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DEC -4 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

AT GREENBELT
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
COURT REPORT 302

SAGE DINING SERVICES, INC.,
a Delaware corporation
222 Bosley Avenue
Suite B-7
Towson, Baltimore County, MD 21204,

Plaintiff,

v.

MORRISON MANAGEMENT
SPECIALISTS, INC.,
a Georgia corporation
5801 Peachtree Dunwoody Road
Atlanta GA, 30342,

Defendant.

JFM 07 CV 3247
Civil Action No. _____

VERIFIED COMPLAINT AND JURY DEMAND

Plaintiff SAGE Dining Services, Inc. ("SAGE"), a premier provider of food, nutrition, dining, and catering services, brings this verified complaint against defendant Morrison Management Specialists, Inc. ("Morrison"), a competing provider of food, nutrition, dining, and catering services, in regard to the unauthorized and infringing use by Morrison of SAGE's federally registered service marks SPICE OF LIFE®, SAGE®, and SAGE DINING SERVICES®. Although defendant Morrison responded to SAGE's demand to cease infringement of SAGE's marks with a written promise that Morrison would cease and desist from using the marks, Morrison actually has continued its infringing use of SAGE's marks and even expanded that use. Plaintiff SAGE therefore seeks preliminary and

permanent injunctive relief, declaratory relief, and damages for: federal service mark infringement, 15 U.S.C. § 1114; federal unfair competition and false designation of origin, 15 U.S.C. § 1125(a); state service mark infringement; and state common law unfair competition.

For its claims against Morrison, plaintiff SAGE states and alleges the following:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 1114, 1121, and 1125, and 28 U.S.C. §§ 1331, 1338, and 1367.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Parties

3. Plaintiff SAGE is a corporation organized and existing under the laws of Delaware with its principal place of business located at 222 Bosley Avenue, Suite B-7, Towson, Maryland, 21204. SAGE provides food, nutrition, dining, and catering services to businesses and institutions throughout the United States.

4. Upon information and belief, defendant Morrison is a corporation organized and existing under the laws of Georgia with its principal place of business located at 5801 Peachtree Dunwoody Road, Atlanta, Georgia, 30342. Morrison provides food, nutrition, dining, and catering services to businesses and institutions throughout the United States. Upon information and belief, Morrison is a subsidiary of Compass Group USA, Inc., a corporation organized under the laws of Delaware, with its principal place of business located in Charlotte, North Carolina.

Facts Common to All Counts

5. SAGE is a premier provider of food, nutrition, dining, and catering services to businesses and institutions throughout the United States. SAGE, which stands for “Setting a Good Example,” was formed in 1990 to provide services rooted in the values of quality, customer service, honesty, and integrity.

6. SAGE currently services over 150 clients in various locations across the United States and currently is in the process of expanding its operations to the West Coast.

7. SAGE excels at providing food, nutrition, dining, and catering services to various businesses and institutions including private schools, colleges, and corporations. In particular, SAGE provides its services to healthcare providers and institutions that serve populations of retired individuals and is actively working to expand its presence in those industries.

8. SAGE is committed to fostering good health and proper nutrition through The Spice of Life® program, which is provided to all of SAGE’s clients. Under The Spice of Life® program, SAGE’s menus highlight healthy items and offer meatless selections, an extensive salad bar which includes an array of herbs in shakers as an alternative to salt, and fresh fruit; SAGE plans its menus to recognize and promote special nutritional awareness events, such as National Heart Month; SAGE employs staff dieticians and makes them available for consultations with its clients; SAGE’s dieticians are involved in reviewing menus, overseeing specific dietary programs developed for those on physician-restricted diets, and gathering nutritional information for nutritional displays; SAGE also develops and provides its clients with The Spice of Life® printed educational materials featuring information regarding proper nutrition and health.

9. SAGE distinguishes its services from those of its competitors primarily on the basis of quality and trustworthiness. Specifically, SAGE excels at delivering superior customer service; controlling costs for its clients and providing its clients with full access to all financial information pertaining to their accounts; and providing healthy, delicious food, tailored to the needs of its clients.

A. The SAGE Service Marks

10. SAGE has used the service mark THE SPICE OF LIFE® in commerce continuously since as early as 1991 to identify its services. In addition, SAGE has used the service marks SAGE® and SAGE DINING SERVICES® in commerce continuously since as early as 1990 to identify its services. These marks are referred to herein as the “SAGE Marks.”

11. SAGE has invested substantial effort and resources over a significant period of time in developing and promoting public recognition of its services and of the SAGE Marks as distinctly designating services associated with SAGE. SAGE promotes its services, including its The Spice of Life® program, and the SAGE Marks in part by sponsoring conferences, by exhibiting at trade shows, and by direct mail and telephone solicitation. SAGE also has invested significant sums – hundreds of thousands of dollars since 2000 – in promotion by providing free, catered meals to prospective clients at conferences and meetings of organizations such as the National Business Officers Association. In the past, SAGE has placed advertisements in targeted publications and has underwritten a Graduate Certificate in Business Leadership for Independent Schools program at Johns Hopkins University. For the fiscal year ending in June 2007, SAGE spent approximately \$120,000 on marketing and promotional activities, in addition to the amount it spent on marketing and sales-related salaries and commissions. For the prior fiscal year, SAGE spent approximately \$143,000 on marketing and promotional activities,

in addition to the amount it spent on marketing and sales-related salaries and commissions. SAGE focuses its marketing efforts on outreach to decision makers employed by prospective clients – for example, vice presidents of finance, vice presidents of administration, business managers, and individuals who run schools.

12. SAGE's services also have been the subject of dozens of articles in publications around the country. For example, in September 2005, Food Management magazine ranked SAGE among the non-commercial food service industry's fifty largest contract management companies.

13. Since 1999, SAGE has maintained an interactive web site, featuring the SAGE Marks, which is located at the Internet address <http://www.sagedining.com> and is devoted to the promotion of the SAGE Marks and to SAGE's services, including The Spice of Life® program.

14. As a result of SAGE's considerable promotional efforts and the extensive resources it has devoted to marketing and promotion, SAGE has developed a strong name and reputation among consumers of food, nutrition, dining, and catering services.

15. Over the years, SAGE has grown to become one of the leading vendors of food, nutrition, dining, and catering services. As a result of the extensive efforts described above, SAGE and its The Spice of Life® program are widely known among prospective consumers throughout the United States, and SAGE and the SAGE Marks enjoy extensive goodwill and consumer recognition.

16. In recognition of the distinctiveness of SAGE Marks, the United States Patent and Trademark Office has issued the following service mark registrations to SAGE:

Mark	Reg. No.	Goods / Services	Filing Date	Date Registered
THE SPICE OF LIFE (Service Mark)	2403880	(Class 42) Nutrition services and dining services, namely, nutrition consultation and catering offered on-site to public and private businesses and institutions	09/01/99	11/14/00
SAGE (Service Mark)	2712358	(Class 42) Dining services, namely catering and contract food service offered on-site to public and private businesses and institutions	04/19/99	05/06/03
SAGE DINING SERVICES (Service Mark)	2733649	(Class 42) Dining services, namely catering and cont[r]act food service offered on-site to public and private businesses and institutions	05/11/99	07/08/03

17. These registrations are valid, subsisting, in full force, unrevoked, and uncancelled. SAGE has given notice to the public of the registration of the SAGE Marks, as provided in 15 U.S.C. §1111. Copies of the registrations are attached hereto as Exhibits A, B, and C.

18. SAGE's rights to ownership and exclusive use of THE SPICE OF LIFE® mark and the validity of that mark is incontestable pursuant to 15 U.S.C. §§ 1115(b) and 1065. A copy of the Notice of Acceptance and Acknowledgement is attached hereto as Exhibit D.

19. SAGE's use of the SAGE marks has been valid and continuous since the date of first use and has not been abandoned. Consequently, SAGE's rights to these marks are superior to any rights that may be claimed by any other party.

20. SAGE has been vigilant in protecting and enforcing its rights and interest in the SAGE Marks and in challenging instances of infringing use.

B. Competition between Morrison and SAGE

21. Morrison provides the same range of services as SAGE, and the two companies compete in the market for providing food, nutrition, dining, and catering services. Morrison and SAGE both provide services to healthcare providers and institutions that serve populations of retired individuals. A September 2005 Food Management magazine article confirms this competition between the parties by ranking both SAGE and Morrison's parent company, Compass Group, among the non-commercial food service industry's fifty largest contract management companies. In fact, in 2003, SAGE and Morrison bid against each other for the contract to provide services to one of Morrison's existing clients, Peninsula Hospital and Peninsula Village in Louisville, Tennessee. SAGE won the contract away from Morrison.

22. Morrison and SAGE also compete against each other in the market for labor and frequently attend the same recruiting events.

23. Morrison and SAGE rely on the same forms of marketing to promote their competing services to prospective clients. Like SAGE, Morrison promotes its services through direct mail and telephone solicitation. Like SAGE, Morrison promotes its services by providing free, catered meals to prospective clients at conferences and meetings. Like SAGE, Morrison has maintained an interactive

web site, which is located at the Internet address <http://www.iammorrison.com> and is devoted to the promotion of Morrison and its services. Like SAGE, Morrison promotes its services by attending and exhibiting at trade shows. Like SAGE, Morrison has benefited from publicity in publications around the country.

24. Morrison is affiliated with Chartwells Educational Dining Services, FLIK Independent Schools by Chartwells, and Bon Appétit Management Company. On information and belief, all four entities are either subsidiaries or divisions of Compass Group, U.S.A., Inc. Chartwells Educational Dining Services, FLIK Independent Schools by Chartwells, and Bon Appétit Management Company also compete directly with SAGE. On information and belief, the actions of Morrison described in this Complaint benefit not only Morrison but also Morrison's affiliates, Chartwells Educational Dining Services, FLIK Independent Schools by Chartwells, and Bon Appétit Management Company.

C. Morrison's Willful Infringement of the SAGE Marks

25. SAGE first became aware that Morrison was infringing the SAGE Marks when a SAGE representative at a culinary school recruiting fair in Atlanta, Georgia observed that Morrison had posted a banner on its booth featuring the words "Spice of Life."

26. On April 12, 2006, counsel for SAGE sent a letter to the president and chief executive officer of Morrison, identifying The SPICE OF LIFE® service mark as a valid, subsisting, and incontestable mark owned by SAGE and demanding that Morrison, and all of its agents, affiliates, and representatives, immediately cease and desist from use of "Spice of Life" in connection with Morrison's marketing and promotional efforts.

27. Following a series of negotiations between counsel for SAGE and counsel for Morrison, counsel for Morrison confirmed in writing that Morrison would cease its use of the phrase “Spice of Life” at industry trade shows immediately and phase out all uses of SAGE’s mark by the end of November of 2006.

28. In reliance on Morrison’s representations, SAGE agreed to forbear from initiating legal action.

29. Unbeknownst to SAGE, and contrary to the representations of Morrison’s counsel, Morrison actually took steps to expand its use of “Spice of Life” immediately after Morrison’s counsel made those representations. On June 22, 2006, seven days after Morrison’s counsel represented that Morrison “has begun the process of phasing out its use of SPICE OF LIFE,” Allina Hospitals & Clinics, one of Morrison’s clients, issued a press release announcing its collaboration with Morrison to open “Spice of Life Cafes” at four of Allina’s hospitals. A regional vice president of Morrison was quoted in the press release as saying, “Our primary focus with the Spice of Life Café renovation is caring for the caregivers.” Three of these hospitals continue to advertise a “Spice of Life Café” on their websites. SAGE did not learn of this continuing use of “Spice of Life” until November 2007.

30. In September 2007, SAGE learned that Morrison continued to violate SAGE’s rights when it determined that the University of Virginia Health System, one of Morrison’s clients, listed a “Spice of Life Cafe” on its website at the Internet address <http://www.healthsystem.virginia.edu/internet/nutrition/cafeteria.cfm>. On that same website, SAGE employees also observed for the first time that Morrison was using “Wild Sage Grille” as the name of one of its food service stations. One of SAGE’s District Managers then traveled to the University of

Virginia where he observed signage advertising a Spice of Life Cafe and Wild Sage Grille. Photographs of some of these signs were taken by a SAGE employee and are attached as Exhibits E and F.

31. Subsequently, SAGE observed that Morrison continued to feature “Spice of Life” on its website, identifying it as “Morrison’s branded food court concept.”

32. Counsel for SAGE therefore wrote to Morrison’s counsel and reiterated SAGE’s previous demand that Morrison, and all of its agents, affiliates and representatives, immediately cease and desist from the continuing use of “Spice of Life” as well as the use of “Wild Sage Grille” in connection with its marketing and promotional efforts and that it confirm in writing that Morrison had taken the requested actions.

33. Counsel for Morrison responded by asserting that use of “Spice of Life” on Morrison’s website was an “oversight” and that Morrison had “adhered to the phase-out terms” as he previously had represented Morrison would do. Counsel for Morrison also stated that Morrison refused to cease using “Wild Sage Grille” at the University of Virginia.

34. SAGE also learned that the staff at the cafeteria operated by Morrison at Union Memorial Hospital in Baltimore, Maryland wore aprons featuring the words “Spice of Life.” On information and belief, Morrison furnished these aprons to hospital food service workers. The hospital cafeteria also featured a station named “Wild Sage Grille.” A photograph of one of the aprons was taken by a SAGE employee and is attached as Exhibit G.

35. On information and belief, Morrison uses “Wild Sage Grille” in its dining facilities throughout the United States.

36. Counsel for SAGE therefore notified Morrison's counsel in writing that SAGE has become aware of "numerous instances in which institutional facilities operated by [Morrison] continue to carry 'Spice of Life' branding on signage as well as on employee uniforms, plates and other utensils." In view of this continuing use, SAGE demanded through counsel that Morrison "describe in detail its efforts to remove all SPICE OF LIFE® branding from" its food service facilities and certify that it has taken "appropriate measures to halt any continuing infringing use."

37. On November 16, 2007, counsel for Morrison responded by e-mail, denying SAGE's assertions and stating that unless SAGE provided Morrison with the particulars regarding SAGE's claim, Morrison considered the matter closed.

38. Morrison continues to use "Spice of Life" and "Wild Sage Grille" at its facilities throughout the country, including at Union Memorial Hospital in Baltimore, Maryland.

39. SAGE has not licensed, nor otherwise consented to, use of the SAGE Marks or any confusingly similar marks by Morrison.

Count I
(Federal Trademark Infringement—
15 U.S.C. § 1114(1))

40. Plaintiff realleges and incorporates herein by reference the allegations in numbered paragraphs 1 through 39 of the Complaint.

41. Upon information and belief, Morrison has used and is using colorable imitations of SAGE's federally registered marks in connection with the advertising or sale of unauthorized services or has permitted their use in commerce in a manner that creates a likelihood of confusion, mistake, and deception. Morrison's conduct is likely to induce potential clients within the food, dining, nutrition, and

catering services industry and others to believe, contrary to fact, that the services of Morrison are rendered, sold, sponsored, approved by, affiliated with, or connected with plaintiff SAGE.

42. SAGE has not consented to Morrison's infringing use. In fact, SAGE specifically has demanded that Morrison cease and desist from use of the infringing marks. As a result, Morrison has committed its infringement with full knowledge of plaintiff's rights in the marks. Thus, Morrison has willfully, deliberately, and maliciously engaged in the foregoing acts with an intent to injure plaintiff SAGE and to deceive the public.

43. Morrison's acts have been and are being committed with the intent and purpose of appropriating and trading upon the goodwill and reputation associated with the SAGE Marks. Such acts have damaged, impaired, and diluted that part of plaintiff's goodwill symbolized by SAGE's well-known marks, to SAGE's immediate and irreparable damage.

44. Morrison, by its acts complained of herein, has infringed the SAGE Marks in violation of 15 U.S.C. § 1114.

45. Morrison's acts of infringement have caused SAGE irreparable injury, loss of reputation, and pecuniary damages. Unless enjoined by this Court, Morrison will continue these acts of infringement, and SAGE will continue to suffer serious and irreparable injury for which SAGE lacks a complete and adequate remedy at law.

COUNT II
(Federal Unfair Competition and False Designation of Origin – 15 U.S.C. § 1125(a))

46. Plaintiff realleges and incorporates herein by reference the allegations in numbered paragraphs 1 through 45 of the Complaint.

47. Upon information and belief, Morrison has used in commerce in connection with the sale or advertising of unauthorized services certain words, names, or other false designations of origin which create a likelihood of confusion, mistake, or deception as to the affiliation, connection, or association of Morrison with SAGE, or as to the origin, sponsorship, or approval of defendant's services or commercial activities by SAGE. Morrison's conduct is likely to induce consumers and others to believe, contrary to fact, that the services of Morrison are rendered, sponsored, sold, approved by, or connected with plaintiff SAGE. Morrison's acts have a substantial effect on interstate commerce and have unfairly damaged, impaired, and diluted that part of SAGE's goodwill symbolized by SAGE's well-known marks to SAGE's immediate and irreparable damage.

48. Upon information and belief, Morrison committed the foregoing acts deliberately and with full knowledge that it was infringing SAGE's rights and with the intent to compete unfairly with SAGE. Thus, defendant's unfair competition and false designation of origin have been willful and deliberate.

49. Morrison's unauthorized use of marks that are confusingly similar to those owned by plaintiff SAGE constitutes false designation of origin within the meaning of section 43(a) of the Trademark Act of 1946, 15 U.S.C. §1125(a).

50. Morrison's conduct complained of herein constitutes unfair competition entitling SAGE to remedies pursuant to section 43(a) of the Trademark Act of 1946, 15 U.S.C. §1125(a).

51. Morrison's acts of unfair competition and false designation of origin have caused SAGE irreparable injury, loss of reputation, and pecuniary damages. Unless enjoined by this Court, Morrison

will continue the acts of unfair competition and false designation of origin complained of herein to SAGE's immediate and irreparable damage. SAGE has no adequate remedy at law.

COUNT III
(Common Law Service Mark Infringement and Unfair Competition)

52. SAGE realleges and incorporates herein by reference the allegations of numbered paragraphs 1 through 51 of the Complaint.

53. Morrison's actions in connection with the sale or advertising of services as described above constitute state common law service mark infringement and unfair competition, as they create a likelihood of confusion, mistake, or deception as to the affiliation, connection, or association of Morrison's services with SAGE, or as to the origin, sponsorship, or approval of Morrison's services or commercial activities by SAGE.

54. Morrison's acts have been and are being committed with the intent and purpose of appropriating and trading upon the goodwill and reputation created by SAGE and associated with the SAGE Marks. Such acts have damaged and impaired that part of SAGE's goodwill symbolized by its well-known marks to SAGE's immediate and irreparable damage.

55. Morrison's actions as described above cause unfair injury to SAGE in violation of state common law service mark and unfair competition laws.

56. Morrison's violations of state common law service mark and unfair competition laws will continue, and SAGE will continue to suffer damages from these actions, unless Morrison is restrained by this Court.

Count IV
(Declaratory Judgment – 28 U.S.C. §§ 2201-2202)

57. SAGE realleges and incorporates herein by reference the allegations of numbered paragraphs 1 through 56 of the Complaint.

58. By wrongfully continuing to use its infringing and confusing marks and thus representing to its customers and the public that it is entitled to use the SAGE Marks, Morrison has acted in conflict with SAGE's rights in and to its marks.

59. There exists an actual, present, and substantial controversy of a justiciable nature concerning SAGE's rights in its marks and Morrison's service mark infringement, federal unfair competition and false designation of origin, and state common law service mark and unfair competition violations.

60. SAGE is entitled to a declaration that its marks are valid and enforceable, and that it has prior, valid rights in the marks and is the rightful owner of all right, title, and interest in and to the marks. SAGE also is entitled to a declaration that Morrison's actions constitute federal service mark infringement, federal unfair competition and false designation of origin, and state common law service mark and unfair competition violations.

Relief Requested

WHEREFORE, plaintiff SAGE respectfully prays:

A. That this Court enter a decree declaring that (i) SAGE's marks as described herein are valid and enforceable; (ii) SAGE has prior, valid rights in the SAGE Marks and is the rightful owner

of all right, title, and interest in and to the SAGE Marks; (iii) Morrison has infringed SAGE's federally registered marks; (iv) Morrison has violated SAGE's rights under federal and state law; (v) Morrison has engaged in unfair competition in violation of federal law and the laws of the State of Maryland.

B. That this Court enter a preliminary and permanent injunction enjoining and restraining Morrison and its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them, from:

- (a) infringing SAGE's federally registered service marks as identified above;
- (b) using the SAGE name or any of the SAGE Marks or any other mark or symbol likely to cause consumer confusion with SAGE's marks in connection with the advertising, promotion, sale, or distribution of Morrison's services;
- (c) holding themselves out as the owner or authorized user of the SAGE name or any of the SAGE Marks;
- (d) representing or suggesting either directly or by implication that Morrison is affiliated or associated with, authorized by or otherwise connected to SAGE; and
- (e) engaging in other acts or practices, including those complained of herein, which tend unfairly or deceptively to compete with or injure the business reputation and goodwill of SAGE.

C. That this Court order Morrison, its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them to surrender for

destruction all labels, signs, prints, packages, wrappers, receptacles, advertisements, uniforms, and other materials containing or referring to the SAGE name and/or any of the SAGE Marks and all plates, molds, matrices, and other means of making the same and further order Morrison, its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them to discontinue the use of the SAGE name and the SAGE Marks;

D. That SAGE have judgment against Morrison for such damages as SAGE has sustained as a consequence of the federal and state service mark infringement and unfair competition in such amount as shall be determined at trial;

E. That, because of the willful nature of defendant's conduct, this Court enter judgment for SAGE and against Morrison for three times the amount of SAGE's damages where appropriate under applicable law, including but not limited to 15 U.S.C. § 1117;

F. That Morrison be required to account and pay over to SAGE all profits from its service mark infringement and unfair competition;

G. That, because of the willful nature of Morrison's conduct, this Court enter judgment for SAGE and against Morrison for three times the amount of Morrison's profits where appropriate under the applicable law, including but not limited to 15 U.S.C. § 1117.

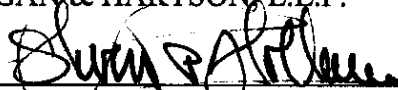
H. That SAGE be awarded the costs of this action and reasonable attorneys' fees;

I. That Morrison be required to file with the Court and serve on SAGE's counsel within 30 days after service of any injunction issued herein, or within such reasonable time as the Court shall direct, a report in writing and under oath setting forth in detail the manner and form in which defendant has complied with such injunction; and

J. That this Court grant such other and further relief as it deems just and equitable.

Dated: December 3, 2007

Respectfully submitted,
HOGAN & HARTSON, L.L.P.

By 

Steven P. Hollman (Bar No. 09719)
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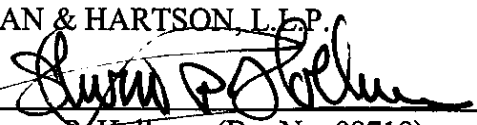
DEMAND FOR JURY TRIAL

Plaintiff SAGE hereby demands a trial by jury as to all claims triable of right to a jury.

Dated: December 3, 2007

Respectfully submitted,
HOGAN & HARTSON, L.L.P.

By



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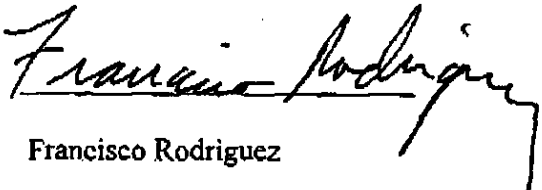
Attorneys for SAGE Dining Services, Inc.

VERIFICATION OF COMPLAINT

I, the undersigned President of SAGE Dining Services, Inc. ("SAGE"), having read the allegations of the foregoing Verified Complaint filed on behalf of SAGE in this proceeding, hereby certify based on my personal knowledge that the factual allegations asserted in the Verified Complaint are true and correct, and that matters asserted upon information and belief are believed to be true and correct.

Pursuant to the Provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3RD day of December, 2007.


Francisco Rodriguez