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June 1, 2010

Hon. David R. Homer
U.S. Magistrate Judge
Room 441
James T. Foley U.S. Courthouse
Albany, New York 12207

Dear Judge Homer:

This letter is in response to Plaintiff's Memorandum of Law in Support of Emergency Motion for a Protective Order ("Protective Order") which was submitted to the Court on May 31, 2010 at 7:37 p.m.

Pursuant to Court's Order issued May 25, 2010 following a Conference at which both the Plaintiff and Relief Defendant were present, and at which Paragraph 11 of Ms. Mehraban's declaration was cited by the Relief Defendant as an example where Ms. Mehraban has made under penalty of perjury an unsubstantiated allegation of fact supposedly within her personal knowledge, it was Ordered that:

Lynn Smith's request for an order compelling SEC to produce Mehraban for oral deposition on June 1, 2010 is **GRANTED** to the extent that Lynn Smith may depose Mehraban concerning the results of Mehraban's interviews **such as** that reported above to the extent disclosed in Mehraban's declaration ("such as" emphasis added).

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In its "First" argument in its Protective Order request, Plaintiff endeavors to unilaterally narrow the Order and declare that "the only permissible questions are those pertaining to the investor interviews referenced in paragraph 11 of Ms. Mehraban's declaration." Plaintiff's strained reading of the Order clearly disregards the Court's "such as" reference, as cited above, which refers to paragraph 11 as an example of the

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types of allegations set forth in Ms. Mehraban's declaration that are legitimate areas for the deposition.

In its "Second" argument in its Protective Order request, Plaintiff once again endeavors to unilaterally narrow the Order to paragraph 11 by taking the Order's words completely out of context by improperly stating that "[a]s for the rest of the declaration the Order finds that 'the records themselves are available' and therefore 'not properly the subject of a deposition.'" To be clear, the full paragraph of the Order cited by the Plaintiff fully states:

The SEC objects to the deposition of Mehraban on various grounds including that her testimony is protected by the attorney-client privilege and work product doctrine. The SEC is scheduled to take the deposition of Lynn Smith prior to the hearing on the motion for a preliminary injunction. It appears to the Court that any claim of attorney-client privilege, work product doctrine, or other such protection such as any law enforcement privilege has been waived to the extent that it is reported in Mehraban's declaration and relied upon by the SEC. To that extent, therefore, Lynn Smith is entitled to depose Mehraban. However, statements in the declaration merely summarizing the contents of reports, documents, and other records are not properly the subject of a deposition of Mehraban where the records themselves are available.

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In its "Third" argument in its Protective Order request, Plaintiff attempts to preemptively object to possible lines of questioning that may or may not occur during the Relief Defendant's deposition of Ms. Mehraban. Such anticipatory objections by the Plaintiff are highly irregular and are not supported in the FRCP. Moreover, the Plaintiff maintains all protections set forth in the FRCP concerning depositions, including the provisions of FRCP 30(c).

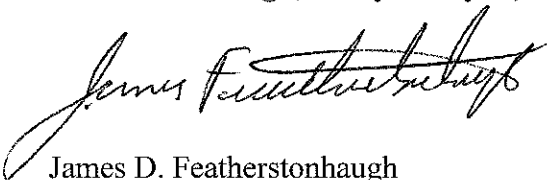
As the Relief Defendant has stated all along, it has no intention of exceeding the scope of the Order and its deposition of Ms. Mehraban will be limited and not extensive. In the event the Plaintiff and the Relief Defendant disagree on the grounds of an objection during the deposition of Ms. Mehraban, the Relief Defendant will submit the deposition transcript to the Court for a determination on the matter. However, Plaintiff's anticipatory objections to hypothetical questions prior to the taking of the deposition of Ms. Mehraban are unsupported and only serve to prejudice the Relief Defendant.

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It is respectfully requested that the Court deny Plaintiff's request for an emergency motion for a protective order.

Very Truly Yours,

Featherstonhaugh, Wiley & Clyne, LLP



James D. Featherstonhaugh

JDF:cr

cc: David Stoelting
Michael Koenig