

1 Movant IP 67.181.43.116  
Michelle Murphy  
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4 In Pro Per

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File  
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*John M  
Y. M  
12/22/11*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF COLUMBIA

10 HARD DRIVE PRODUCTIONS, INC )

11 Plaintiff )

12 v. )

13 DOES 1 – 1,495 )

14 Defendants )

CASE NO. 1:11-CV-01741-JDB

**RE-FILED MOTION OF NONPARTY  
TO QUASH AND VACATE  
SUBPOENA, OR IN THE  
ALTERNATIVE, TO SEVER,  
COMBINED WITH POINTS AND  
AUTHORITIES**

THIS FILING IS TO BE DEEMED  
FILED UNDER SEAL PURSUANT TO  
THE COURT'S ORDER DATED  
NOVEMBER 2, 2011

19 Movant IP 67.181.43.116 ("Movant") respectfully requests that the Court quash and  
20 vacate the subpoena, served by Plaintiff upon Comcast Cable Communications ("Comcast")  
21 pursuant to this Court's October 4<sup>th</sup>, 2011 Order permitting expedited discovery, to the extent the  
22 subpoena requires Comcast to produce Movant's identifying information. This motion is made  
23 on the grounds that: (i) Plaintiff had not established grounds sufficient to overcome Movant's  
24 right to privacy and anonymity, (ii) Movant is improperly joined in this action, (iii) the  
25 connection between an IP address and Movant is speculative, (iv) the connection between  
26 Movant and an IP address is speculative at best, (v) forcing disclosure of Movant's identity is an

1 unreasonable burden upon Movant and (vi) Movant is not subject to jurisdiction in the District of  
2 Columbia and must be sued, if at all, in Movant's home state. In the alternative Movant requests  
3 the Court sever Movant from this case.

4  
5 **I. INTRODUCTION**

6  
7 In late October 2011, Movant received a letter from its Internet provider, Comcast, that  
8 advised Movant that it had until November 21, 2011 to object to the release of personal identity  
9 information. Attached to the notice was a copy of this Court's October 4, 2011 Order from  
10 which it appears that a complaint, filed on behalf of Hard Drive Production Ltd., apparently  
11 alleges that 1,495 doe defendants all join in a civil conspiracy to illegally download a movie  
12 entitled "Amateur Allure- Maelynn" through a file sharing protocol called "torrent."

13  
14 Movant is a thirty-fiv (35) year old mother of a six (6) year old child, residing in  
15 California and studying nursing. Movant has never heard of and has no connection with Plaintiff  
16 or Plaintiff's "movie". Movant has no connection with the District of Columbia, has never been  
17 to the District of Columbia, has never transacted business with Plaintiff or anyone located in the  
18 District of Columbia and Movant cannot afford to travel to the District of Columbia to defend  
19 this action.

20  
21 Movant respectfully objects to the release of its personal and identity information by  
22 Comcast, for the reasons set forth below.

1 **II. MOVANT'S IDENTITY IS ENTITLED TO PROTECTION AND SHOULD**  
2 **NOT BE RELEASED.**

3 The right to speak anonymously is a cherished right, especially in the age of virtual speech  
4 through the Internet. (**Macintyre v. Ohio Elections Commission**, 514 U.S. 334, 349 (1995);  
5 **McMann v. Doe**, 460 F.Supp.2d 259, 266 n. 35 (D Mass. 2006); **ACLU v. Miller**, 97 F. Supp.  
6 1228, 1231 (ND GA 1997). The Court should protect Movant's right to keep its identity private.  
7

8 A court order granted to a private party is a form of state action subject to constitutional  
9 limitations. (**New York Times Co. v. Sullivan**, 376 U.S. 254, 265 (1964); **Shelley v. Kraemer**,  
10 334 U.S. 1 (1948). A violation of an individual's First Amendment rights constitutes irreparable  
11 injury. (**Elrod v. Burns**, 427 U.S. 347, 373-374 (1976).  
12

13 Plaintiff in this case is notorious for bringing massive lawsuits filed throughout the  
14 country, which encompass hundreds and thousands of individual citizens as party defendants  
15 without any facts linking those individuals to any of the conduct alleged in the lawsuit. Indeed,  
16 Plaintiff does not care to link those citizens to the lawsuit because Plaintiff's business practice is  
17 not to follow through in the lawsuits against these target victims, it is to shake the victims down  
18 and extort a quick nuisance cash settlement by threatening to disclosure of the identity of the  
19 victim and subject them to public embarrassment by an alleged connection with downloaded  
20 internet porn. This is not a proper purpose of a lawsuit. The Court's process should not be  
21 available to aid in Plaintiff's scheme.  
22

23 An order to compel production of one's identity threatens the exercise of fundamental  
24 rights, and is "subject to the closest scrutiny." (**NAACP v. Alabama**, 357 U.S. 449, 461 (1958).  
25 **Bates v. City of Little Rock**, 361 U.S. 516, 524 (1960).) The Ninth Circuit has warned that  
26 "[t]he subpoena power is a substantial delegation of authority to private parties, and those who  
27

1 invoke it have a great responsibility to ensure it is not abused." (**Theofel v. Farey-Jones**, 359  
2 F.3d 1066, 1074 (9th Cir. 2004).)

3  
4 Here, if the Court does not quash plaintiff's subpoena for Movant's identity, an innocent  
5 person will be irreparably injured because once Movant's anonymity is lost, it cannot be  
6 recovered.

7  
8 **III. JOINDER OF MOVANT IN THIS CASE IS IMPROPER.**

9  
10 Joinder of Movant in this action is improper because Movant is but one of more than one  
11 thousand four hundred different target defendants known only by an IP address used to allegedly  
12 commit internet download acts at different times and places, each with unique computer network  
13 configurations, unique computer hardware, unique computer usage, and through many different  
14 internet service providers. Plaintiff strategically chose to join over one thousand four hundred  
15 unrelated IP addresses in a single action, rather than file individual suits. But joinder of parties is  
16 only proper, under Fed. Rule of Civ. Proc. Rule 20(a)(2), when a right to relief arises out of "the  
17 same transaction, occurrence or series of transactions or occurrences and (B) any question of law  
18 or fact common to all defendants will arise in the action."

19  
20 Attempts to join numerous defendants in a single action for copyright infringement over  
21 person-to-person networks historically have failed. (See **Interscope Records v. Does 1-25**, 200  
22 U.S. Dist. LEXIS 27782 (MD FL 2004); **Elektra Ent. Group, Inc. v. Does 1-9**, 2004 WL 2095581  
23 (SD NY 2004).)

24  
25 For example, one court previously held in copyright suits against users of sophisticated  
26 person-to-person networks that "no factual allegations to support the assertion that the Does

1 defendants are connected to the same transaction, occurrence or series of transactions or  
2 occurrences, or any facts that show they specifically acted in concert," justified severance of the  
3 doe defendants. **IO, Group, Inc. v. Does 1-435**, Case No. 10-cv-4382, 2011 WL 445043 at \*3  
4 (ND CA 2010.) Under Fed. Rule of Civ. Proc. Rule 20(b), the Court may sever claims or  
5 parties to avoid prejudice and assure fairness to both sides. (**Coleman v. Quaker Oats Co.**, 232  
6 F.3d 1271, 1296 (9th Cir. 2000).) Here, there is no greater prejudice and unfairness than  
7 revealing an innocent person's identity and private Internet computer usage.

8  
9 In a similar case to this one, Judge Spero of the United States District Court for the  
10 Northern District of California painstakingly analyzed joinder case law developed prior to and  
11 after the BitTorrent technology, and found "the court remains unpersuaded that the peer-to-peer  
12 architecture of the BitTorrent technology justifies the joinder of otherwise unrelated defendants  
13 in a single action." (**Hard Drive Productions, Inc. v. Does 1-188**, Case Number 11-cv 01566  
14 (ND Cal. 2011), Order, August 23, 2011.)

15  
16 Judge Spero found that "merely infringing the same copyrighted work over this period [is]  
17 not enough," and that "each defendant also will likely have a different defense," quoting from  
18 **BMG Music v. Does 1-203**, 2004 WL 953888 (ED Pa 2004) (Id.). Judge Spero held that the 188  
19 doe defendants did not participate in the same transaction or occurrence, or the same series of  
20 transactions or occurrences, and that their joinder was improper under Rule 20(a). As a result, all  
21 doe defendants except one, was severed and dismissed in order to avoid prejudice and unfairness  
22 to the doe defendants, and in the interest of justice. The motion to quash in the Hard Drive case  
23 was granted. (Id.)

24  
25 This case seems identical to the Hard Drive case, with conclusory allegations of multiple  
26 doe defendants using the BitTorrent protocol over multiple ISPs covering wide periods of time.

1 These same circumstances led to very recent decisions from the federal courts that severely  
2 restricted requests for expedited discovery. (See **AF Holdings LLC v. Does 1-97**, 11-cv-03067  
3 (ND Cal. 2011); **Hard Drive Productions, Inc. v. Does 1-58**, 11-cv-02537 (ND Cal. 2011).) In  
4 one very recent case, a court found that 5,000 doe defendant were improperly joined because the  
5 allegation of downloading the same file did not establish that each doe defendant was engaged in  
6 the same transaction or occurrence. (**On the Cheap, LLC v. Does 1-5011**, 10-cv-4472 (ND Cal.  
7 2010), Order Severing Doe Defendants 1-16 and 18-5011, Sept. 6, 2011.) On September 12,  
8 2011, that court ordered plaintiff's subpoena quashed. (Order, Sept. 12, 2011.)

9  
10 Here, Movant was improperly joined with 1,495 other IP addresses where individuals  
11 purportedly acted over a period of time through many different ISPs each with unique computer  
12 usage, to download an unspecified portion of file or files. Here, there is no unifying common  
13 question of fact to 1495 unique defendants, and no common action shared by as many defendants  
14 over any period of time.

15  
16 Moreover, there is no connection between Movant's IP address and Movant, as it relates to  
17 the alleged downloading. "The mere allegation that defendants have used the same peer-to-peer  
18 network to infringe a copyrighted work is insufficient to meet the standards for joinder set forth  
19 in Rule 20." (**Coughlin v. Rogers**, 130 F .3d 1348, 1350 (9th Cir. 1997).)

20  
21 As a result of over-reaching misjoinder, plaintiff's subpoena should be quashed an  
22 Vacated, and Movant should be served from this action.

1           **VI. THE CONNECTION BETWEEN MOVANT AND AN IP ADDRESS IS**  
2           **SPECULATIVE**

3           Plaintiff asks this Court to equate an IP address, obtained by uncertain geo-location  
4 technology reliability, with a flesh-and-blood person, Movant, in order to obtain Movant's  
5 identity. IP address tracing by geo-location technology is not equivalent to scientific DNA  
6 testing or fingerprint technology. There is no certainty who uses an internet network at any time,  
7 or whether the wi fi signal was intercepted by an unauthorized user or hacked by a criminal. The  
8 accuracy of geo-location technologies is affected by source problems, namely accurate geo-  
9 location data linking an IP addresses to a physical location and reallocation of such links, and  
10 circumvention problems, namely, how sophisticated computer users can circumvent geo-location  
11 tracking. (The Legal Implications of Geo-identification by Dan Svantesson, Law Prof., Bond  
12 Univ., Australia, July, 2005, p. 3.) "With a \$50 wireless antenna and the right software, a  
13 criminal hacker located outside your building as far as a mile away can capture passwords, email  
14 messages and other [information]." (CNET, "The Unvarnished Truth About Unsecured Wi-Fi,"  
15 by Elinor Mills Nov. 1st, 2010.)

16  
17           Perhaps this is why, in a very similar case, an anonymous California grandmother was  
18 served with a subpoena to disclose her identity, based solely upon her IP address. (SFGate, "Law  
19 Firm Drops Suit Against East Bay Porn Granny.' Aug. 30, 2011.) When the actual perpetrator  
20 was located, the anonymous grandmother was unapologetically dropped from the suit. (Id.)

21  
22           Because the connection between Movant and an IP address is speculative, the Court  
23 should quash and vacate plaintiffs subpoena as to the disclosure of Movant's identifying  
24 information.

1           **V. THE SUBPOENA PLACES AN UNDUE BURDEN ON MOVANT.**  
2

3           The Fed. Rules of Civ. Proc., Rule 45(c)(3)(ii) & (iii) requires that a subpoena be quashed  
4 when undue burden is placed on a movant. In this case, Movant resides on the west coast,  
5 thousands of miles from the courthouse in the District of Columbia. It would place an undue  
6 burden upon Movant to have to defend any of Movant's right in this action.  
7

8           Furthermore, the subpoena will require Movant to reveal his/her identity, which is  
9 protected from discovery by, among other sources, the California Constitution's right of privacy  
10 (Cal. Constn. Article 1, sec. 1.) and the previously cited constitutional protections of anonymous  
11 internet usage. Any conduct by Movant related to Plaintiff's claims will have occurred in  
12 California and Movant remains entitled to the protections of California's law and Constitution.  
13

14           For the reason that the subpoena places an undue burden on Movant, the subpoena should  
15 be quashed and vacated.  
16

17           **VI. MOVANT SHOULD NOT BE SUBJECTED TO THE JURISDICTION OF**  
18           **THIS COURT.**

19           The purpose of the subpoena is to disclose Movant's identity as a listed "**Doe**" in the  
20 above styled case, a placeholder name used when a defendant's true identity is unknown. See  
21 generally, **Plant v. Does**, 19 F. Supp. 2d 1316, 1320 (S.D. Fla. 1998). Once the Plaintiff has  
22 ascertained the name of the defendant through the process of discovery, or in the instant case,  
23 through their subpoena, the plaintiff must amend the complaint to name the defendant and effect  
24 service of process. **Slaughter v. City of Unadilla**, 2008 U.S. Dist. LEXIS 8350 (M.D. Ga.  
25 2008). After amending the Plaintiff's complaint to reflect the disclosed Movant's identity,  
26 Movant would be subjected to the personal jurisdiction of this Court located in the District of  
27



1 Columbia without Movant having ANY connection with the District, without Movant transacting  
2 any business in the District and without any other sufficient minimum contacts. See **GTE New**  
3 **Media Servs. v. Bell South Com.**, 199 F.3d 1343, 1347 (D.C. Cir. 2000). See also  
4 **International Shoe Co. v. Washington**, 326 U.S. 310, 316 (1945).

5  
6 Federal cases with personal jurisdiction analysis under internet activity have repeatedly  
7 dismissed complaints for want of personal jurisdiction unless a contractual relationship exists  
8 with a party located within the state to establish sufficient minimum contacts, and no such  
9 relationship has been plead by the Plaintiff. See **GTE New Media Servs. v. BellSouth Com.**,  
10 199 F.3d 1343, 1348- 49 (D.C. Cir. 2000) (citing **Bensusan Restaurant Com v. King**, 126 F. 3d  
11 25, 29 (2d Cir. 1997); **Mink v. AAAA Development. LLC**, 190 F.3d 333, 336-37 (5<sup>th</sup> Cir.  
12 1999); **Cybersell. Inc. v. Cybersell. Inc** .130 F.3d 414, 419-420 (9th Cir. 1997).

13  
14 Plaintiff is fully aware of this court's lack of personal jurisdiction over Movant and is  
15 simply using this Court to obtain information to subject the undersigned to improper jurisdiction,  
16 for the improper purpose of burdening and harassing Movant as part of plaintiff's effort to extort  
17 a nuisance settlement. Having brought a plethora of nearly identical cases across the country,  
18 Plaintiff is undoubtedly aware that IP addresses may be located geographically to determine the  
19 proper jurisdiction without such John Doe discovery. See e.g., 16 Alb. L.J. Sci. & Tech. 343,  
20 356 (discussing IP geolocation technologies). Plaintiff could easily determine that Movant  
21 probably lives in California.

22  
23 Further, Movant contests the personal jurisdiction of this court over the ISP on which the  
24 subpoena was served and demands strict proof thereof.

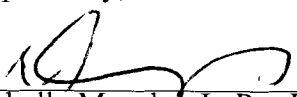
1           Upon compliance from the ISP with the information requested, the John Doe identity will  
2 be established and the case will immediately be amended, and the undersigned will be added as a  
3 party to the case, causing an undue burden sufficient enough for this court to quash the subpoena  
4 at issue in this motion. Requiring individuals from across the country to litigate in this district  
5 creates exactly the sort of hardship and unfairness that the personal jurisdiction requirements  
6 exist to prevent. Allowing Plaintiff to proceed without quashing this subpoena would allow  
7 general jurisdiction in any federal court against any person across the country, or the world, so  
8 long as the claim involved a John Doe defendant and internet use, and such precedent violates  
9 due process as it offends "traditional notions of fair play and substantial justice" as guaranteed by  
10 the U.S. Constitution. See **International Shoe Co. v. Washington**, 326 U.S. 310,31

11  
12           **VII. CONCLUSION.**

13  
14           For all of the reasons set forth above, and in the interests of justice, Movant respectfully  
15 request the Court to quash plaintiffs civil subpoena so that Movant's anonymous identity is not  
16 revealed and Movant's communications are protected from unwarranted disclosure. In the  
17 alternative, Movant requests the Court sever Movant from this case.

18  
19 Dated: December 13, 2011

Respectfully,

20  
21   
22 Michelle Murphy, In Pro Per  
23 Movant IP 67.181.43.116

1 Movant IP 67.181.43.116  
Michelle Murphy  
2 8309 Terrace Drive  
Stockton, CA 95212  
3 Tel: (209) 609-8063  
Email: michelle\_murphy76@yahoo.com

4 In Pro Per  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF COLUMBIA

10 HARD DRIVE PRODUCTIONS, INC )

CASE NO. 1:11-CV-01741-JDB

11 )  
12 Plaintiff )

**RE-FILED DECLARATION OF  
MOVANT**

13 v. )

THIS FILING IS TO BE DEEMED  
FILED UNDER SEAL PURSUANT TO  
THE COURT'S ORDER DATED  
NOVEMBER 2, 2011

14 DOES 1 – 1,495 )

15 Defendants )  
16 )  
17 )  
18 )

19 I, Michelle Murphy, Movant IP 67.181.43.116, declare,

20 1. I am a thirty-five (35) year old mother of a six (6) year old child, residing in  
21 California and studying nursing.

22 2. In late October 2011, I received a letter from my Internet provider, Comcast, that  
23 advised that I had until November 21, 2011 to object to the release of personal identity  
24 information. Attached to the notice was a copy of this Court's October 4, 2011 Order from  
25 which it appears that a complaint, filed on behalf of Hard Drive Production Ltd., apparently  
26  
27

1 alleges that I am one of 1,495 doe defendants all join in a civil conspiracy to illegally download a  
2 movie entitled "Amateur Allure- Maelynn" through a file sharing protocol called "torrent."


3 3. I have never heard of and have no connection with Plaintiff or Plaintiff's "movie".

4 4. I have no connection with the District of Columbia, have never transacted business  
5 with Plaintiff or anyone located in the District of Columbia.

6 5. I cannot afford to travel to the District of Columbia to defend this action. Indeed, I  
7 cannot afford to hire an attorney in this case.

8 6. I declare under penalty of perjury under the laws of the State of California and the  
9 Law of the United States that the forgoing is true and correct and that this declaration is executed  
10 this 13th day of December, 2011 in California.

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28



Michelle Murphy, In Pro Per  
Movant IP 67.181.43.116

IN THE UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

HARD DRIVE PRODUCTIONS, INC

Plaintiff/Petitioner

vs.  
DOES 1-1,495

Defendant/Respondent

Hearing Date:

CASE NO:  
1:11-CV-01741-JDB

AFFIDAVIT OF SERVICE OF:  
**DECLARATION OF MOVANT; MOTION OF  
NONPARTY TO QUASH AND VACATE  
SUBPOENA OR IN THE ALTERNATIVE, TO  
SEVER, COMBINED WITH POINTS AND  
AUTHORITIES**


The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

**REGULAR MAILING**


On the date of December 21, 2011, affiant then deposited in the United States mail, in the county where the property is situated, the above described documents with proper postage to:

COMCAST NE&TO  
650 CENTERTON Road  
MOORESTOWN, NJ 08057

DATED this 21 day of December, 2011.

  
\_\_\_\_\_  
Susan Adams

District of Columbia: SS  
Subscribed and Sworn to before me  
this 21 day of December, 2011

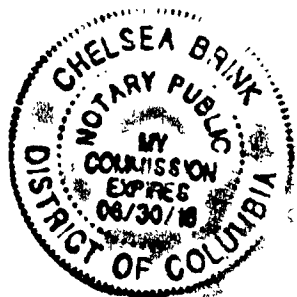
  
\_\_\_\_\_  
Notary Public, D.C.  
My commission expires 6/30/2016



FOR: R-miscellaneous  
REF: 1:11-CV-01741-JDB

ORIGINAL AFFIDAVIT OF  
SERVICE

Tracking #: 7061114 SEA



IN THE UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

HARD DRIVE PRODUCTIONS, INC

Plaintiff/Petitioner

vs.  
DOES 1-1,495

Defendant/Respondent

Hearing Date:

CASE NO:  
1:11-CV-01741-JDB

AFFIDAVIT OF SERVICE OF:  
DECLARATION OF MOVANT; MOTION OF  
NONPARTY TO QUASH AND VACATE  
SUBPOENA OR IN THE ALTERNATIVE, TO  
SEVER, COMBINED WITH POINTS AND  
AUTHORITIES

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

**REGULAR MAILING**

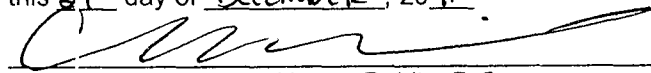
On the date of December 21, 2011, affiant then deposited in the United States mail, in the county where the property is situated, the above described documents with proper postage to:

STELLE HANSMELER PLLC  
161 N CLARK Street SUITE 3200  
CHICAGO, IL 60601

DATED this 21 day of December, 20 11.

  
\_\_\_\_\_  
Susan Adams

District of Columbia: SS  
Subscribed and Sworn to before me  
this 21 day of December, 20 11.

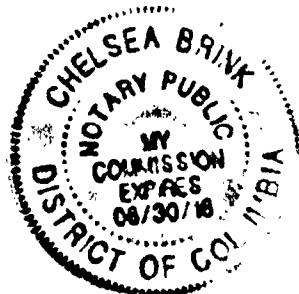
  
\_\_\_\_\_  
Notary Public, D.C.  
My commission expires 6/30/2016



FOR: R-miscellaneous  
REF: 1:11-CV-01741-JDB

ORIGINAL AFFIDAVIT OF  
SERVICE

Tracking #: 7061115 SEA



Movant I.P. 67.181.43.116  
Michelle Murphy  
8309 Terrace Drive  
Stockton, CA 95212  
209.609.8063  
[michelle\\_murphy76@yahoo.com](mailto:michelle_murphy76@yahoo.com)

January 25, 2012

The Honorable John M. Facciola  
U.S. Magistrate Judge  
U.S. District Court  
333 Constitution Avenue, N.W., Room 2321  
Washington, D.C. 20001

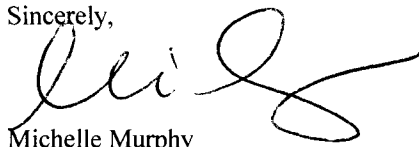
Re: *Hard Drive Productions, Inc. v. Does 1-1,1495*  
United States District Court for the District of Columbia  
Docket No.: 1:11-cv-01741-JDB

Honorable John M. Facciola,

1. Pursuant to the Court Order dated December 21, 2012 in the above-referenced matter, I have enclosed the required form in Response to the Court's Order indicating that I do want my motion to quash to be considered by the Court.
2. Pursuant to the Court Order a re-filed Motion to Quash the subpoena, vacate the subpoena, or in the alternative to sever was filed with the U.S. District Court in Washington D.C. on December 21, 2011. A copy of the first page of that Motion with appropriate time date stamp from the Court is enclosed.

I trust this resolves any questions. If the Court has any further concerns please contact me immediately.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michelle Murphy', written in a cursive style.

Michelle Murphy