nob Hill Holdings, Inc. - Parchase of All of the Issued and Oatstanding Shares of West Side Cellular, Inc.

Ladies and Gentlomen:

We have acted as special counsel to Noh Hill Holdings, Inc., a Delaware corporation ("Nob Hill"), in connection with the transactions which are the subject of that certain Stock Purchase Agreemant, dated as of September 9, 2003 (the "Stock Purchase Agreement"), by and between Nob Hill and you, in your capacity as seller (in such capacity, "Seller") of the Shares (as such term is defined in the Stock Purchase Agreement). This opinion is rendered to you at your request

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to on page 3:

- The Stock Princhase Agreement.
- Certificate of Incorporation of Nob Hill, as filed with the Secretary of State of the State of Delaware on November 15, 2001;
- The Bylaws of Nob Hill certified by the Secretary of Nob Hill, Inc. as of September 9, 2003;
- Written Consent of the Sole Director of Nob Hill dated as of August 22, 2003;
- Any and all other documentation we deem necessary to review in order to review the opinions set forth herein.

The documents referred to in clauses 2, 3 and 4 are collectively referred to herein us the "Authorization Documents." In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

I. All documents submitted to us as originals are complete and authentic, all copies of documents submitted to us conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in



all respects to the drafts reviewed by us, all originals or copies submitted to us have not

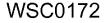


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been amended or modified since the date they were submitted to as by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factual matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a completent adult person of sound mind not operating under any legal disability, duress or fraud.

2. All parties (except Nob Hill) to the Stock Parchase Agreement: (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purclisse Agreement and to perform their respective obligations thereinder, and such agreements are valid, binding and enforceable obligations of such perfies. All parties (except Nob Hill) to the Stock Purclisse Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby.

3. The conduct of the parties to the Stock Parchase Agreement has conformed to any requirement of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created is part of the Stock Porchase Agreement.

4. The conduct of all partice pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statistics, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally waived.

5. Seller has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been didy authorized, executed and delivered by Seller, and constitutes the legal, valid and binding obligation of Seller.

6. Except for the Stock Purchase Agreement and all exhibits and schedules uttached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) among Nob Hill and Seller or Seller and third purches, and there is no usage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the tespective rights and obligations of Nob Hill hereunder, or (ii) have any effect on any of the opinions set forth in this letter.

7. The representations and warranties of each party to the Stock Furchase Agreement (including Nob Hill) are true and complete.

8. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase. Agreement and related documents or related thereto and have not requested tax advice from Klink & Associates, Inc., to analyze such transactions from a tax perspective or to advise any of them regarding such tax consequences.

Except where expressly stated otherwise, we have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Parchase Agreement





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September 9, 2003 8age 3.

(including, without limitation, any examination of documents in our files or otherwise made available to us by Nob Hill in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of such their should be drawn from our representation of Neb Hill in connection with the Stock Purchase Agreement or othersvise,

In rendering the opinions expressed below, we have related, with your consent, as to fustual matters solely upon the statements, representations and warranties of the various parties contained in the above-lined documents and upon a certificate excented by the President of Nob Hill. We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, valid existence and good standing of Nob Hill.

In addition, notwithstanding anything contained in this letter to the controry, with your consent, we expressly disclaim any opinion as to:

The effect of any ordinances, statutes, administrative decisions, orders, £ς rules and regulations of any municipality, county or other political subdivision of any -88382

The budy accuracy and completeness of any of the representations, warranties or distonionis as to factual matters given by Nob Hill or required of Nob Hill under the Stock Purchase Agreement or any other documents or instruments executed in connection therewith, and we have undertaken no independent investigation with respect to the same;

The enforceability of provisions to the effect that rights or remodies see 3. not exclusive, that every right of remody is cumulative and may be excreised in addition to or with any other right or remedy, that the election of a particular remedy or remedies does not preclude recourse to one or more other remedies and that the delay or failure to exercise rights or normalies will not operate as a warver of such right or remedy.

The effect of any state or federal laws or foreign laws or regulations upplicable to transactions because of the inture of the business by any party (other than Not Hill) or because of the method by which business is conducted by any party (other flum Nob Hill) to the Stock Purchase Agreement;

The enforceability of any provision for liquidated damages or respicting the right of any person to engage in any business or other activity; or

The federal, state, local of foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto,

Based upon and subject to the foregoing, we are of the opinion that:

Nob Hill is a corporation duly incorporated, validly existing, and in good 2 standing under the laws of the State of Delaware.

Nob till has the corporate power and corporate anthority to execute and deliver the Stock Purchase Agreement and to perform all of its obligations under the Stock Parchase Agreement,



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September 9, 2003 Page 4

3. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Nob Hill.

4. The execution and delivery by Nob Hill of the Stock Purchase Agreement does not result in any violation of the Authorization Documents.

We have not been requested to opine, and we have not opined, as to any issues other than these expressly set forth berein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the Delaware General Corporation Law and the current laws of the State of California without reference to conflict of laws principles, to present judicial interpretations thereof and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise of supplement if upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit colely in connection with the consummation of the minsactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed to writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

This optimion has been rendered to you at the request of Nob Hill, and may be relied upon by you only in connection with the transactions contemplated by the Stock Purchase Agreement. No other use or distribution of this optihion may be made, and no other person or party may rely on this opinion, without our express prior written concent in each instance.

Very truly yours. Shanka 200, C KLENE & ASSOCIATES, INC.

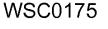


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POWER OF ATTORNEY

(JOHN P. MCNABOLA, baving a place of business at 50 Francisco Street, San Francisco, CA 94133, leareby appoint Patrick Mullins, an individual having a place of business at 744 Montgomery Street. San Francisco, CA, as my Attorney-in-Fact ("Agent") to execute such documents as may be reasonably required to be executed, and in the best interests of each of Nob Hill Holdings, Inc., and West Side Cellular, Inc., in that certain transaction between these two corporations (the "Transaction").

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to the Transaction that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf in this Transaction. This power and authority shall authorize my Agent to manage and conduct any and all of the affairs of either of the above-named corporations and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the fitture as President of each of the above-named corporations. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

a. Conduct any business with any basiking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to either of the above-named corporations by my person, firm, corporation or political entity.

 Perform any net necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.

c. Have access to any safe deposit box that either of the above-named corporations might own, including its commits.

2. Sell, exchange, buy, invest, or reinvest any assets or property owned by either of the above-named corporations. Such assets or property may include income producing or non-income producing assets and property.

3. Purchase and/or maintain insurance as would be ordinary and custometry in the industry for by most other companies or corporations engaged in business similar to or substantially similar to that of either of the above-named corporations.

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4. Take any and all legal steps necessary to collect any amount or debt owed to me, or to settle any claim, whether made against either of the above-named corporations or asserted on my behalf against any other person or entity.

5. Enter into binding comments on behalf of either of the corporations named above,

6. Exercise all stock rights on behalf of either of the corporations ramted above as my proxy, including all rights with respect to stocks, bonds, debendures, or other investments.

7. Maintain and/or operate any business that may be awared by either of the abovenamed corporations.

 Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents for either of the above-named corporations.

9. Sell, convey, lease, mongage, manage, insure, improve, repair, or perform any other act with respect to any of the property of either of the above-named corporations (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to achieve tenants and to recover possession). This includes the right to achieve tenants and to recover possession). This includes the right to achieve used or cher real property now owned by either of the above-named corporations now owned or hereafter acquired in the future.

10. Prepare, sign, and file documents with any governmental body or agency, including, but not finited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.

b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).

 Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security henefits).

This Power of Attorney shall be construed broadly as a General Power of Attorney for the general purpose of having SWRR, lnc. acquire Sixty Five Bedford Struet, Inc., (and any related subsidiaries and/or other interests thereof). The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Autorney from causing: (i) my income to be taxable to my Agent. (ii) my assets to be subject to a general power of appointment by



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any Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the anthority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and sets under this document.

My Agent shall be entitled to reasonable compensation for any services provided as my Agent. My Agent shall be entitled to reinibursement of all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Auoroey shall become effective immediately, and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a Dutable Forwer of Auoroey. This Power of Auoroey shall continue effective until my death. This Power of Auoroey may be revoked by me at any time by providing written notice to my Agent.

Dated August 2003 at Dublin, Ireland,

JUHIN P. MCNABOLA





EXHIBIT 1-J Docket No. 23630-12 Page 209 of 209



IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. TRICARICHI,

Appellant,

v.

COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO. and SEYFARTH SHAW LLP,

Respondents.

Electronically Filed Sep 19 2017 01:45 p.m. Elizabeth A. Brown Supreme Cour**Clerke of Scip**leme Court

District Court Case No. A-16-735910-B

APPEAL

From the Eighth Judicial District Court, Department XV Clark County, Nevada Hon. Joe Hardy, District Court Judge

JOINT APPENDIX Volume VIII

Mark A. Hutchison (4639) Michael K. Wall (2098) Todd W. Prall (9154) HUTCHISON & STEFFEN, LLC 10080 West Alta Drive, Suite 200 Las Vegas, NV 89145 702-385-2500 702-385-2086 (fax) mhutchison@hutchlegal.com mwall@hutchlegal.com Scott F. Hessell Thomas D. Brooks (Admitted *Pro Hac Vice*) SPERLING & SLATER, P.C. 55 West Monroe, Suite 3200 Chicago, IL 60603 312-641-3200 312-641-6492 (fax) shessell@sperling-law.com tdbrooks@sperling-law.com

Attorneys for the Appellant, Michael A. Tricarichi

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| 11100 Vallaal j 20, 2017 | |

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison &

Steffen, LLC and that on this $\sqrt{q^{4L}}$ day of September, 2017, I caused the

document entitled JOINT APPENDIX VOLUME VIII to be served on the

following by Electronic Service to:

Dan Waite Ryan Lower Steve Morris

Service by regular U.S. Mail as follows:

Chris Paparella (*Pro Hac Vice*) HUGHES HUBBARD & REED LLP One Battery Park Plaza New York, NY 10004-1482 Telephone: (212) 837-6644 Facsimile: (212) 299-6644 chris.paparella@hugheshubbard.com

Attorneys for Respondents Coöperatieve Rabobank U.A. and Utrecht-America Finance Co.

An employee of HUTCHISON & STEFFEN, LLC

(b) as to all other representations and warranties and breaches of any other covenant or undertaking, for the lesser of the applicable statule of limitations or four (4) years following the Closing Date.

Any claim or demand against any of Seller, Company or Buyer, of which notice has been given pursuant to <u>Section 10.6</u> on or prior to the expiration of the related period, shall continue to be subject to inderunification hereunder, the expiration of such period netwithstanding.

Section 10.6 Notice and Defense. Bayer, Company and Seller, shall promptly notify all other parties of any claim, suit or demand of which the notifying party has actual knowledge that emittes it to indemnification under this <u>Article 10</u> (the date that the notifying party receives actual knowledge of the claim, suit or demand, shall be the "Actual Knowledge Date"); *provided, however, that, in any event, the notifying party shall so notify the other on or before the expiration of thirty (30) days from the Actual Knowledge Date. The failure of the netifying pury to give such notice on or before the expiration of thirty (30) days from the Actual Knowledge Date shall affect the liability of the indemnifying party only if and to the extent that such failure prejudiced the indemnifying party.*

(a) The indemnifying party shall have fifteen (15) days from the date notice of the indemnification claim is received to notify the party seeking indemnification if the indemnifying party disputes its liability with respect to such claim or demand. If the indemnifying party disputes its liability with respect to such claim or demand, such dispute shall be settled by arbitration in accordance with <u>Section 11.9</u>. Arbitration may be commenced at any time by the indemnifying party or the person seeking indemnification by giving written notice to the other party to the dispute that such dispute has been referred to arbitration pursuant to the terms of thes <u>Section 10.6</u>.

If the liability or damage for which indemnification is sought is asserted 7653by a third party, the indomnifying party shall have, at its election, the right to defend any such matter at its sole cost and expense through counsel chosen by it and reasonably acceptable to the other party (provided that the indemnifying party shall have an such right if it is contesting. liability under Suction 10.6(a)). If the indomnifying party so undertakes to defend, the indemnifying party shall notify the indemnified party hereto of its intention to do so. The indemnifying party must defend such matter diligently or the indemnified party may assume control of the defense of such matter. The indemnifying party shall not, without the indemnified party's written consent (such consent nor to be unreasonably withheld), settle or compromise any claim or consent to an entry of judgment that does not include, as an unconditional term thereof, a release of the indemnified party or parties. Each party agrees in all cases to cooperate with the defending party and its counsel in the defense of any such liabilities or claims. The defending party and the non-defending party or parties may be represented by the same counsel unless such representation would be imppropriate due to conflicts of interests between them. In addition, the non-defending party or parties shall at all times be entitled to monitor and participate in such defense through the appointment of counsel of its or their own choosing, at its or their own cost and expense. In defending a third party claim, an indemnifying party may not take any position that is adverse to the interests of the indomnified party with respect to such claim.



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ARTICLETT

MISCELLANEOUS

Section 11.1 Severability. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any applicable law or regulation in any state or country, such provision shall be inoperative in each such state or country and the remainder of this Agreement shall remain binding upon the parties bereto in each such state or country with the Agreement as a whole matfieted elsewhere to the extent permitted by law, and to the extent that enforcement of the remainder of day Agreement withcan the illegal, unenforceable or void provision would not be inconsistent with the intent of the parties as evidenced in this Agreement.

Section 11.2 Notices and Other Communications, Every notice or other communication required or contemplated by this Agreement by either party shall be in writing. and shall be delivered either by (a) personal delivery. (b) postage prepaid return receipt requested certified mail or the equivalent of certified mail under the laws of the country where mailed, (c) facsimile transmission, or (d) Federal Express or other reputable overnight courier service with proof of receipt to the party for whom intended at the address set forth on Schedule 11.2 to this Agreement or at such other address as the intended recipient previously shall have designated by written notice delivered in accordance with this Section 11.2 to the other parties. Any notice or other communication sent by certified mail or the equivalent shall be deemed to have been delivered to and received by the intended recipient on the date it is officially recorded to delivered by return receipt or equivalent. Any nonice or other communication delivered in person or sent by overnight courier service shall be deemed to have been delivered to and received by the intended recipient on the date of delivery. Any notice or other communication delivered by factionile transmission, with proof of such transmission evidencing date, time and destination facsimile number, shall be deemed to have been delivered and received by the intended recipient on the day immediately following the date of the successful and confirmed mussicission of such facsimile. A copy of any actice or other communication sent to Buyer or Seller shall be sent to Buyer's counsel or Seller's counsel, as the case may be, as an forth on Scherhole) 1.2.

Section 11.3 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, and each counterpart shall constitute an original instrument, even where such executed counterpart was delivered via facsimile transmission, but all such separate counterparts shall constitute only one and the same instrument.

Section 11.4 <u>Governing Law: Jurisdiction</u>. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of the State of Obio without regard to its conflicts of laws miles. In respect of any actions for injunctive or other equitable tellef hereunder, any action or proceeding may be brought against any party in the federal courts located in the city of San Francisco. California and each of the parties consents to the jurisdiction of such courts in any such action or proceeding may be served on any objection to venue laid therein. Process in any such action or proceeding may be served on any party anywhere in the world.



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Section 11.5 <u>Written Agreement to Govern</u>. This Agreement sets forth the entire understanding and supersedes all prior and contemporateous agreements among the parties relating to the subject matter contained herein and merges all prior and contemporateous discussions among them, and no party shall be bound by any condition, representation, warranty, covenant or provision other than as expressly stated in or contemplated by this Agreement or as subsequently shall be set forth in writing and executed by duly authorized representatives of the parties hereto.

Section 11.6 <u>Assignability</u> Neither this Agreement nor any right hereunder is ussignable in whole or in part, by any party without the express written consent of the other party and any such attempted assignment shall be void and unenforceable. Notwithstanding the foregoing, this Agreement and the rights bereunder may be assigned by Bayer (i) as collateral security to any lender providing financial assistance with respect to the transactions contemplated under this Agreement, and (if) to any subsequent purchaser or a holder of the Shares; *provided, however*, that in no such event shall Bayer be relieved from its obligations under this Agreement by any such assignment.

Section 11.7 No Waiver of Rights. All waivers herenoder must be made in writing, and follore of any party at any time to require another party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

Section 11.8 <u>Expenses</u>. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all attorneys' fees, except as set forth in Section 9.2 of this Agreement.

Section 11.9 Mandatory Binding Arbitration. Any dispute, disagreement, claim or controversy between Buyer and Seller arising out of or relating to this Agreement or the breach, termination or validity hereof (each, a "Disputed Maner") that is not resolved within 10 (ten) theys after notice has been received in accordance with Section 11.2 of this Agreement regarding a Disputed Matter shall be referred to and settled by arbitration administered by the American Arbitration Association in accordance with the Commercial Arbitration Roles of the American Arburation Association (collectively, the "AAA Rules") by three (3) arbitrators who are minually agreeable to Buyer and Seller. If Buyer and Seller are unable to agree upon three (3) arbitrators, then the relevant number of additional arbitrators shall be selected in accordance with the AAA Rules so that a total of three (3) arbitrators shall be relected. All proceedings in any such arbitration shall be conducted in San Francisco, California. Each party to such arbitration proceeding shaft bear its respective costs, fees and expenses in connection with such arbitration. Upon a final determination by the arbitrator with respect to a Disputed Matter, the arbitrator shall notify Buyer and Seller of such final determination (such notice being an "Arbitration Order"). Jurisdiction of such arbitrator shall be exclusive as to any Disputed Matter, and Buyer and Seller agree that this agreement to arbitrate shall be specifically enforceable under the laws of the respective donoicliary jurisdictions of Bayer and Seller. An Arbitration Order may be entered in any court having jurisdiction over the parties or the subject mater of such Arbitration Order.





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Section 11.10 Further Assurances. At any time before or after the Closing, each of the parties hereto shall, at the request of any other party hereto, perform such acts, execute and deliver such instruments (including without limitation powers of attorney necessary to control an audit), and documents and do all such other things consistent with the terms of this Agreement as may be reasonably necessary to accomplish the transactions contemplated in this Agreement or to otherwise carry out the purpose of this Agreement.

Section 11.11 Schedules and Exhibits. All Schedules and Exhibits referred to in and attached to this Agreement are incorporated herein by reference as if fully set forth in the text of this Agreement.

[Remainder of page intentionally left blank; signature page follows.]



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IN WITNESS WHEREOP, the parties hereto have crusted this Agreement to be executed by their respective duly authorized officers as of the date first written above. SELLER: MICHAEL TRICAMEN X. W BUYER: NOR HILL HOLDINGS, INC. man Marin In J.K. 838. John P. McNinhola President

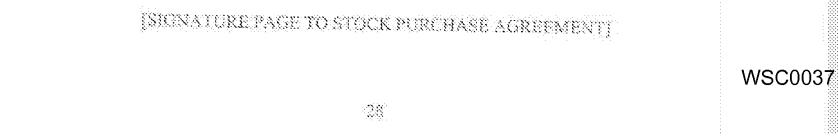


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SPOUSAL CONSENT

I. Barbara A. Tricarichi, the wife of Michael Tricarichi, the sole shareholder of West Side Cellular, Inc., an Ohio corporation ("Company"), hereby acknowledge and confirm the following

Thave approved and consented to the sale and transfer by Michael Tricarichi to Nob Hill Holdings, Inc., a Delaware corporation ("Suyer"), of one hundred (109) shares of common stock of Company, pursuant to that certain Stock Purchase Agreement (the "Stock Purchase Agreement"), dated as of September 9, 2003, by between Buyer, as purchaser, and Michael Tricarichi, as seller, of all of the issued and outstanding stock of Company. I have reviewed, approved and consented to the execution of the Stock Fundhase Agreement and all documents arising from or relating thereig.

DATED: September 9, 2003

Bad A SPOUSE t Tattan da



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COMPANY JOINDER.

FOR VALUE RECEIVED, the rescipt and sufficiency of which is bereby acknowledged. West Side Cellular, Iac., an Ohio corporation ("Company"), hereby joins in the Stock Purchase Agreement, dated as of September 9, 2003, to which this Company Joinder is attached for the sole purpose of being bound under Sections 5.2(b) and 16.3 thereof and in connection therewith, Company hereby assumes all obligations imposed on Company buder such sections.

WEST SIDE CHLILLAR, INC.

M., 24 Sec:

John F. McNubola President

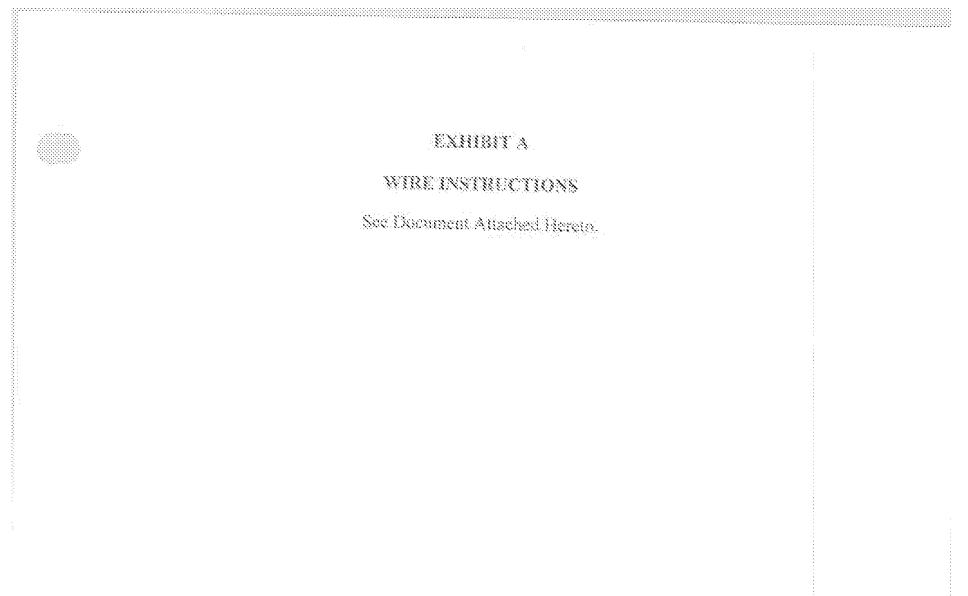




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WSC0040

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| | | | | 80802/894 | f-785 |
|---------|---|---|--------------|-----------|-------|
| | | | | | |
| | Nob | Hill Holdings, Inc. | | | |
| <u></u> | | September 9, 2003 | | | |
| | Chris Efertjang) Rabobank International New York Branch 245 Park Avenue New York, NY 10167-0062 | | | | |
| | Dear Mr. Kortlandt: | | | | |
| | We bereby instruct you to | execute the fallowing tearsform | | | |
| | Amount | \$ 34,621,393.05 | | | |
| | Ťur | Bank of New York ABA \$921-0888-18 | | | |
| | Credit to: | Rababank Nederland, New York Branch Acet, 1999 -1-123 | | | |
| | Fürthör Credit im | Míchael Trícarichi Sacrow Act.2 <mark>000</mark> 1555 | <u>šcč</u> ć | | |
| | References | Stock purchase price | | | |
| | Planta Cobli ous account at | your Bank (1588). | | | |
| | Thank you for your attentio | | | | |
| | | Very valy yours | | | |

John P. McMahola Fresident



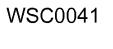
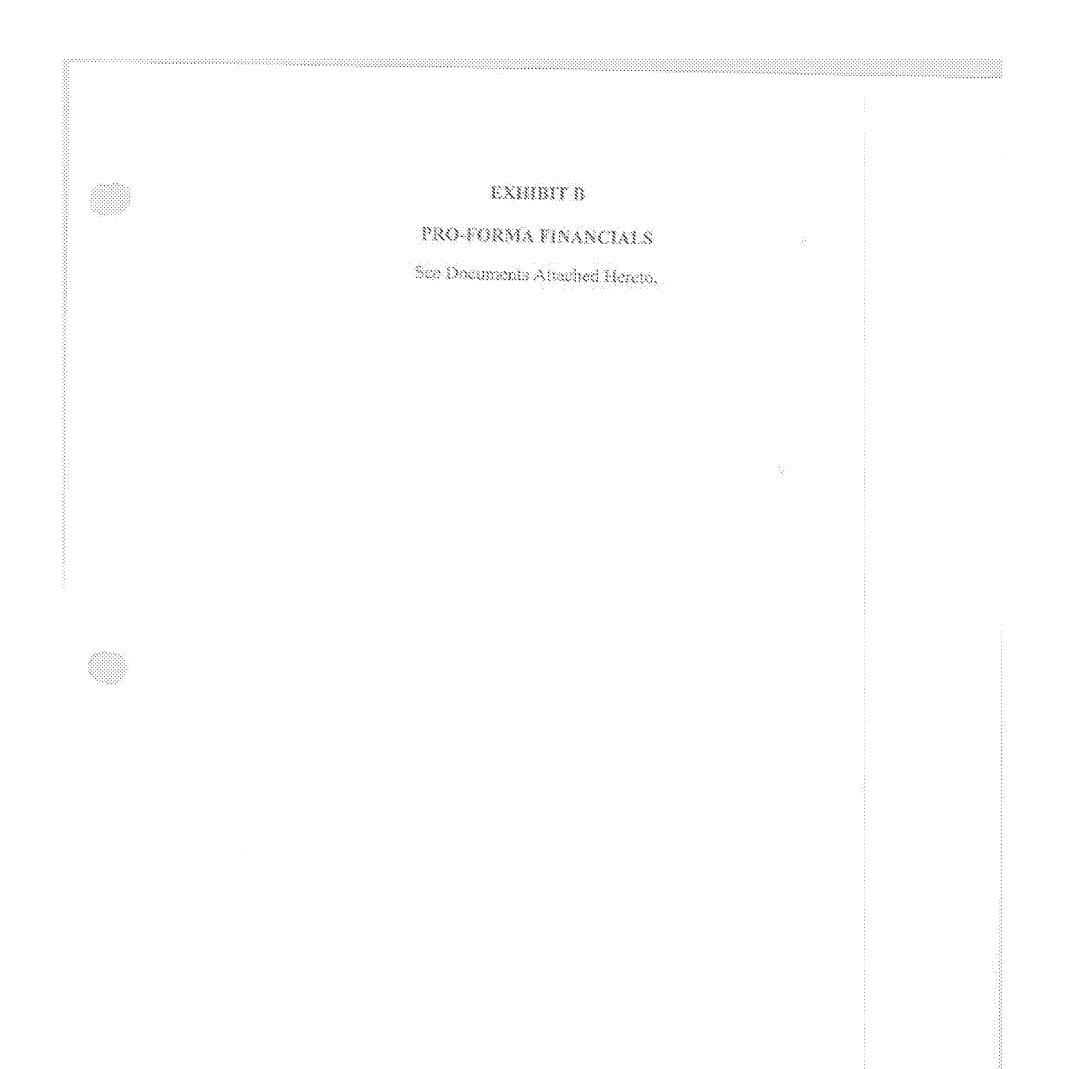


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WSC0042

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| | WEST SIDE CELLULAR Balanca Sheki Addua 31, 2093 | | | |
|--|---|---------------------------------------|----|--|
| ASSETS. | | | | |
| Contes alsos DLI PERSHING MONEY MARKET NOTES RECEIVABLE RECEIVABLE FROM ESCROW AGENT | 39,949,373,32 \$77,777,33 \$9,0841.06 | | | |
| Total Current Assets | | 40,377,150,28 | | |
| Property and Equipment | | | | |
| Yotal Empropy and Equipment | | 8.00 | : | |
| Other Assens | | · · · · · · · · · · · · · · · · · · · | | |
| Tatal Chine Assess | | 8.08 | | |
| Toui Asseis | Mar esti t | 40, 373, 180, 80 | | |
| LIABILITIES AND CAPITAL Current Embilieus ACCRUED WORKERS COMP ACCRUED PERSONAL PROP. TANES | 2,133,5% | | | |
| Total Current Lindilities | | S. 87 9 2 2 8 | i. | |
| Long-Term Lisbilities | | : | | |
| Yotal Long-Them Lightlines | | : | | |
| Toral Calulities | | | | |
| Capital CAPITAL STOCK RETAINED BAPNINGS CURRENT Net Income | 5,1890.60 <1,582,691.42> 41,969,062.56 | | | |
| You! Capital | | 40/371/371/18 | | |
| Tuval I. Einilitiges & Capital | | 40,377,150,85 | | |

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WSC0043

| | į | WEST SIDE CELLLE Income Statemen of the Eight Month's Enging Al | se en la companya de | | |
|---|---|--|--|---|--|
| | | | | | |
| | | Sway to Phane | | | |
| | Received a contractor on concernence and a second | | tu ka dawa | | |
| | SAUELARTENE ENCLORING & PHONES SALES COMPR | 3 387.236.74 | | : | |
| | - A MARANA ANA ANA ANA ANA ANA ANA ANA ANA AN | 68.030 (40.08 | | | |
| | en de la manager de la societa de la seconda de la seco | | 8.4675 | | |
| | Tettal Revenues | 66 54 1731 8 735 | Second | | |
| | | and required a state of the second | 1.1999.00.000000 | | |
| | Cost of Solice | | | | |
| | COS-ASECOME | 2276920.58 | | | |
| | COS CELLARAS PERINE | 134,53 7,42 | 0.20% | | |
| | COS CTRES | 1.17.2.544.42 | | | |
| | COO GRALER CONSISSIONS | 4.443.838 SN | 6.88% | | |
| : | | | | | |
| : | Toral Control Sales | 8.032.038.33 | 8.08% | | |
| | Carris Profile | \$0,997,220-48 | | | |
| | | | EN38 (264 (26 | | |
| | Expéries | | | | |
| | ***LETTES | 8315388538 | 12.585 | | |
| | PANESIA TAKES | 188,853,99 | 8,2352 | | |
| | EXPLOYEE GENERITS | | 33384 | | |
| | ENDLOYEE WELFARE | | \$1.\$Q2055 | | |
| | A SECRET (SINCE) | 422,733,550 | 3.5.235 | | |
| | INSERANCE | 5.575 LC | 6.68 | | |
| | SALES PROMOTIONS | 788. (B) | 8.663s | | |
| | | 1 | 0.88% | | |
| | NERICLE MARTERIANCE | | 0.02% | | |
| | LEASED VERENCES | 22.000.23 | <u>Ó. Est</u> es | | |
| | ESTERTAINMENT TRANEL | 1002-005 | 8,06% | | |
| | TRAVEL - CHER. MET MARCH | 8,853,80 363,55 | 0.0198 | | |
| | STREFT REF | 11,13,23,235 | 0.00005 8.4:21:5 | | |
| | THEENHOUS | 2000 - 100 - | 5.555 (* 19 5.555% | | |
| | POSTAGE | R. 38.5.62 | 800232 | | |
| | DUES & SUBSCRIPTIONS | 3.383.488 | 8 88 8 C | | |
| | | 3.388.33 | 18.02 M.S | | |
| | MIRCINE AND | 3333.93 | 6 83344 | | |
| | | 47.346.28 | | | |
| | HILLENG MAINTENANCE | 8.5 8.64 | 6.035% | | |
| | DEPRENATION | 4.284.48 | 8.6325 | | |
| | BAD DERI | | 0.884% | | |
| | KREETE & CONSERVATIONS | 5.339.67 | | | |
| | BASK CHARGES PROFESSIONAL FEES | | 0.0025A | | |
| | - CONCENSIONAL A DES THINI PARTY BILLING VEES | 4,488,388,902 | | | |
| | EQUIPMENT MAINTENANCE | 2 6,372,82 2(839,48) | | | |
| | STEVEN MARITERANCE | 59 (S99) | | | |
| | EQUIPMENT LEASE | | 0.000 | | |
| | CANNELECTIONS | | 1888838 1888838 | | |
| | PERSONAL PROPERTY TAX | 85.48883.837 | \$333 SS | | |
| | CASE ENVERSES | | 32.3525 | | |
| | SALES TAN CESCOUNTS | ×***** | \$\$\$\$ \$ | | |
| | FEADARD COST ON TACH PA | 234, 89884,655 | 13.69 9 3. | | |
| | STATE COLUMN TAX | | \$ \$\$\$% | | |
| | n en | an an that a state of the second | | | |
| | Total Expenses. | <u></u> | | | |
| | | | | | |



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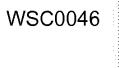
| | Not income per Backs | | 41,909,052,55 |
|-----------------|------------------------------------|--------|----------------------------|
| Add | 507% Entertainment Expense | | 318.83 |
| Add Dedact | Depreciation Red Debt | | 4,204,05 |
| the property of | Total adjustments to income (M1) | | (20,000,00) (15,479,03) |
| | Tassble Income Selere NDL | | 41.893.892.84 |
| | NOL Carry Forward | | (1,257,638,00) |
| | Net Taxette menne | | 40,835,944.64 |
| | Federal Tax State Tax | 35.00% | 34,222,580,62 |
| | Fout \$50,000 | 10.33% | 255.00 |
| | Over 550,000 | 8,50% | 3,449,885.28 |
| | - Leanet | | 597,321,285 |
| | Siste & Local Yax reduction | | (1,448,583,54) |
| | Nettaxes | | 16,853,378,63 |
| | Fortrand gramtum | | 5,372,014,94 |
| | Cast belience as of 09/03/03 | | 40,871,971,14 |
| | Net resh peyant te Mike Tricarichi | | 35,189,356,70 |



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EXHIBIT C FINAL RETURN See Documents Auzehod Floteto,



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| 23602 MERCANTILE RD | and a strain of the second |))[[V] | - E - 19403. | | | | |
| BEACHWOOD OH 44122-5915 | | | Dia tampayor is a | 10.R.C. 8 | action \$733,080 | C) high | 1329- |
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| 2. Onio Schedule 8 actualments and | 70 1928, 596 23 (r 1128A, ing 24). Generatia a ama manana mat | . Comittent de | ang gene and guidening | | 1,7.0040,7 | · | |
| 1. Base income (ing 1 plus the 2) | constant 8, ins 3) Completed (20) | appe gjuni arth 10 | . 1994 19 | | 1,2.240,3 | 110 | |
| Base income (line 1 plue line 2) Allocable income everywhere (from | Schedule C. line 71 | ann ann ann d | | & | 1,7 <u>.246,</u> 9 1,7.246,9 | 14 en 1 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 | |
| Base income (line 1 plus line 2) Allocable income everywhere (from Apponionable income (line 3 minus) | Schedule C, line 7) | ayse (jiwi vili 12 | . 999 8 | | 1,2.240,3 | 14 en 1 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 | |
| Base income (line 1 plus line 2) Allocable income everywhere (from Apponionable income (line 3 minus Ohio separate company apponionmi | Schedule C, line 7) Schedule C, line 7) line 4) | 1940 (1001, 011, 10 1940 - 1940 - 1940 - 1940 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - 1940 - | | | 1,7.24,9 1,7.24,,9 1,7.24,,9 1,7.84,, | 14 ss 9 4 ss 9 4 ss | |
| Base income (line 1 plue line 2) Allocable income everywhere (from Apportionable income (sine 3 minus) Ohio separate company apportionms Apportioned income (line 5 multiplie) | Schedule C, line 7) Schedule C, line 7) line 4) III (allo from Schedule O,) d by line 5 or 5cm 97, (40) | 540 (km, aig h) (ma 4 (sum ji 2) 201 - Sebuate | the s | | 1,7.246,9 1,7.366,9 1,7.865, | 14 ss 9 4 ss 9 4 ss | |
| Base income (line 1 plus line 2) Allocable income averywhere (from Apponiensable income (line 3 minus) Ohio separate company appontionmi Appontioned income (line 5 multiplie Appontioned income (line 5 multiplie Appontioned income within Ohio (from | Schedule C, line 7) Schedule C, line 7) line 4) Ini rato from Schedule D, I 4 by line 6 or from FT-112 Schedule C, line m | site llen sig p line 4 (even if a) NC, Schedule | the 6 member of 5 contined repo B (countries), the 73 | | 1,7.24,9 1,7.24,,9 1,7.24,,9 1,7.84,, | 148 940 940 | |
| Base income (line 1 plue line 2) Allocable income everywhere (from Apportionable income (line 3 minus Ohio separate company apportionme Apportioned income (line 5 multiplie Apportioned income within Ohio (from Moome (loss) from transferor company | Schedule C, line 7) line 4) in rato from Schedule D, j d by line 5 or from FT-112 Schedule C, line 8) ration, O.R.C. sector 575 | site fles, siy p ins 4 (even if a) NC, Schedule 4 man | ene s member of s continued repe B (countriess), the 73 | 4) 4) 5) 5) 7) 8) | 1,7.24, 9 1,7.24, 9 1,7.24, 9 1,7.24, 9 1,9 1,9 1,9 | 14 es 9 4 es 9 9 fes 9 fes | |
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| Base income (line 1 plus line 2) Allocable income averywhere (from Apportionable income (line 3 minus Ohio separate company apportionms Apportioned income (line 5 multiple Apportioned income (line 5 multiple Apportioned income (line 5 multiple Allocable income within Ohio (from Income (loss) from transferor corpo Related antity and related member Ohio taxable income before not ope Ohio taxable income before not ope Ohio taxable income (line 11 minus Tax on net mome basis (from Schedule F, Jax on net worth basis (from Schedule F, Jax on net worth basis (from Schedule F) | Schedule C, line 7) line 4) ini ratio from Schedule D, (d by line 6 or from F7-112 Schedule C, line 8) ration. O.R.C. section 573 ratiostments (from Schedu ming loss deduction (add tech schedule showing com line 12) dule K, line (c)) | site Res sig p Ins 4 (sverif a) DC, Schedule 3.053 Is B-3 or Sch Inss 7, 8, 9 a Istation), O.R. | the 6 member of 5 combined args B (combined), Eng 7) adule 3-3 (combined)) and 10) C. section 5733 (dij)(1) | 2 4 4 5 7 8 8 7 8 8 7 8 8 7 8 8 7 8 8 7 8 8 7 8 8 7 8 8 7 8 8 8 7 8 8 8 7 8 8 8 7 8 | 1,7,3%, 3 1,7,3%, 5 1,7,8%, 1 1,7,8%, 1 1,7,8%, 1 | 14 es 9 4 s 9 4 s 9 4 s 2 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 | |
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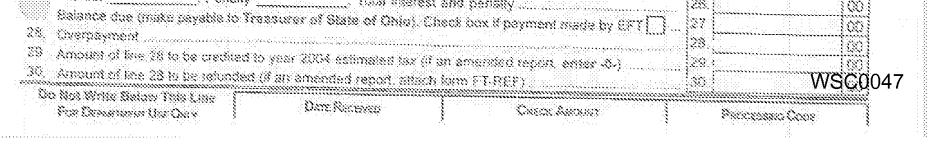


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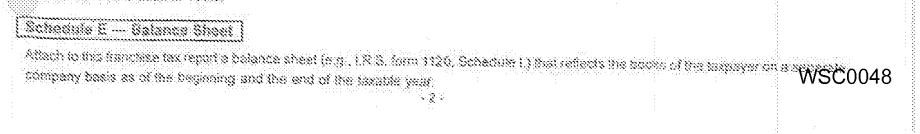


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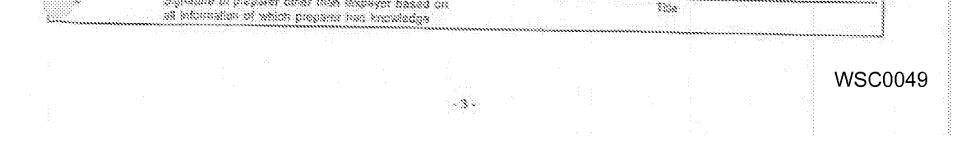


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| Section 1: Franchise Tax Computation | There are no tranchice report Schedules H, I, or J |
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| Note: All related Onio targetyer corporations that as of Jam of the report year most the ownership or control requirer to file as members of a combined report must share one \$50,000 nm booms basis tax bracket to which the 5,1% spates. Gust related targetyers must chars one \$0 to \$50 tax bracket regardlass of whether those related targetyer o rations actually the a combined report (see Ohio Revised) | Partis exceeds the provated amount is taxable at the higher panchis tax and litter tax rates. Related taxpoyees must provate the S0 to tate \$60,000 bracket on Form FT-OTAS. Onto Taxpays: Altitution Scheduls. The provation, however made, applies to both th |
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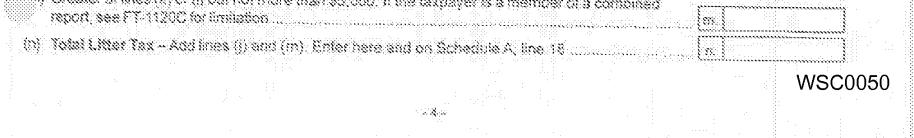


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| S. | Foreign source income deduction. (Add lines 1, 2, 3 and 4c. Enter here and on Schedule B, | 1.11 | بوبفيضييهم | | |
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Schedule B-2 - Relates Benny and Relatest Wainber Action hiers

| 389 | ite: If the taxpayer is a member of a combinal tranchise group, complete Schedule S-3 (Combined) on Perm | 87.3 | 1280. | | |
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| 5.5 | Related entity gains (losses) from sale of investments in stock or data. O.R.C. section 5733 (4()(12)(a) Related shifty gains (losses) from sale of other intengible property. O.R.C. section 5733.04()(12)(b) | š., | | | |
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| 8 | . Interest expense and interlyble expense paid to related members. O.R.C. section, 6733.04()((3) | | | | |
| 3 | and \$733.042 Add lines 5 and 8 | 8. 7. | | | |
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| ŝ | r. Related entity geins (losses) allocable to Ohio | 10. | •••••••••• | | |

Add excess related emply loss (if loss deducted in all sizes exceeds total loss). O.R.C., section 5733,054(8)

12 Excess related entity gain (if gain taxed by all states exceeds total gain). O R C. Section 5733.054(A)

13. Related members' net interest income and net enangible income texed by other states. O.R.C. section

5733.055 (Enter Similar Sector of (i) such increme layed by other states are pixeling product of line 8 investige 8) 13

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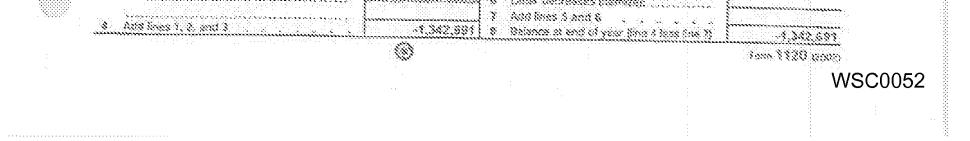


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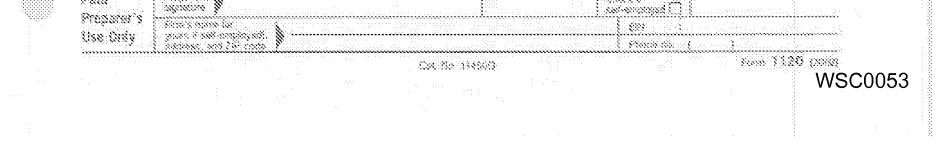


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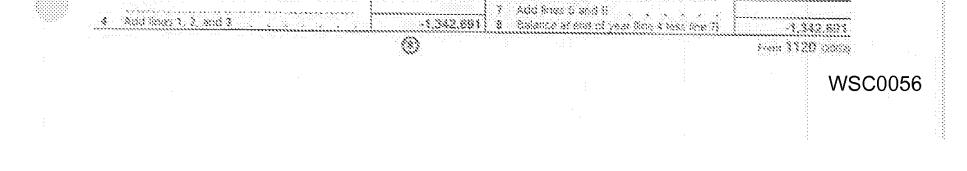


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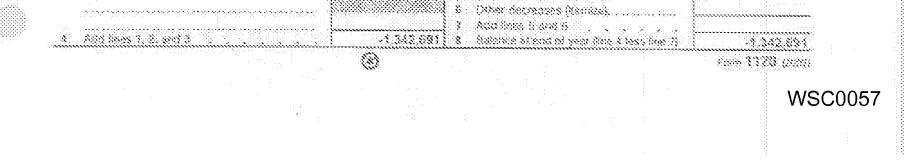


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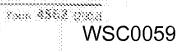
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EXHIBIT 1-J Docket No. 23630-12 Page 56 of 209



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| | Prepaid activation cost | | | 288,936 | |
| | Security deposits | | | 13,744 | |
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| | Total other assets | | | 279,930 | |
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| | Total offer current kabilities | | | 20,615 | |



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EXHIBIT D

FORM OF NON-CONFIDENTIALITY CERTIFICATE

See Document Anaphed Hereio.





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NON-CONFIDENTIALITY CERTIFICATE

September 9, 2003

Reference is hereby made to requisition by Nob Hill Holdings LLC, a corporation, of the capital stock of West Side Cellular, Inc., an Ohio corporation and the dimensions relating discrete (collectively, the "Transactions").

Each of the undersigned heachy agrees, confirms, represents and certifies that (i) their disclosure of the structure of tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the iscuefit of any third party. whether or not such understanding of agreement is legally binding. (ii) they do not know or have any reason to know that the details regarding the Transactions are protected from disclosure or use in any other minimer. (iii) they have not requested from or imposed on any of the parties. involved in the Transactions or any other third party any express or implied understanding or apreement of confidentiably whether or not such understanding or agreement is legally binding, (iv) have not taken and will not take any action that would (a) cause the discliming of the structure of tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is logally binding or (b) cause the dotails regarding the Transactions to be protected from disclosure or use in any other manner, (v) have not failed to take and will rint, in the future, fail to take any action if such failurs would (a) cause the disclosure of the supeture or tax aspects of the Transantions to be limited in any way by an express or implied enderstanding or agreement with or for the benefit of any third party, whether or not such understanding in agreement is legally building or (b) cause the details regarding the Transactions. to be protocted from disclosure or use in any other manner, neither Cooperatieve Centrale Raiffeixen-Bocrenleenhank B.A., "Rabohank Nederland", New York Branch, Ucrecht-America Printince Co. or any of their affiliates has made or provided any statement, and or written, to such party (or to such party's knowledge, any third party) as to the potential tax consequences of the Transactions.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without limitation, (A) automey-client privilege (including work product), (B) confidentiality requirements applicable to banks in general or (C) federal or state areas until to banks or (b) applying to the financial performance or condition of any of the indersigned or any of their assets.

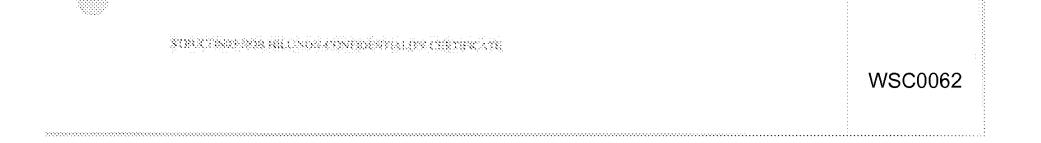


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NOR HILL HOLDINGS, INC.

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FORTREND INTERNATIONAL LLC

By:______ Tulke

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Byr_____ Tille:

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EXIIIBIT E

FORM OF LEGAL OPINION OF COUNSEL TO SELLER

See Opeument Attached Hereite



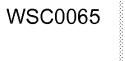


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[HEP LETTERHEAD]

August ____ 2003

Nob Hill Holdings, Inc. 30 Francisco Street San Francisco, California 94133 Auro, John P. McNabola

Re: Sale of All of the Issued and Outstanding Shares of West Side Cellular, Inc.

Ladies and Gomfernerr

We have acted as special counsel to West Side Celhdar, Inc., an Ohio corporation ("West Side Cellular"), and Michael Tricarichi, as the sole shareholder of West Side Cellular ("Seller"), in connection with the transactions that are the subject of that certain Stock Purchase Agreement dated as of August _____, 2003 (the "Stock Purchase Agreement"), by and between Seller and Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"). All capitalized terms used in this opinion without definition have the respective meanings given to them in the Stock Purchase Agreement. This opinion is rendered to you at the request of Seller.

In rendering the opinious contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to below:

The Stock Purchase Agreement:

Articles of Incorporation of West Nide Cellular;

The Code of Regulations of West Side Cellular,

Such other records, certificates, documents and instruments, as we have deemed necessary or appropriate to review in order to review the opinions expressed herein.

In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

A. All documents submitted to us as originals are complete and anthentic, all copies of documents submitted to us conform in all respects to the originals thereof.

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Nob Hill Holdings, Inc. August ____ 2003 Page 2

including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft formi conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and cortificates as to factual matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fraud

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- B. All parties (except Seller) to the Stock Purchase Agreement (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations therounder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Seller) to the Stock Purchase Agreement have complied with all legal (except Seller) to the Stock Purchase Agreement have complied with all legal (except Seller) to the Stock Purchase Agreement have complied with all legal (except Seller) to the stock Purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement have complied with all legal (except Seller) to the stock purchase Agreement (and ell applicable exhibits thereto) in order to carry out the transactions contemplated thereby.
- C. The conduct of the parties to the Stock Purchase Agreement has conformed to all requirements of good faith, fair dealing and consciousability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of, the Stock Purchase Agreement.
- D. The conduct of all partice pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, lassa, rules, regulations and ordinances, inless such notice requirements have been validly and legally waived.
- E. Nob Hill has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Nob Hill, and constitutes the legal, valid and binding obligation of Nob Hill.
- F. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) between Nob Hill and Seller or

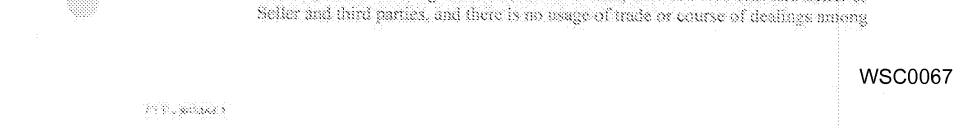


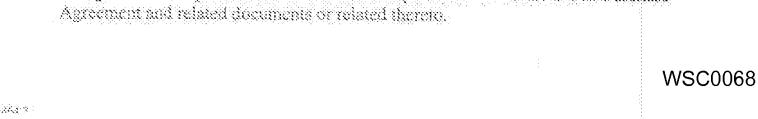
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Nob Hill Holdings, Inc. August, 2003 Page 3

the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the respective rights and obligations of Seller hereunder, or (ii) have any effect on any of the opinions set forth in this letter.

- G. The representations and warranties of each party to the Stock Purchase Agreement (including Seller) are true and complete.
- H. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related (hereto)
- U We have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Purchase Agreement (including, without limitation, any examination of documents in our files or otherwise made available to us by West Side Cellular in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of auch facts should be drawn from our representation of West Side Cellular in connection with the Stock Purchase Agreement or otherwise. In busing the opinions set forth herein on "our knowledge," the words "our knowledge" are intended to be limited to the actual knowledge of the attorneys within our firm who have been directly involved in the transaction contemplated under the Stock Purchase Agreement.
- 1. In readering the opinious expressed below, we have relied, with your consent, as to factual matters solely upon the statements, representations and warranties of the various parties contained in the ubove-listed documents and upon a certificate executed by Seller and the President of West Side Cellular (the "Certificate"). We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, valid existence and good standing of West Side Cellular.
- K. In addition, notwithstanding anything contained in this latter to the contrary, with your consent, we expressly disclaim any opinion as to the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related therato. We understand that all purties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign lax consequences of the transactions provided for in the Stock Purchase



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Noh Hill Holdinga, Inc. August ____, 2003 Page 4

Based upon and subject to the foregoing, as of the date and time one minute prior to actual consumptation of the transaction contemplated by the Stock Purchase Agreement (the "Opinion Date"), we are of the opinion that:

- A. West Side Cellular is a corporation incorporated, validly existing, and in good standing under the laws of the State of Ohio
- B. Seller has the requisite power and authority to execute and deliver the Stock Purchase Agreement and to perform all of his obligations under the Stock Purchase Agreement.
- C. The Stock Purchase Agreement has been duly authorized, excanged and defivered on behalf of Seller.
- D. No notice to, action of, or filing with any governmental agency or regulatory body is required to authorize the execution and delivery of the Stock Purchase Agreement by Seller.
- E. The authorized capital stock of West Side Cellular consists of seven hundred and fifty (750) shares of voting common stock, no par value, of which one hundred (100) shares are outstanding as of the date of this opinion. To our knowledge and based on the Certificate, all such outstanding shares were validly issued and outstanding, fully paid and nonassessable, and there are no other securities of West Side Cellular of any class issued, reserved for issuance or otherwise outstanding. To our knowledge and based on the Certificate, there are no options, offers, warrants, conversion rights, subscriptions or agreements or rights of any kind to subscribe for or to purchase, or commitments to issue (either formal or informal, firm or contingent) shares of capital stock or other securities of West Side Cellular (whether debt, equity or a combination thereof) or obligating West Side Cellular to grant, extend or enter into any such agreement or commitment. To our knowledge and based on the Certificate, there are no commitmentis, agreements or other arrangements relating to the shares of common stock of West Side Cellular currently issued and outstanding and such shares are not subject to any pledges, security interests, liens, encumbrances, claims or equitable interests.

We have not been requested to oping, and we have not opined, as to any issues other than those expressly set forth herein, and up opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the laws of the State of Ohio without reference to conflict of laws principles, to present judicial interpretations thereof, and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or

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supplement it upon a change occurring in applicable law by tegislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinious contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

This opinion has been rendered to you at the request of West Side Cellular and Seller, and may be relied upon by you only. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written concent in each instance.

Very maly yours,

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SCHEDULE 3.2(b)

CAPITAL STOCK OF COMPANY

| Authorized | Seven Hundred and Fifty (750) Shares of Common Stock. no par value |
|----------------------------|--|
| Issued and Outstanding: | One Hundred (100) Shares of Common Stock, up par value |
| Owner: | Michael Tricacichi - One Hundred (100) Shares of Common Stock, no par value |



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SCHEDULE 3.2(g) CLOSING ASSETS

(1) Cash in the amount of \$39,949,373; and

(2) Seller Loam in the principal amount of \$\$75,000 plus accrued interest of \$2,777.77

.

WSC0072

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SCHEDULE 3.2(j)

MATERIAL CONTRACTS

1. Settlement Agreement with Verizon Wireless,

2. Settement Agreement with Cingular Wireless.

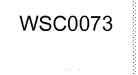


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SCHEDULE 3.2(n)

BANK ACCOUNTS AND POWERS OF ATTORNEY

Bank: Rabobank Netherland, New York Branch 245 Park Avenue New York, New York 10167

Account Number 1377

Signatories on Account: Michael Tricarichi

Bank: Chase NYC, DLJ Pershing Division One Pershing Plaza Jersey City, New Jersey 07399

Account Number: [900

Signatories on Account: Michael Triearichi



Bank: Key Bank, N.A. 24600 Chagrin Blvd Beachwood, Ohio 44122

Account Number: 0753

Signatories on Account: Scott Ginsherg & Michael Tricarichi

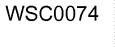


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SCHEDULE 3.2(p)

SUBSIDIARIES

None.



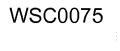


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SCHEDULE 11.2

NOTICES

Atta: Charles G. Klink, Esq. Facsimile: (310) 979-0922

| Seller | Michael Tricarichi 341 Arbour Gardens Las Vegas, Nevada 89148 Facsimile: (702) 597-2108 |
|---------|--|
| Copy to | Holm Locser & Parks |

| Coosta | Hohn Loeser & Parks 3300 BP Tower Cleveland, Uhlo 44114-2031 Aun.: Randy Flart, Esq. Facsimilie: (216) 274-2511 |
|----------|--|
| Buyen | Nob Hill Holdings, Inc. 50 Francisco Street San Francisco, CA 94133 Attri: John P. McNabola, President Facsimile: (415) 399-9212 |
| Kopy so: | Klink & Associates, Inc. 1734 Granville Avenue, Suite 6 Los Angeles, California 96025 |



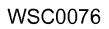


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EXHIBIT F

FORM OF LEGAL OPINION OF COUNSEL TO BUYER

See Document Atlached Hereto.

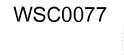


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Klink & Associates, Inc. 1734 Granville Avenue, Unit 6 Los Angeles, CA 90025

September 9, 2003

÷.,

Michael Tricarichi, as the sole sharebolder of West Side Celhilar, Inc. 343 Arbour Gordens bas Vogas, Nevada 39148;

Re: Nob Hill Holdings, Inc. - Purchase of All of the Issued and <u>Outstanding Sharps of West Side Cellular</u>, Inc.

Ladies and Gentlement

We have acted as special counsel to Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"), in connection with the transactions which are the subject of that certain Stock Parchase Agreement, dated as of September 9, 2003 (the "Stock Parchase Agreement"), by and between Rob Hill and you, in your capacity as seller (in such capacity, "Seller") of the Shares (as such term is defined in the Stock Parchase Agreement). This opinion is rendered to you at your request.

In remtering the opinions contained herein, we have been fornished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to on page 3:

- 1. The Stock Purchase Agreement:
- Certificate of Incorporation of Nob Hill, as filed with the Secretary of State of the State of Debasare on November 15, 2001;
- The Bylaws of Nob Hill certified by the Secretary of Nob Hill, Inc. as of September 9, 2003;
- Written Consent of the Sole Director of Nob Hill dated as of August 22, 2003;
- 5. Any and all other documentation we deem necessary to review in order to review the opinions set forth herein.

The documents referred to in clauses 2, 3 and 4 are collectively referred to herein as the "Authorization Documents." In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

1. All documents submitted to us as originals are complete and authentic, all copies of documents submitted to as conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in



all respects to the drafts reviewed by us; all originals or copies submitted to us have not

WSC0078

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September 9, 2003 Page 2

been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to foctual matters dated price to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of cound mind not operating under any legal disability, duress or thaud.

2. All parties (except Nob Hill) to the Stock Purchase Agreement. (i) have doly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Nob Hill) to the Stock Purchase Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby:

3. The conduct of the parties to the Stock Porchase Agreement has conformed to any requirement of good faith, fair dealing and consciousbility. Each party to the Stock Porchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security inferest transferred or created as part of, the Stock Purchase Agreement.

4. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally subject.

3. Seller has full power, inthority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Seller, and constitutes the legal, valid and binding obligation of Seller.

6. Except for the Stock Purchase Agreement and all exhibits and schedules stacked thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) among Nob Hill and Seller or Seller and third parties, and there is no agage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, quality or enservise modify the respective rights and obligations of Nob Hill hereunder, or (ii) have any effect on any of the oplitions set forth in this letter.

7. The representations and warranties of each party to the Stock Purchase Agreement (metoding Nob Hill) are true and complete.

8 All parties to the Stock Porchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related theorie and have not requested tax advice from Klink & Associates, Inc., nor related upon Klink & Associates, Inc., to enalyze such transactions from a tax perspective or to advise any of them regarding such tax consequences.

Except where expressly stated otherwise, we have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the manaections contemplated by the Stock Purchase Agreement

WSC0079

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September 9, 2003 Pase 3

fucibiling, without limitation, any examination of documents in our files or otherwise made available to us by Nob Hill in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of Nids Hill in competition with the Stock Purchase Agreement or otherwise.

In rendering the opinions expressed below, we have relied, with your consent, as to factual matters solely upon the statements, representations and scattanties of the various parties contained in the above-listed documents and upon a certificate executed by the Prosident of Nob Hill. We did not independently verify each matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, balid existence and good standing of Mob [Hill.]

In addition, notwithstanding anything contained in this letter to the contrary, with your consent, we expressly diselating any opinion as to:

The effect of any ordinances, statutes, administrative decisions, orders, rules and regulations of any municipality, county or other political subdivision of any abian)

The muth, accuracy and completeness of any of the representations, warranties or statements us to factual monors given by Nob Hill or required of Nob Hill under the Stock Purchase Agreement or any officer documents or instruments executed in connection therewish, and we have undertaken no independent investigation with respect to the same.

The enforceability of provisions to the effect that rights or remedies are not exclusive, that every right of remedy is consulative and may be exercised in addition to or with any other right or remedy, that the election of a particular remedy or remedies does not preclude recourse to one or more other remodies and that the delay or failury to exercise rights or remedies will not operate as a waiver of such right or remedy;

The effect of any state or federal laws or fearing laws or regulations applicable to transactions because of the nature of the business by any party (other than Nob Hill) or because of the method by which business is conducted by any party (other than Nob Hill) to the Stock Purchase Agreement;

The enforceability of any provision for liquidated damages or restricting the right of any person to engage in any business or other netivity; or

The federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

Based upon and subject to the foregoing, we are of the opinion that;

Nob Hill is a corporation duly incorporated, validly existing, and in good ł., standing under the laws of the State of Delaware.

Nob Hill has the corporate power and corporate authority to execute and deliver the Stock Purchase Agreement and to perform all of its oblightions under the Stock Ptweliase Agreement.

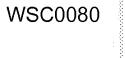


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3. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Nob Hill.

4. The execution and delivery by Nob Hill of the Stock Purchase Agreement does not result in any violation of the Authorization Documents.

We have dot been requested to oping, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the Delaware General Corporation Law and the current laws of the State of California without reference to conflict of laws principles, to present judicial interpretations thereof and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit solely in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state diractly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no gourisel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an oppermulty to consider the matters further.

This opinion has been rendered to you at the request of Nob Hill, and may be relied upon by you only in connection with the transactions contemplated by the Stock Purchase Agreement. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each instance.

Very truly yours,

KLINK & ASSOCIATES, INC.

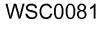


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TAB 2

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Articles Of Incorporation

(Dadar Chapter 179), (H. ab 2003) Picilis Corporation

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TRIRD. The purposes for which it is transid are

- (a) To engage in the business of selling retail and/or wholesals television equipment, suffor and visual equipment, radio equipment, training tapes, and security systems.
- (b) To unkeys to the busines of the production, rents! and sale of movies, video tapes and other forms of audio visual reproduction (e.g. laser discs, stc.)
- (c) To engage in any business, related to or worelated to those described in Clauses (a) and (b) af this Article III, from time to this sutharised or approved by the Board of Directors of this corporation, or carry on any other trade or business which can, in the opinion of the Board of Directors of the Corporation, be advantageously carried on in consection with or subliary to Clauses (a) and (b) of this Article III, and to do all such other things as are incldental or canducive to the situingent of the above objects or any



(3) To angage in any other larful act or activity for which corporations may be formed under Section 1701.01 of see WSC0082

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G0346-1939

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to Section 1701.98 inclusive of the Chic Revised Code.

- (c) To purchase or otherwise acquire, own, hold, mortgage, Pledge, sell, transfer or to any manner dispose of or deal in or with intangible or personal property of any and every kind and description.
- (f) To purchase, own, hold, mortgage, or otherwise encumber and to lease either as lesser or lessee, sell, exchange, transfer, convey or To any manner whatsoever to acquire or dispose of or deal in or with real property, or chattels, real, tangeable or intangeable.
- (a) To enter into, wake, perform, and darry out contracts of any and every kind, for any lasful purpose, without limit we to amount, with any persons, firms, associations, corporations, or governmental buddee, agreeiss or subdivissions.

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| par value, if any i he a | 250 shaves of Common Voting Stock all of which shall theor par value. |
| | he corporation, through its Board of Directors, shall ave the right and power to repurchase any of its utstanding shares at such price and upon such tems a may be agreed upon by the corporation and the elling shareholdar(s). |
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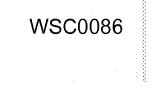
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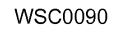


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TAB 3

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CODE OF RECEILATIONS

NERTEIDE CENTOLAR, INC.

ARTICLE IS

NEETINGS OF SHAREHOLDERS.

Section 1. Annual Meeting. The annual meeting of shareholders shall be held on the second Monday of Santary of each year commensing with the year 1988 (or, if that be a legal holiday, on the sect soccooding bisiness day! At two sociock a.m., or at such other data and/or hour as may from time to time be designated by the Roard of Directors and specified in the Notice of Annual Meeting.

Sattica 2. <u>Openial Meetings</u>. Openial meetings of the charabolders for any purpose or purposes may be called by the Chairman of the Scard of President of by order of the Scard of Directors and it shall be the daty of the Secretary to call such a meeting upon a request in writing therefore stating the purpose or purposes thereof delivered to the Secretary signed by the holders of record of not less than teachy-five percent (25%) of the amares curstanding and entitled to vote.

Section 3. <u>Place of Machings</u>. Meetings of the sharwholders may be held at the Corporation's principal office of at such other place within or without the State of Ohio as the Board of Directors may from time to time determine.

Section 4. Motice of Meetings. Notice of the annual or of any special meeting of shareholders shall be in accordance with chic Acolesed Code Sections 1701.31 to 1701.95, inclusive, provided, however, that no failure or irregularity of notice of any annual meeting shall invalidate the same or any proceeding thereast. All notices with respect to any shares which are jointly held may be given to such joint shareholders as are named first upon such records and notice so given whall be sufficient notice to all the holders of such shares.

Soution 3. <u>Quorus</u>. At all assuings of shareholders the Solders of record of a sajority of the issued and outstanding voting shares of the Corporation, present in person or by promy shall constitute a quorum for the transaction of business. In the absence of a quorum, the holders of a majority of the voting shares present in person or by provy say adjourn the meeting by resolution to a date fixed therein, and no further notice thereof shall be required. At any both adjourned meeting at which a quorum may be present, any husiness may be transacted which might have been transacted at the meeting se criginally called.



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Soction 6. <u>Provies</u>. Any shareholder entitled to vote at a meeting of charcholders may be represented and vote thereat by procy appointed by an instrument in writing, subscribed by such charcholder, or by his doly authorized attorney, and submitted to the Secretary at before such meeting. A telegram or cablegree appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of a writing, appointing a proxy is a sufficient writing.

Souther 7. ACLIER by Written Consent. Any action which may be sutherized or taken at a meeting of the shareholders, may be takes of authorized without a meeting by writing or weitings signed by all of the shareholders who would be anticled to optice of a meeting of the shareholders held for the purpose of such action, which writing or writings shall be filed with or entered upon the records of the Corporation.

APTICLE II.

BOARD OF STRECTORS

Section 1. Number. The number of Directors shall be not less than the lesser of the number of shareholders of the Corporation of three as may be fixed from time to time by resolution of the shareholders; provided, however, that no reduction in the sumbur of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 2. <u>Election and Term of Office</u>. The Directors thall be elected at the annual charabolders meeting or at a special useting balled for that purpose. Directors shall be elected to serve until the bast annual election of Directors and natil their respective successors shall have been duly elected.

Section 3. Vacancies: A resignation from the Spard of Directors shall be deemed to take effect upon its indepint by the Secretary, uplace scale other time is specified therein. In case of any vacancy in the Board of Directors, through death, resignation, disqualification of other cause deemed sufficient by the Board, the remaining Directors, though lebs then a majority of the whole board, by officiality work of a majority of those present at any duly convened meeting, may elect a successor to hold diffice for the unexpired position of the term of the Director whose place shall be vacant, and until the election of a successor.

Section 4. <u>Anniar Mastings</u>. The Sound of Directors by resolution may establish regular periodic meetings and notice of such meetings used but is given.

Servion 5. <u>Special Meanings</u>. Special Meetings of the Board of Directors shall be called by the Secretary or an Assistant Secretary whonever ordered by the Board of Directors of requested in writing by any two Directors, the Cheirman of the Rosti, if any, or the President, if he is a Director. Notice of a Special Meeting shall be away to each Director by wall at least five days before the meeting is



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