

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-23507-GOLD/MCALILEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Kirkland Young, LLC, a limited liability
company, Attorney Aid, LLC, a limited
liability company, David Botton, April
Botton Krawiecki and Samy Botton,

Defendants.

**RECEIVER'S SECOND REPORT AND FIRST INTERIM
APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES**

Mark F. Raymond, Court-appointed Receiver ("Receiver") for Defendants Kirkland Young, LLC, Attorney Aid, LLC and ABK Consultants, Inc. (collectively, the "Receivership Entities"), by and through undersigned counsel, hereby submits his Second Report to the Court along with his First Interim Application for Allowance of Fees and Expenses for the Receiver, his counsel, Broad and Cassel and forensic accountants Sharpton, Brunson & Company, P.A. ("Sharpton Brunson").

INTRODUCTION

On November 19, 2009, the Federal Trade Commission ("FTC") initiated Civil Action No.: 09-23507 styled *Federal Trade Commission v. Kirkland Young LLC and David Botton*. On that same day, the Court issued an Order to Show Cause and *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief ("TRO") [DE 19] pursuant to which Mark F. Raymond was named Receiver.

BROAD and CASSEL

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The Receiver filed his First Interim Report on November 19, 2009 [DE 38] and a Supplemental Report Concerning Business Conditions of Kirkland Young, LLC and its Affiliated Entities was filed on December 18, 2009 [DE 75]. Those reports described the Receiver's preliminary findings regarding the Receivership Entities' prior business activities, his efforts to locate and bring additional assets into the Receivership Estate, and his plan for continuing to assist former customers of Kirkland Young to obtain mortgage modifications. To avoid the expense inherent in the preparation of interim reports, the Receiver has delayed filing another report until now, when he has significant developments to report and significant action to recommend.

RECEIVERSHIP ACTIVITIES

(DECEMBER 18, 2009 TO APRIL 30, 2010)

Since his appointment on November 19, 2009, the Receiver has taken a number of steps to fulfill his mandates under the Court's TRO. Respecting additional efforts of the Receiver, please refer to the prior Interim Reports.

I. Receivership Investigation

During this reporting period, the Receiver has reviewed voluminous records from the office of the Receivership Entities, including information stored on the Receivership Entities' computer networks, documents obtained from financial institutions and other third parties, including lawyers and others who assisted the Receivership Entities businesses with their transactions. In addition, since the filing of his previous reports, the Receiver and his professionals have had discussions--including continuing discussions--with a number of people associated with the Receivership Entities, including officers of some of the Receivership Entities, persons responsible for maintaining the

financial books of Receivership Entities, persons responsible for operating the business of Receivership Entities, persons responsible for performing accounting services, and persons who had business relationships with the Receivership Entities.

The Receiver has formed conclusions based on his investigation and review of these materials. These conclusions confirm the Receiver's findings that were previously set forth in his First Interim Verified Report [DE 38]. While these conclusions may change as his review continues, the Receiver does not believe any changes would be material.

II. Financial Overview of Receivership Estate

The Receiver and his staff have maintained an accurate accounting of all assets and expenditures related to Receivership operations. A copy of this accounting as of April 30, 2010 is attached as Exhibit 1. As of the April 30, 2010, there is a total of \$2,862,288 in bank accounts established by the Receiver, net of all administrative expenses paid to date. As of April 30, 2010, the Receivership's combined operating accounts balance was \$538,452.61.¹ The balance of the Receivership funds \$2,089,159, which consists of monies deposited by Kirkland Young's customers into escrow/trust accounts, remains in sub-accounts identified by their previous escrow holder, including Michael Botton, P.A., RMG Law PLLC and Brian Rokaw, P.A.

As set forth in Exhibit 1, receipts and disbursements of the Receivership Estate through April 30, 2010, include cash receipts of \$2,862,288 and cash disbursements of \$202,193. For the time covered by this Report, from November 19, 2009, through April 30, 2010, the Receiver generated \$211,201 in back-end fees associated with assisting

¹ As set forth in Exhibit 1, there is approximately \$32,483.00 in deposits in the operating accounts that remain unclassified at this time. These funds may constitute escrow deposits. Therefore, in an abundance of caution, the Receiver is treating those funds as such pending further investigation.

former customers of Kirkland Young obtain loan modifications, pursuant to the terms of the customers' contracts with Kirkland Young. *See Ex. 1.*

III. Business Operations of Kirkland Young

A. Assistance to Former Customers of Kirkland Young

Since the inception of the Receivership, the Receiver, his counsel, and his staff of five former Kirkland Young employees (senior loan processors) have worked with former customers of Kirkland Young, Attorney Aid, LLC, as well as the three law firms that previously worked with Kirkland Young and Attorney Aid, that signed contracts with these entities prior to entry of the Court's TRO to assist them with their mortgage modifications (the "active" customers). This work has included extensive daily interactions with customers and their financial institutions to avoid foreclosures, obtain delays or forbearances, and in many instances, obtain mortgage modifications. These former active customers of Kirkland Young deposited in excess of \$2 million into sub-accounts with Kirkland Young with the expectation that those funds would be segregated and utilized to help secure mortgage modifications and avoid their facing foreclosures.

From November 19, 2009 through April 30, 2010, the Receiver has successfully facilitated the modification of 123 mortgage loans. None of these loans pertain to any Florida residents. The Receiver has not collected any upfront fees from any of these customers. However, pursuant to the terms of the customers' contracts with Kirkland Young, the Receivership Estate would be entitled to collect approximately \$211,201 in fees for obtaining these mortgage modifications, should the Court permit the Receivership to do so.²

² Notably, as of April 30, 2010, there were 186 files in the "modification in review" processing stage. That means that the Receiver, his counsel and his staff have provided the customers' lending institutions with all

A substantial portion of these fees were previously collected in advance by Kirkland Young prior the entry of the Court's TRO. These funds remain in segregated accounts under the control of the Receiver. The fees the Receivership Estate would be entitled to collect as a result of obtaining these mortgage modifications, as provided in the customers' contracts could then be used to pay the Receivership's operating expenses associated with carrying out these services. The remainder of the fees that are ultimately generated through the Receiver's efforts should be earmarked for eventual distribution to those customers who suffered harm and legitimate verifiable losses as a result of Kirkland Young's pre-receivership activities, as has been alleged by the FTC.

B. The OAG's Demand To Shut Down Kirkland Young

On December 19, 2009, the Office of the Attorney General, Department of Legal Affairs, State of Florida ("OAG") initiated an action styled *Office of the Attorney General, Department of Legal Affairs, State of Florida v. Kirkland Young, LLC, et. al.*, Case No.: 09-90945 CA 03 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The named-defendants in that lawsuit include Kirkland Young, LLC, Attorney Aid, LLC, ABK Consultants, Inc., David Botton, April Botton Krawiecki, Bridgette Grant, Samy Botton, as well as Michael Botton, Ryan Grant and Brian Rokaw. The lawsuit generally alleges that the defendants violated provisions of Florida's Deceptive and Unfair Trade Practices Act in connection with their rendering of loan modification services. The Receiver continues to cooperate with the OAG's

of the final documents required by the lender to determine whether a modification is appropriate. In addition, there are approximately 205 active customer files that are in the processing stage prior to reaching the "modification in review" stage. In those instances, the lender has requested additional documentation and information from the customers. If the Court permits the Receiver to continue servicing these files and the loans are modified (and the terms are accepted by the customer) that the Receivership Estate would be entitled to collect close to \$800,000 in fees as provided in its customers contracts.

investigation in this matter and continues discussions relating to a potential settlement of that matter, subject to this Court's approval.

Last week, after nearly six months of working to assist Kirkland Young's customers (with the OAG's knowledge), the OAG demanded that the Receiver cease providing assistance to victims of Kirkland Young. The OAG maintains that the Receiver is prohibited from assisting Kirkland Young's former customers because Kirkland Young had collected up-front fees from its customers in violation of Florida Statute § 501.1377.

As explained in the Receiver's Emergency Motion for Instructions Concerning the Winding Down of Kirkland Young filed on May 11, 2010 [DE 117], these prior bad acts of Kirkland Young should not be imputed to the Receivership so as to preclude the Receiver from assisting these disadvantaged customers to obtain loan modifications. The assistance provided by the Receivership to these former customers outweighs the potential harm that many of these customers will experience now that the Receiver has ceased these business operations.

III. Forensic Accounting Analysis

The Receiver's forensic accountants have continued to work to unravel the web of financial transactions associated with the Receivership Entities. Substantial progress has been made. Given the volume of transactions in question, and the lack of diligence with which the books were maintained, tracing every dollar is neither possible nor an efficient use of Receivership funds. Based upon these considerations, the Receiver's forensic accountants reviewed the available pre-receivership accounting records for Kirkland Young, and performed a limited reconstruction of these records to create a balance sheet

for the Receivership Entities as of the inception of the receivership, November 19, 2009. They also prepared a preliminary reconciliation of active customer balances as of November 19, 2009 and April 30, 2010. These various statements and summaries are summarized as follows:

Summary of Pre-Receivership Balance Sheet (November 19, 2009)

As of November 19, 2009, Kirkland Young, LLC and its affiliated entities had combined assets, liabilities and equity as follows:

| | |
|---------------------------------------|---------------------|
| Total Assets | \$ 2,362,491 |
| Total Liabilities | \$ 1,949,623 |
| Total Members' Equity | <u>412,867</u> |
| Total Liabilities and Members' Equity | <u>\$ 2,362,491</u> |

Assets were primarily comprised of operating cash and cash held in escrow by Michael Botton, P.A., RMG Law PLLC and Brian Rokaw P.A. (hereinafter "escrow holders"). Liabilities were primarily comprised of the corresponding liability for amounts held in escrow.

The Receiver and his forensic accountants performed a preliminary reconciliation of active Kirkland Young customers (i.e., those customers whose request for a loan modification is currently pending and/or whose funds are currently held in escrow accounts under the control of the Receiver) to the escrow sub-account balances of the trust accounts as of November 19, 2009. Based upon this review, the Receiver notes that a significant number of customers did not have escrow balances. The Receiver has learned that Kirkland Young did not require its customers who were current on their mortgage payments to make monthly deposits into an escrow account.

Similarly, there are a significant number of escrow sub-account balances that did not pertain to active customers. The Receiver has determined that, in those instances, the

funds belonged to customers that had canceled their contracts with Kirkland Young or whose contracts had been canceled by Kirkland Young, and should have received a refund of their escrow payments prior to entry of the Court's TRO.

Summary of Post-Receivership Financial Status (Inception through March 31, 2010)

To date, the Receiver has recovered \$2,862,288 from various sources, including \$2,225,193 in transfers from accounts owned or controlled by the Receivership, and \$217,945 in Kirkland funds that were improperly transferred to Joyce Botton, David Botton's mother. As of April 30, 2010, the Receiver has disbursed a total of \$127,645 to administer the Receivership Estate. These operating expenses were primarily comprised of payroll for the Receivership's five loan processors, office rent and telephone and internet/computer related expenses. No payments were made for legal or forensic accounting services associated with administration of the Receivership. The combined balance sheet of the Receivership Estate includes assets, liabilities and equity as follows:

| | |
|----------------------------------|---------------------|
| Total Assets | <u>\$ 2,871,296</u> |
| Total Liabilities | \$ 2,367,728 |
| Total Net Assets | <u>503,568</u> |
| Total Liabilities and Net Assets | <u>\$ 2,871,296</u> |

1. Pre-Receivership Balance Sheet:

The combined balance sheet for Kirkland Young, LLC and its related entities as of November 19, 2009 is set forth in Schedule 1 below, and Exhibit 2, respectively, and includes total assets of \$2,362,491, total liabilities of \$1,949,623 and total equity of \$412,867. Exhibit 2 provides information obtained from the books and records maintained at Kirkland Young, LLC, including records for Attorney Aid, LLC and its

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related trust accounts. The combined balance sheet excludes ABK Consultant's assets, liabilities and equity.³

SCHEDULE 1
COMBINED BALANCE SHEET - UNAUDITED
NOVEMBER 19, 2009

| | COMBINED TOTALS |
|--|----------------------------|
| ASSETS | |
| Current Assets | |
| Cash | \$ 343,167 |
| Cash - restricted | 1,976,722 |
| Accounts receivable, net | 1,722 |
| Loans to employees | 1,850 |
| Total current assets | 2,323,461 |
| Non Current Assets | |
| Furniture, fixtures and equipment | 39,030 |
| Total non current assets | 39,030 |
| Total Assets | \$ 2,362,491 |
| LIABILITIES AND MEMBERS' EQUITY | |
| Current Liabilities | |
| Accounts payable and accrued expenses | \$ 2,788 |
| Escrow deposits | 1,946,836 |
| Total Liabilities | \$ 1,949,623 |
| Members' Equity | |
| Members' equity | 647,648 |
| Distribution to members | (234,781) |
| Total Members' Equity | 412,867 |
| Total Liabilities and Members' Equity | \$ 2,362,491 |

2. Assets

(a) Cash and Cash Restricted

The "Cash" identified in Schedule 1 above is comprised of funds formerly located in Kirkland Young LLC's several accounts at Bank of America and an Attorney Aid, LLC account at Citibank. The "Cash – Restricted" identified in Schedule 1 above represents amounts that were held by Michael Botton, P.A., RMG Law PLLC and Brian Rokaw P.A. in Interest on Lawyers' Trust Accounts (IOLTA) (escrow and trust accounts)

³ The Receiver is in the process of obtaining additional records pertaining to ABK Consultants, Inc. and will provide a supplemental report once those records are reviewed.

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on behalf of the Receivership Entities' customers. The alleged purpose of these accounts was as a repository for "good faith" or "payment history" accounts to be used in connection with Kirkland Young's negotiation with lenders on a consumer's behalf and for securing payment of Kirkland Young's back-end fees.

The aggregate escrow amounts received by each escrow holder were held in one IOLTA at Citibank and were segregated by customer using escrow accounting software, Case Expense Tracker (CET), which was used to track the movement of customer funds using ledger cards (sub-accounts). The IOLTA and customer sub-accounts for the escrow holders were initially managed and controlled by Kirkland Young. However, as reported in the Receiver's First Interim Report [DE 38], the responsibility for tracking these funds was subsequently outsourced to April Botton Krawiecki's company, ABK Consultants, Inc. Schedule 2, below, provides a summary of escrow receipts and disbursements for these trust accounts:

SCHEDULE 2
TRUST ACCOUNT RECEIPTS AND DISBURSEMENTS - UNAUDITED
FEBRUARY 19, 2009 - NOVEMBER 19, 2009

| | IOLTA | | | |
|---|---------------------|-------------------|------------------|---------------------|
| | MICHAEL BOTTON | RMG LAW | BRIAN ROKAW | COMBINED TOTALS |
| RECEIPTS | | | | |
| Customers Deposits | \$ 5,272,942 | \$ 540,812 | \$ 105,929 | \$ 5,919,683 |
| Less: | | | | |
| Credits to Clients | (1,571,841) | (24,053) | | (1,595,894) |
| Returned Escrow Funds | (186,329) | (4,099) | (6,190) | (196,618) |
| Total Receipts (Net of Credits and Returned Funds) | 3,514,772 | 512,660 | 99,739 | 4,127,171 |
| DISBURSEMENTS | | | | |
| Attorney Aid, LLC. | (34,629) | (156,329) | (35,734) | (226,693) |
| Kirkland Young, LLC. | (1,594,841) | (19,098) | (32,795) | (1,646,734) |
| Brian Rokaw, P.A. | | | (450) | (450) |
| Michael Botton, Esq. | (169,695) | | | (169,695) |
| RMG Law, PLLC. | | (105,425) | | (105,425) |
| Total Disbursements | (1,799,165) | (280,852) | (68,979) | (2,148,996) |
| Net Adjustments | (2,410) | 258 | 699 | (1,453) |
| Ending Balance | \$ 1,713,198 | \$ 232,066 | \$ 31,458 | \$ 1,976,722 |

(b) Accounts Receivable

Included within the accounts receivable balances as of November 19, 2009 are estimated qualified payments that were paid by Kirkland Young to various customers' lenders. These amounts have been eliminated against amounts previously included in escrow deposits balances to avoid a duplication of assets, liabilities and equity, as seen below:

| | |
|--------------------------------|-----------------|
| Application Fees | \$ 1,722 |
| Refundable Qualifying Payments | 31,686 |
| Elimination Entry | <u>(31,686)</u> |
| Total accounts receivable | <u>\$ 1,722</u> |

(c) Furniture, Fixtures and Equipment

Furniture, fixtures and equipment include the following as of November 19, 2009:

| | |
|----------------------------------|------------------|
| Computers and Computer Equipment | \$ 12,118 |
| Furniture | 26,350 |
| Refrigerator | <u>562</u> |
| Total accounts receivable | <u>\$ 39,030</u> |

3. Liabilities**(a) Escrow Deposits**

Escrow deposit balances as of November 19, 2009, have been adjusted by the "refundable qualifying payment" amounts included in accounts receivable (as noted in Kirkland Young's books and records) to avoid a duplication of assets, liabilities and equity as follows:

| | |
|-----------------------|---------------------|
| Cash – Restricted | \$ 1,976,722 |
| Elimination Entry | <u>(29,886)</u> |
| Total escrow deposits | <u>\$ 1,946,836</u> |

The escrow deposit balances represent the corresponding liability for restricted cash balances held in trust accounts by Michael Botton, P.A., RMG Law PLLC and Brian Rokaw, P.A. and are comprised of the following components:

- Customer deposits for qualifying payments to be made to lenders;
- Customer deposits to be returned to customers;
- Back-end fees due to Kirkland Young (contingent);
- Escrow account maintenance and other fees “earned” by ABK Consultants pursuant to its agreement with its affiliate Receivership Entities; and
- Retainer/submission fees “earned” by the escrow holders pursuant to their retainer agreements with customers.

As of November 19, 2009, there were 985 active customer sub-accounts used to account for restricted cash balances. There were 968 customer sub-accounts with balances ranging from (\$1,700) to \$31,374; and the remaining 17 sub-accounts were non-customer sub-accounts used to record transfers from customer sub-accounts and to make disbursements to the Receivership Entities and their respective escrow holder.

Schedule 3 below provides a summary of customer and non-customer sub-account balances as of November 19, 2009.

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SCHEDULE 3
SUMMARY OF IOLTA SUB-ACCOUNT BALANCES - UNAUDITED
NOVEMBER 19, 2009

| # OF SUB-ACCOUNTS | SUB-ACCOUNT | MICHAEL BOTTON | RMG LAW | BRIAN ROKAW | COMBINED TOTALS |
|-------------------|--|---------------------|-------------------|------------------|---------------------|
| 968 | Customer Sub-accounts | \$ 1,666,038 | \$ 214,741 | \$ 25,508 | \$ 1,906,287 |
| | Attorney Aid - Processing | | (1,348) | | (1,348) |
| | Attorney Aid - Submissions | 1,388 | | 1,872 | 3,260 |
| | Fee Collection | 29,347 | 15,257 | 1,559 | 46,163 |
| | Kirkland Young - Services Payment | 9,293 | 1,208 | | 10,501 |
| | Kirkland Young - Qualifying Pymt | 5,183 | | | 5,183 |
| | Payment Plan | 1,674 | 682 | | 2,356 |
| | Brian Rokaw - Income Submissions | | | 2,519 | 2,519 |
| | Michael Botton - Income Closings | 80 | | | 80 |
| | Michael Botton - Income Submissions | 195 | | | 195 |
| | RMG Law - Income Retainers | | (25) | | (25) |
| | RMG Law - Income Submissions | | 2,250 | | 2,250 |
| | RMG Law - Submission Payments | | (699) | | (699) |
| 17 | Subtotal - Noncustomer Sub-accounts | 47,159 | 17,325 | 5,950 | 70,434 |
| 985 | TOTAL ESCROW ACCOUNT ACTIVITY | \$ 1,713,198 | \$ 232,066 | \$ 31,458 | \$ 1,976,722 |

4. Members' Equity

Members' equity balances represent the residual interest in the assets that remain after deducting total liabilities. Members' equity is further reduced by owner distributions. Member's equity balances as of November 19, 2009, are comprised of the following cumulative net income amounts after reductions for distributions to owners:

Cumulative Net Earnings:

| | |
|---------------------------------------|----------------|
| 2007 Net Income – Kirkland Young, LLC | \$ 1,324 |
| 2008 Net Income – Kirkland Young, LLC | 56,531 |
| 2009 Net Income – Kirkland Young, LLC | 349,849 |
| 2009 Net Income – Attorney Aid | <u>275,044</u> |
| Total cumulative net income | <u>682,748</u> |

Cumulative Distributions:⁴

⁴ Distributions to owners reflect only amounts recorded in the equity section of the balance sheet located at Kirkland Young, and do not include other owner-related disbursements accounted for elsewhere in Kirkland Young's books and records.

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| | |
|---|-------------------|
| ABK Consultants, Inc. | (19,491) |
| April Botton Krawiecki | (74,000) |
| Bridget Botton | (14,000) |
| David Botton | (60,000) |
| Samy Botton | (100) |
| Unclassified Distributions ⁵ | <u>(102,290)</u> |
| Total distributions to members | (269,881) |
| | |
| Total Members' Equity | <u>\$ 412,867</u> |

5. Active Customer Reconciliation

The Receiver and his forensic accountants conducted a preliminary review of the financial status of the trust account balances for all active customers of Kirkland Young as of November 19, 2009. The Receiver's findings are categorized into the following two areas: (1) financial status of trust funds; and (2) reconciliation of active customer accounts.

(a) Financial Status of Trust Funds

As of November 19, 2009, the customer balance in the escrow accounting records for the trust accounts was \$1,906,287. The Receiver and his forensic accountants verified the IOLTA balances on deposit with Citibank were sufficient to cover the trust account balance as of November 19, 2009. The account balances on that date were as follows:

| <u>Escrow Holder</u> | <u>CET Escrow Balance</u> | <u>Bank Balance</u> |
|----------------------|---------------------------|---------------------|
| Michael Botton, Esq. | \$ 1,666,038 | \$ 1,835,039 |
| RMG Law, PLLC. | 214,741 | 272,777 |
| Brian Rokaw, P.A. | <u>25,505</u> | <u>35,515</u> |
| Total Trust Accounts | <u>\$ 1,906,287</u> | <u>\$ 2,143,331</u> |

⁵ Unclassified distributions include cashiers checks, ATM deposits and other withdrawals. The Receiver continues to investigate these amounts so that they may be properly attributed to the appropriate customer.

(b) Reconciliation of Active Customers

To determine whether the customer escrow sub-account balances included in the escrow account records were attributable to active customers as of November 19, 2009, the Receiver and his forensic accountants reconciled a list of active of customers obtained from a report generated from the Salesforce database (SF) to the customers' sub-accounts contained in CET. SF is web-based customer relationship management software utilized by Kirkland Young to track customer activity and to store customer documents online.

The initial SF report included 1,564 active customers (leads). Of the 1,564 active customers, 43 were customers that were repeated in the report leaving a total of 1,521 active customers. The 968 sub-accounts used to track the movement of customer funds in CET included 39 customers with two sub-accounts. (Generally, the second sub-account, if applicable, was used to account for retainers and submission fees that have been deposited into the trust account). The summary and detail results of the reconciliation are provided in Schedule 4 below and Exhibit 3 attached hereto.

The reconciliation shows that most active customers (approximately 859 or 56%) did not have customer sub-accounts. Similarly, the trust accounts contain \$576,626 in customer sub-account balances for customers that were not active and that needed to be refunded. The Receiver and his forensic accountants are currently investigating these differences and will present their findings in the next report.

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SCHEDULE 4
ACTIVE CUSTOMER RECONCILIATION SUMMARY
NOVEMBER 19, 2009

| | TOTAL |
|---|---------------------|
| SALESFORCE | |
| Active Leads Per Salesforce Report | 1,564 |
| Less: | |
| Adjustment for Customers with two leads | (42) |
| Adjustment for Customers with leads on two reports | (1) |
| Total Active Customers Per Salesforce | 1,521 |
| Active Customer Count Recap: | |
| Number of Customers with IOLTA Ending Balance | 662 |
| Number of Active Customers Excluded from CET | 859 |
| Total | 1,521 |
| Active Customer IOLTA Balance Recap: | |
| Customers with IOLTA Ending Balance | \$ 1,329,661 |
| Active Customers Excluded from CET | - |
| Total | \$ 1,329,661 |
| IOLTA | |
| Number of Customer Sub-Accounts | 968 |
| Less: | |
| Adjustment for Customers with two sub-accounts | (39) |
| Total Customers with IOLTA Sub-Accounts Per CET | 929 |
| IOLTA Customer Count Recap: | |
| Number of Customers Included in Salesforce with Active Status | 662 |
| Number of Customers Excluded from Salesforce Active Status | 267 |
| Total | 929 |
| IOLTA Balance Recap: | |
| Customers Included in Salesforce with Active Status | \$ 1,329,661 |
| Customers Excluded from Salesforce Active Status | \$ 576,626 |
| Total | \$ 1,906,287 |

IV. Additional Relevant Activities

A. Kirkland Young's Office

Kirkland Young continues to have a leasehold interest in 2915 Biscayne Boulevard in Miami, Florida. During this reporting period, the Receiver successfully renegotiated the terms of Kirkland Young's office lease reducing Kirkland Young's monthly rent by 50% from \$10,975 to \$5,487.50. The Receiver also downsized the Receivership by moving Kirkland Young's operations to a smaller office within the same building. In conjunction with this relocation, the Receiver inventoried all documents and electronic evidence. The Receiver retained all of Kirkland Young's computer servers,

hard-drives and numerous pieces of computer equipment for forensic purposes. The Receiver also re-assembled several work-stations from existing office furniture to administer the Receivership and to provide a no-frills location with ready access for the inspection and copying of evidence by state and federal law-enforcement personnel, attorneys for customers and third parties (entitled to such access pursuant to the Court's TRO), as well as the Receiver's forensic accountants and legal counsel.

B. Associated Legal Actions

1. The Ohio Office of the Attorney General

On November 23, 2009, the Attorney General of Ohio initiated an action styled *State of Ohio v. Kirkland Young, LLC*, Case No.: 09CVH11-17495 in the Court of Common Pleas, Franklin County, Ohio. The Complaint alleges various counts against Kirkland Young for violating Ohio's Telephone Solicitation Sales Act (R.C. 4719.01), Consumer Sales Practices Act (R.C. 1345.01) and Debt Adjuster's Act (R.C. 4710.01) in connection with the company's loan modification services. The Receiver is presently investigating these allegations and has been in frequent communication with the Ohio Office of the Attorney General to discuss a possible resolution of this matter, subject to this Court's final approval.

2. Former Customer of Kirkland Young

On January 20, 2010, a former customer of Kirkland Young, Sean O'Connor filed a small claims complaint in Monmouth County, New Jersey (Case No.: SC 284-10) against Kirkland Young seeking a refund of his escrow deposit monies. The Receiver was unable to reach Mr. O'Connor prior to the deadline for responding to the Complaint to advise him of the Court's TRO provision that prohibits the filing of lawsuits against

the Receivership Estate. The Receiver provided the small claims Court with a copy of this Court's TRO and the Court dismissed the lawsuit. The Court referred Mr. O'Connor to seek relief through the Receivership Estate's claims process.

C. Implementation of Claims Process

On May 5, 2010, the Receiver filed a Motion for Authorization to Distribute Proofs of Claim and to Establish a Claims Bar Date [DE 114]. That motion will initiate a claims process primarily for the benefit of the Receivership Entities' customers and creditors who have suffered legitimate and verifiable losses as a result of the activities of Kirkland Young and others. The motion seeks the Court's approval of: (1) a procedure to administer claims and a proof of claim form; and (2) a deadline for the filing of proofs of claim. If the motion is approved, the Receiver will mail or e-mail proof of claim forms to all known customers of Kirkland Young to their last known address within 30 days of the order granting the motion. After receipt of the Court's approval, documents relating to the claims process, including the motion, proof of claim form and notice will be posted on the Receiver's website, www.kirklandreceiver.com.

The Receiver's forensic accountants will assist the Receiver in this process, including the analysis of the claim forms. As part of the claims process, the Receiver and his forensic accountants will compare the data submitted by customers and creditors with the available records of the Receivership entities with whom they did business to confirm the completeness and accuracy of the claims.

On May 10, 2010, the FTC filed its Response in Opposition to the Receiver's Motion [DE 115]. The Receiver's Reply is due on May 20, 2010.

V. The Next Sixty Days

The Receiver has four primary objectives for the next phase of the Receivership: (1) continue assisting victims as directed by the Court; (2) analyze and validate the claims submitted by customers and creditors; (3) recommend a plan of distribution; and (4) continue analyzing the activities of the Receivership entities.

A. Continue Assisting Victims

At the request of the FTC and OAG, the Receiver has stopped assisting victims of Kirkland Young to obtain their mortgage modifications. Accordingly, the Receiver has sought instructions from the Court whether he may resume these activities. In the event the Court directs the Receiver to cease these activities, the Receiver will implement a procedure to contact nearly 1600 customers and to provide them with the necessary information so they can, hopefully, take steps to seek modifications on their own.

B. Analyze Claims

To enable the Receiver to recommend a distribution, claim forms will need to be analyzed for completeness and accuracy. The Receiver and his forensic accountants will review the claims forms for completeness and accuracy to ensure that claimants provided all of the necessary supporting documentation to confirm the amount of monies paid to and received from the Receivership Entities. Next, working with records from the Receivership Entities and other sources, the Receiver and his forensic accountants will attempt to reconcile those records with the information provided by each of the Claimants.

In order to recommend an equitable distribution of the estate's assets, the Receiver needs a complete understanding of the business activities of the Receivership Entities and the degree to which, if at all, they commingled assets. For example, if one of the entities engaged in actual business activities and did not commingle assets with the other entities, it may be appropriate to recommend the distribution of that company's assets to the customers and creditors of that company. On the other hand, if there was substantial commingling of assets among all of the entities, it may be appropriate to recommend pooling of the assets of all of the entities and distributing the assets of all of the entities pro rata to all of the customers. Depending on the facts discovered, other recommendations may be appropriate.

The FTC and other third parties have asked the Court to implement a pro-rata distribution process which would require the Receiver to invade the active customers' segregated accounts for distribution to other customers who may have only paid a small upfront fee and no monthly escrow payments, and did not receive a loan modification or other services from Kirkland Young (i.e., pool the assets). One of the immediate dangers in that approach is that active customers with identifiable escrow funds who may otherwise qualify for a loan modification may be further harmed by not having access to those funds for purposes of obtaining a loan modification.

C. Propose a plan of distribution

Based on the outcome of the foregoing activities, the Receiver will recommend a plan of distribution to the Court. The recommendation will take into account whether the Receivership entities should be treated separately or on a consolidated basis, and whether all claimants are entitled to participate in the distribution. Given the volume of analysis

that must occur prior to making an informed recommendation, the Receiver anticipates making a recommendation in the fourth quarter of 2010, assuming the prior approval and implementation of a claims process.

D. Continue Analysis of Receivership Entities

The Receiver has received useful information from customers and third parties during the course of the Receivership. The Receiver would like to thank those parties for their efforts. For anyone who may have information that they believe would be of use to the Receivership, the Receiver encourages those parties to provide that information to him.

The Receiver has received most but not all of the documents he has subpoenaed from third parties. It will be necessary to obtain and review all such documents in order to complete an understanding of the flow of funds through the Receivership Entities, to identify any additional sources of recovery, and to prepare a final accounting. The Receiver is working diligently on this task, but without knowing the full volume of documents he expects to receive, it is difficult to estimate the time needed for completion.

The Receiver will continue to attempt to locate additional funds and other assets and, if appropriate, will institute proceedings to recover assets on behalf of the Receivership Entities. In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews and/or depositions of parties and third parties with knowledge.

SUMMARY OF PROFESSIONAL SERVICES RENDERED

The professional services rendered by the Receiver, Broad and Cassel, and Sharpton Brunson, and the necessary and reasonable out-of-pocket costs associated with those services, are set forth and described in detail on Exhibits 4 and 5. The attached records convey information for the time period of November 19, 2009 through March 31, 2010, and include: (a) the number of hours worked by each attorney and staff member on a particular day; (b) the manner and type of work performed by each attorney and staff member; and (c) the discounted billing rate for each person rendering services in this matter. The attached records have been prepared based upon the contemporaneous daily time records maintained by the professionals rendering the services.

The Receiver views his role as primarily providing a public service to customers and assisting law enforcement, as appropriate, in their investigation and prosecution of those responsible in this matter. The Receiver and his counsel have already discounted their hourly rates considerably in this matter. It warrants noting that the Receiver and his counsel attend to the Receivership's affairs, including operating the Receivership, winding down the affairs of Kirkland Young, responding to frequent inquiries from customers, their counsel and others, resolving personnel issues for former Kirkland Young staff and employees, and overseeing and interacting with the forensic accountants, on a daily basis. The Receiver and his counsel routinely perform and will continue to perform much of this work (including much of the drafting of the instant report) without charging or even recording the time spent.

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Receiver's counsel and his forensic accountants have applied only for reimbursement for those actual and necessary out-of-pocket expenses, such as subpoena charges, photocopy charges, fax charges, delivery charges, and various expenses in connection with this matter. All such expense items would typically be billed by a law firm and accounting firm to their clients. All in-house costs have been substantially discounted if not written off entirely.

**SUMMARY OF INVOICES FOR SERVICES
PROVIDED TO THE RECEIVERSHIP⁶**

(NEXT PAGE)

⁶ The detailed invoices supporting all services by the Receiver and his counsel are attached as Exhibits hereto. Those invoices have been redacted in certain places to avoid disclosure of attorney-client and work-product privileged materials, customer names and other information deemed confidential as to third-parties for litigation purposes.

Summary for Broad and Cassel**November 2009**

The following is an aggregate tabular summary of fees and expenses for the Receiver and the Receiver's counsel, Broad and Cassel, who presently handles the receivership day-to-day matters under the Receiver's supervision for the month of November, 2009:

| Attorney | Number of Hours | Billed Amount |
|--|------------------------|----------------------|
| Mark F. Raymond, Receiver | 59.30 | \$20,162.00 |
| David B. Rosemberg | 59.00 | \$14,160.00 |
| Thomas J. Rebull | 8.20 | \$1,968.00 |
| Jeffrey R. Geldens | 34.70 | \$8,328.00 |
| Paralegal | | |
| Patricia Anzalone | 0.30 | \$49.50 |
| Gisela Fasco | 21.40 | \$3,531.00 |
| Eugene Perez | 10.00 | \$1,250.00 |
| Junelle Rodriguez | 9.40 | \$1,551.00 |
| Subtotal Fees of Receiver, Receiver's Counsel and Paralegals: | | \$50,999.50 |
| Total Expenses of Receiver and Receiver's Counsel: | | \$688.90 |

**Total Fees and Expenses
for Receiver, Receiver's
Counsel and Paralegals:**

\$51,688.40

Summary for Broad and Cassel**December 2009**

The following is an aggregate tabular summary of fees and expenses for the Receiver and the Receiver's counsel, Broad and Cassel, who presently handles the receivership day-to-day matters under the Receiver's supervision for the month of December, 2009:

| Attorney | Number of Hours | Bill Amount |
|--|------------------------|--------------------|
| Mark F. Raymond, Receiver | 49.80 | \$16,932.00 |
| Rhett Traband, P.A. | 1.10 | \$319.00 |
| David B. Rosemberg | 112.00 | \$26,880.00 |
| Miriam Alfonso de Oliveira | 0.70 | \$168.00 |
| Jeffrey R. Geldens | 9.80 | \$2,352.00 |
| Zachary Scott | 3.80 | \$665.00 |
| Damian Stutz | 5.30 | \$927.50 |
| Paralegal | | |
| Gisela Fasco | 145.00 | \$23,925.00 |
| Eugene Perez | 2.50 | \$312.50 |
| Junelle Rodriguez | 34.30 | \$5,659.50 |
| Subtotal Fees of Receiver, Receiver's Counsel and Paralegals: | | \$78,140.50 |
| Total Expenses of Receiver and Receiver's Counsel: | | \$1,490.87 |

**Total Fees and Expenses
for Receiver, Receiver's
Counsel and Paralegals:**

\$79,631.37

Summary for Broad and Cassel**January 2010**

The following is an aggregate tabular summary of fees and expenses for the Receiver and the Receiver's counsel, Broad and Cassel, who presently handles the receivership day-to-day matters under the Receiver's supervision for the month of January, 2010:

| <u>Attorney</u> | <u>Number of Hours</u> | <u>Bill Amount</u> |
|--|-------------------------------|---------------------------|
| Mark F. Raymond, Receiver | 11.40 | \$3,876.00 |
| David B. Rosemberg | 43.70 | \$10,488.00 |
| <u>Paralegal</u> | | |
| Gisela Fasco | 49.50 | \$8,167.50 |
| Junelle Rodriguez | 47.80 | \$7,887.00 |
| Subtotal Fees of Receiver, Receiver's Counsel and Paralegals: | | \$30,418.50 |
| Total Expenses of Receiver and Receiver's Counsel: | | \$354.21 |

**Total Fees and Expenses
for Receiver, Receiver's
Counsel and Paralegals:**

\$30,772.71

Summary for Broad and Cassel**February 2010**

The following is an aggregate tabular summary of fees and expenses for the Receiver and the Receiver's counsel, Broad and Cassel, who presently handles the receivership day-to-day matters under the Receiver's supervision for the month of February, 2010:

| <u>Attorney</u> | <u>Number of Hours</u> | <u>Bill Amount</u> |
|--|-------------------------------|---------------------------|
| Mark F. Raymond, Receiver | 3.90 | \$1,326.00 |
| David B. Rosemberg | 33.40 | \$8,016.00 |
| <u>Paralegal</u> | | |
| Gisela Fasco | 33.70 | \$5,560.50 |
| Junelle Rodriguez | 27.60 | \$4,554.00 |
| Subtotal Fees of Receiver, Receiver's Counsel and Paralegals: | | \$19,456.50 |
| Total Expenses of Receiver and Receiver's Counsel: | | \$422.69 |

**Total Fees and Expenses
for Receiver, Receiver's
Counsel and Paralegals:**

\$19,879.19

Summary for Broad and Cassel**March 2010**

The following is an aggregate tabular summary of fees and expenses for the Receiver and the Receiver's counsel, Broad and Cassel, who presently handles the receivership day-to-day matters under the Receiver's supervision for the month of March, 2010:

| <u>Attorney</u> | <u>Number of Hours</u> | <u>Bill Amount</u> |
|--|-------------------------------|---------------------------|
| Mark F. Raymond, Receiver | 5.80 | \$1,972.00 |
| David B. Rosenberg | 48.40 | \$11,616.00 |
| <u>Paralegal</u> | | |
| Gisela Fasco | 33.60 | \$5,544.00 |
| Eugene Perez | 3.00 | \$375.00 |
| Junelle Rodriguez | 44.60 | \$7,359.00 |
| Subtotal Fees of Receiver, Receiver's Counsel and Paralegals: | | \$26,866.00 |
| Total Expenses of Receiver and Receiver's Counsel: | | \$806.32 |

**Total Fees and Expenses
for Receiver, Receiver's
Counsel and Paralegals:**

\$27,672.32

Summary for Sharpton, Brunson & Company, P.A.**November 2009**

The following is an aggregate tabular summary of fees and expenses for the Receiver's forensic accountant, Sharpton, Brunson & Company, P.A., for the month of November, 2009:

| Accountants | Number of Hours | Bill Amount |
|---------------------------------------|------------------------|---------------------|
| Darryl K. Sharpton | 24.00 | \$7,800.00 |
| Christle Heller | 7.50 | \$450.00 |
| Subtotal Fees: | | \$8,250.00 |
| Less: Service Value Adjustment | | (\$7,020.00) |
| Total Expenses: | | |

**Total Fees and Expenses for
Receiver's Forensic Accountants: \$1,230.00**

Summary for Sharpton, Brunson & Company, P.A.**January and February 2010**

The following is an aggregate tabular summary of fees and expenses for the Receiver's forensic accountant, Sharpton, Brunson & Company, P.A., for the months of January and February, 2010:

| | <u>Number of Hours</u> | <u>Bill Amount</u> |
|------------------------|-------------------------------|---------------------------|
| Darryl K. Sharpton | 10.00 | \$3,250.00 |
| Leisha Austin | 92.00 | \$18,400.00 |
| Christle Heller | 25.00 | \$1,500.00 |
| Subtotal Fees: | | \$23,150.00 |
| Total Expenses: | | |

**Total Fees and Expenses for
Receiver's Forensic Accountants:**

\$23,150.00

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Summary for Sharpton, Brunson & Company, P.A.**March 2010**

The following is an aggregate tabular summary of fees and expenses for the Receiver's forensic accountant, Sharpton, Brunson & Company, P.A., for the month of March, 2010:

| | <u>Number of Hours</u> | <u>Bill Amount</u> |
|------------------------|------------------------|--------------------|
| Darryl K. Sharpton | 4.00 | \$1,300.00 |
| Leisha Austin | 90.00 | \$18,000.00 |
| Christle Heller | 36.00 | \$2,160.00 |
| Subtotal Fees: | | \$21,460.00 |
| Total Expenses: | | |

**Total Fees and Expenses for
Receiver's Forensic Accountants:**

\$21,460.00

EVALUATION OF SERVICES RENDERED AND EXPENSES INCURRED

The foregoing sets forth the extent of the professional services rendered by the Receiver and his professionals (the “Applicants”) in connection with their request for compensation. The attached Exhibits 4 and 5 details the nature of the professional services rendered and the costs incurred. These recitals, however, constitute only a summary of the time spent and it must be recognized that a mere reading of the time summaries cannot completely reflect the full range of services rendered by the applicants, the complexity of the issues, and the pressures of time and performance which have been placed upon the Applicants in connection with this case.

No understanding exists among the Receiver, his counsel, his forensic accountants or any other person or entity for a sharing of the compensation to be awarded herein except between the Receiver and Broad and Cassel.

APPLICABLE ANALYSIS

In determining fees, a Court must (1) determine the nature and extent of the services rendered; (2) determine the value of the those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974); *see Grant v. George Schumann Tire and Battery Co.*, 908 F.2d 874, 877-878 (11th Cir. 1990)(bankruptcy fee award case addressing the issue of attorney’s fees generally before considering specific requirements in the bankruptcy context). The twelve factors set forth in *Johnson*, which involved an award of attorneys’ fees under the federal civil rights statutes, as incorporated by the Eleventh Circuit in *Grant*, a bankruptcy case, are as follows: (1) the time and labor required; (2) the novelty and

difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

A. Time, Nature and Extent of Service, Results Obtained and Related Factors

The forgoing summary description, together with the time records attached hereto detail the time, nature and extent of the professional services rendered by the Applicants during the approximate six-month period covered by this Application. The Applicants believe that the time spent is justified by the nature, complexity and the pressures of the work, as well as the results that have been achieved thus far.

B. Novelty/Difficulty of the Question Presented

This case required a high level of skill due to the nature of the financial transactions involved, the shoddy records kept by the Defendants, and the opposition encountered by the Applicants.

C. The Skill Requisite To Perform the Service Properly

In order to perform the services and obtain the results required, substantial legal skill and experience in the areas of commercial law, litigation and negotiations were required of the Receiver and his counsel. The Receiver is sensitive to the financial considerations arising in receiverships such as this and is making every effort to control costs.

D. Preclusion of Other Employment by the Attorneys Due to the Acceptance of the Case

Although the Receiver and his professionals were not explicitly precluded as a result of this case from accepting other matters, matters in this case were treated by them in an expeditious and professional manner. Also, various matters in this case required the Applicants to devote considerable time to this case, all to the preclusion of expending time on other active matters.

E. The Customary Fee

The hourly rates of the Applicants set forth on the attached exhibits reflect a rate that is generally lower than (in the case of the Receiver) or equal (for the other professionals) to the hourly rates billed by Applicants to clients in other commercial cases.

Discounts already given:

- In addition, as promised by the Receiver in his original application to the FTC (attached to the FTC's recommendation of a receiver to this Court), the Receiver has already discounted his rates and those of his counsel.
- Further, as described above, as a public service, the Receiver and his counsel routinely do not charge the Receivership for numerous tasks and, as a practice, round their time down to the nearest hour.

F. Whether the Fee is Fixed or Contingent

The compensation of the Applicants in this matter is subject to the approval of this Court, and Applicants have received no compensation for the services rendered to date. The above factors should be taken into consideration by the Court and the

compensation should reflect the assumption of the risk of non-payment and delay in payment.

G. Time Limitation Imposed by the Client or Other Circumstances

This case has imposed serious time limitations on the Applicants due to the necessity of rapid resolutions of many issues. Indeed, the preliminary stages of this case required almost *all* of the available time of the Receiver and his professionals.

H. The Experience, Reputation and Ability of the Attorneys

The Receiver and his counsel enjoy a fine reputation and have substantial ability in the fields of receiverships, litigation and commercial law. The Receiver is acutely aware of the financial considerations arising in receiverships such as this.

I. The “Undesirability” of the Case

This case is not undesirable, and the Applicants have been privileged to appear before the Court in this proceeding and to represent the interests of customers and creditors who were victimized by Kirkland Young’s activities.

J. Nature and Length of Professional Relationship with the Client

The Applicants have had no relationship with the Receivership Entities or any other entities or principals prior to this case.

K. Awards in Similar Cases

The amounts requested by the Applicants are not unreasonable in terms of awards in cases of similar magnitude and complexity. The compensation requested by the Applicants comport with the mandate of applicable law, which directs that services be evaluated in light of comparable services performed in other cases in the community. The hourly rates requested by the Applicants are either lower than or equal to the

ordinary and usual hourly rates billed by the Applicants to their ordinary commercial clients, notwithstanding the risks of non-payment and delayed payment associated with this case.

L. Source of Payment for Amounts Sought Hereunder

The Receiver requests that the amounts for which payment is authorized hereunder be paid from funds presently held, or soon to be received, by the Receiver.

WHEREFORE, the Applicants respectfully request that this Court enter an order, a proposed version of which is attached as Exhibit 6 for the Court's convenience, for authorization of compensation and reimbursement for the period November 19, 2009 through March 31, 2010 to the following:

| | <u>Receiver</u> | <u>Counsel</u> | <u>Expenses</u> | <u>Total By Month</u> |
|--|-----------------|----------------|-----------------|-----------------------|
| Broad and Cassel | | | | |
| November, 2009 | \$20,162.00 | \$30,837.50 | \$688.90 | \$51,688.40 |
| December, 2009 | \$16,932.00 | \$61,208.50 | \$1,490.87 | \$79,631.37 |
| January, 2010 | \$3,876.00 | \$26,542.50 | \$354.21 | \$30,772.71 |
| February, 2010 | \$1,326.00 | \$18,130.50 | \$422.69 | \$19,879.19 |
| March, 2010 | \$1,972.00 | \$24,894.00 | \$806.32 | \$27,672.32 |
| Sharpton, Brunson & Company, P.A. | | | | |
| November 2009 | | \$1,230.00 | | \$1,230.00 |
| Jan./Feb. 2010 | | \$23,150.00 | | \$23,150.00 |
| March, 2010 | | \$21,460.00 | | \$21,460.00 |

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Respectfully submitted,

BROAD AND CASSEL
Attorneys for Receiver,
Mark F. Raymond

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By: /s/ David B. Rosemberg
DAVID B. ROSEMBERG
Florida Bar No.: 0582239

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/ David B. Rosemberg
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