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6 Attorneys for Plaintiff,
KIRBY MORGAN DIVE SYSTEMS, INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

FILED
RECEIVED
MAR 25 2008
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10
11 KIRBY MORGAN DIVE SYSTEMS,
INC., a California corporation,

12 Plaintiff,

13 vs.

14
15 UNIVERSAL SCUBA
DISTRIBUTORS, a proprietorship,

16 Defendant.

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CV-08-08258-JSL

COMPLAINT FOR:

- (1) INFRINGEMENT OF A
FEDERALLY REGISTERED
TRADEMARK;
- (2) FALSE DESIGNATION OF
ORIGIN;
- (3) VIOLATION OF
ANTICYBERSQUATTING
ACT;
- (4) COMMON LAW
TRADEMARK
INFRINGEMENT;
- (5) UNFAIR COMPETITION
UNDER STATE LAW

DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff alleges as follows:

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PARTIES

1. Plaintiff Kirby Morgan Dive Systems, Inc. (“Kirby Morgan”) is a California corporation having its principal place of business at 1430 Jason Way, Santa Maria, CA 93455. Kirby Morgan is a leading innovator and industry leader in dive equipment and has a long tradition of innovation, providing the highest quality and superior performance that divers have come to expect in a Kirby Morgan product. Kirby Morgan is seeking injunctive relief with respect to the claims presented in this complaint. At this time Kirby Morgan is not seeking monetary damages on its trademark infringement claims to prevent Universal from receiving a defense of its claims from any insurance carrier and the amount of economic damages is not known.

2. Defendant Universal Scuba Distributors (“Universal Distributors”) is a proprietorship that provides dive equipment and related products and has a place of business at 14230 Westheimer Road, Houston, Texas 77077.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) as it arises under Acts of Congress related to trademarks. Additionally, the Court has subject matter jurisdiction over Kirby Morgan’s federal trademark infringement claim pursuant to 15 U.S.C. § 1121. The Court has subject matter jurisdiction over Kirby Morgan’s common law trademark infringement claim and its state law unfair competition claim pursuant to 28 U.S.C. § 1367, as the facts giving rise to Kirby Morgan’s claims arise from the same common nucleus of operative facts.

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1 4. This Court has personal jurisdiction over Universal Distributors as it is
 2 doing business in this judicial district through its websites,
 3 www.universaldistributors.us and www.kirbymorgandivers.com, which advertise,
 4 display, and offer for sale scuba diving equipment and related products. On
 5 information and belief, Universal Distributors has sold and is selling its products
 6 and services to customers in this judicial district by way of its websites,
 7 distributors, or direct contact by Universal Distributors or one of its related entities.
 8 Universal Distributors knowingly caused an effect in this judicial district through
 9 unconsented use of Kirby Morgan’s federally registered trademarks KIRBY
 10 MORGAN, KIRBY MORGAN DIVE SYSTEMS, INC., and helmet designs even
 11 though KIRBY MORGAN has been in use since 1967, over forty (40) years;
 12 KIRBY MORGAN DIVE SYSTEMS, INC. has been in use since 2002, over six (6)
 13 years; and the helmet designs have been in use since as early as 1977, over thirty
 14 (30) years.

15
 16 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
 17 as Universal has committed acts of infringement in this judicial district.

18
 19 **FACTUAL ALLEGATIONS**

20
 21 6. Plaintiff Kirby Morgan is a California corporation located in Santa
 22 Maria, California and is a leading innovator and industry leader in dive equipment.
 23 Kirby Morgan is commonly known as “Kirby Morgan” to its dealers, end
 24 customers, suppliers, and others in the dive equipment industry.

25
 26 7. Kirby Morgan helmet designs are registered with the U.S. Patent and
 27 Trademark Office under U.S. Registration Nos. 2,634,033, 2,670,929, 2,852,306,
 28 2,801,683, and 2,803,929 (see Exhibit 1).

1 8. Kirby Morgan owns several additional trademarks, service marks,
2 trade names, and logos, including KIRBY MORGAN (U.S. Reg. No. 1,767,264)
3 and KIRBY MORGAN DIVE SYSTEMS, INC. (U.S. Reg. No. 3,333,120). See
4 Exhibit 2.

5
6 9. Over the years Kirby Morgan has expended substantial sums of money
7 and effort, and extensively advertised and successfully promoted its products and
8 marks in numerous trade publications and at trade shows. Kirby Morgan has
9 established a valuable business and substantial good will in the design of its
10 products in the use of its products in interstate commerce and throughout the world.

11
12 10. Kirby Morgan has sold relatively large dollar volumes of its
13 proprietary products worldwide through its authorized dealers and its products have
14 met with wide and popular approval. As a result of Kirby Morgan's authorized
15 sales and promotion and the distinctive appearance of Kirby Morgan's products,
16 Kirby Morgan's products have acquired a secondary meaning and have come to be
17 known to the trade and to its customers throughout the United States, and the world,
18 as identifying high quality products sold by Kirby Morgan.

19
20 11. As a result, Kirby Morgan's trademarks are well known throughout the
21 United States and other parts of the world, and Kirby Morgan has developed
22 substantial goodwill and recognition among its U.S. customers and the U.S. public
23 at large in its Kirby Morgan trademarks and dive equipment products.

24
25 12. Universal Distributors registered the domain name
26 www.kirbymorgandivers.com on November 19, 2008. See attached Exhibit 3
27 showing the WhoIs Database data showing Universal Distributors' registration.
28

1 13. On the www.kirbymorgandivers.com webpage, Universal Distributors
2 uses images of Kirby Morgan’s registered helmets with the KIRBY MORGAN
3 mark emblazoned across the top over the large helmet images. See Exhibit 4. The
4 webpage then automatically resolves and/or has links to Universal Distributors’
5 other website at www.universaldistributors.us where it sells dive products. On the
6 www.universaldistributors.us website, Universal Distributors uses another image of
7 Kirby Morgan’s registered helmet designs under a link to “commercial” products.
8 See Exhibit 4.

9
10 14. Universal Distributors has used in commerce the term KIRBY
11 MORGAN, or formatives thereof, and has used registered images of Kirby
12 Morgan’s helmets as trademarks for its advertisement, sale, and promotion of dive
13 equipment. Universal Distributors’ use of the KIRBY MORGAN marks, or
14 formatives thereof, and images of the registered helmets are exactly the same as
15 Kirby Morgan’s trademarks for the same or related dive equipment and products.

16
17 **CLAIM I – INFRINGEMENT OF FEDERALLY**
18 **REGISTERED TRADEMARKS**
19 **(15 U.S.C. § 1114(1))**

20
21 15. Plaintiff repeats and incorporates the allegations set forth in paragraphs
22 1 through 14 above.

23
24 16. Kirby Morgan owns U.S. Trademark Registration No. 1,767,264 for
25 KIRBY MORGAN for diving suits; namely wetsuits and dry suits; underwater life
26 support system used in scuba diving comprised of a mask, regulator and tank, sold
27 separately and as a unit; underwater life support systems used in scuba diving
28 comprised of a helmet, regulator, deck breathing gas controller and umbilical cord,

1 sold separately and as a unit, in International Class 009, registered on April 27,
2 1993; and U.S. Trademark Registration No. 3,333,120 for KIRBY MORGAN
3 DIVE SYSTEMS, INC. for diving equipment, namely diving helmets, regulators,
4 head protectors, masks, mask bags, cold water neck dams, deck breathing gas
5 controller, breathing valves, exhaust valves, rebreathers, underwater life support
6 system used in scuba diving comprised of mask, regulator and tank, sold separately
7 and as a unit, non-recreational underwater life support system used in scuba diving
8 comprised of a helmet, demand breathing regulators, deck breathing gas controller,
9 breathing valves, exhaust valves, and umbilical cord, sold separately and as unit,
10 and spare parts for same, in International Class 040, registered on Nov. 13, 2007.
11 See attached Exhibit 2.

12
13 17. Kirby Morgan also owns five (5) registrations for its helmet designs
14 bearing U.S. Reg. No. 2,634,033 for use in connection with diving equipment;
15 namely diving helmets, regulators, head protectors, masks, mask bags, cold water
16 neck dams, wet suits, deck breathing gas controllers, and spare parts for same in
17 International Class 009, and for t-shirts and sweatshirts in International Class 25,
18 registered on October 15, 2002; U.S. Reg. No. 2,670,929 for use in connection with
19 diving equipment, namely helmets in International Class 009 and for t-shirts and
20 sweatshirts in International Class 025, registered on January 7, 2003; U.S. Reg. No.
21 2,852,306 for diving equipment, namely helmets, in International Class 009,
22 registered on June 15, 2004; U.S. Reg. No. 2,801,683 for diving equipment, namely
23 helmets in International Class 009, and t-shirts and sweatshirts in International
24 Class 025, registered on January 6, 2004; and U.S. Reg. No. 2,803,929 for diving
25 equipment, namely diving helmets regulators, head protectors, masks, mask bags,
26 cold water neck cams, deck breathing gas controller, and spare parts for same in
27 International Class 009, for t-shirts, sweatshirts, and wet suits in International Class
28 025, and for the manufacture of diving equipment, namely diving helmets,

1 regulators, head protectors, masks, mask bags, cold water neck dams, wetsuits, deck
2 breathing gas controllers, and spare parts for same, to order and/or specification of
3 others in International Class 40, registered on January 13, 2004. See Exhibit 1.
4

5 18. Universal Distributors has used in commerce the KIRBY MORGAN
6 mark, or formatives thereof, and registered helmet designs as trademarks in
7 connection with the advertising of, sale of, or offer to sell dive equipment and
8 related products. Universal Distributors' use, in relation to Kirby Morgan's use of
9 its own marks will likely cause confusion or mistake, or will likely deceive the
10 public as to Universal Distributors' products being associated or identified with or
11 being the same as those of Kirby Morgan.
12

13 19. Kirby Morgan did not consent to or authorize Universal Distributors'
14 adoption or commercial use of the term KIRBY MORGAN, or formatives thereof,
15 or use of the registered images of Kirby Morgan's helmets for Universal
16 Distributors' dive equipment.
17

18 20. Universal Distributors therefore has infringed Kirby Morgan's
19 trademarks in violation of its federal trademark rights under the Lanham Act, 15
20 U.S.C. §§ 1051 et seq., particularly 15 U.S.C. § 1114(1).
21

22 21. Kirby Morgan's marks are strong in light of the substantial marketing
23 and promotion of the Kirby Morgan trademarks for dive equipment over the past
24 more than thirty years, the substantial sales volume of the products and services
25 under its KIRBY MORGAN and helmet design marks, its critical acclaim, and its
26 widespread public recognition. Universal Distributors' use of the confusingly
27 similar KIRBY MORGAN mark and use of the registered helmet images in
28

1 connection with Universal Distributors' dive products creates a likelihood of
2 confusion.

3
4 22. Upon information and belief, Kirby Morgan avers that, at all times
5 relevant to this action, including when Universal Distributors first adopted the
6 KIRBY MORGAN mark, Universal Distributors knew of Kirby Morgan's prior
7 adoption and widespread commercial use of the KIRBY MORGAN mark and
8 registered helmet designs in connection with dive equipment and products,
9 including all of the goods specified in Kirby Morgan's federally registered
10 trademarks listed above. Universal Distributors' infringement of the Kirby Morgan
11 marks is therefore willful, knowing, and deliberate.

12
13 23. Kirby Morgan has no control over the composition or quality of the
14 goods sold under the confusingly similar Kirby Morgan marks by Universal
15 Distributors. As a result, to the extent Universal Distributors' products are inferior
16 to Kirby Morgan's, Kirby Morgan's valuable goodwill, developed at great expense
17 and effort by Kirby Morgan, is being harmed by Universal Distributors'
18 unauthorized use of the confusingly similar mark, and is at risk of further damage.

19
20 24. The goodwill of Kirby Morgan's business under the KIRBY
21 MORGAN mark and the registered helmet designs is of enormous value, and Kirby
22 Morgan will suffer irreparable harm should Universal Distributors' infringement be
23 allowed to continue to the detriment of Kirby Morgan's reputation and goodwill.

24
25 25. Universal Distributors' infringement will continue unless enjoined.
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CLAIM II – FALSE DESIGNATION OF ORIGIN

(15 U.S.C. § 1125(a))

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2
3
4 26. Plaintiff repeats and incorporates the allegations set forth in paragraphs
5 1 through 25 above.

6
7 27. Kirby Morgan uses its KIRBY MORGAN mark and registered helmet
8 designs throughout the United States in connection with its dive equipment. Such
9 products include diving helmets, regulators, head protectors, masks, mask bags,
10 cold water neck dams, deck breathing gas controller, breathing valves, exhaust
11 valves, rebreathers, underwater life support system used in scuba diving comprised
12 of mask, regulator and tank, sold separately and as a unit, non-recreational
13 underwater life support systems used in scuba diving comprised of a helmet,
14 demand breathing regulators, deck breathing gas controller, breathing valves,
15 exhaust valves, and umbilical cord, sold separately and as unit, and spare parts for
16 same.

17
18 28. Kirby Morgan’s KIRBY MORGAN mark and registered helmet
19 designs are distinctive and distinguish Kirby Morgan’s dive equipment from that of
20 its competitors.

21
22 29. Kirby Morgan’s KIRBY MORGAN mark and registered helmet
23 designs are strong in light of the substantial marketing and promotion of Kirby
24 Morgan dive equipment by Kirby Morgan over the past more than thirty years, the
25 substantial sales volume of Kirby Morgan’s products, its critical acclaim, and its
26 widespread public recognition.

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1 30. Universal Distributors’ use of the confusingly similar KIRBY
2 MORGAN mark and registered helmet designs in connection with Universal
3 Distributors’ dive equipment creates a likelihood of confusion with Kirby Morgan’s
4 use of its KIRBY MORGAN mark and registered helmet designs.

5
6 31. Kirby Morgan has no control over the composition or quality of the
7 goods sold under the confusingly similar KIRBY MORGAN mark and registered
8 helmet designs by Universal Distributors. As a result, to the extent Universal
9 Distributors’ products are inferior to Kirby Morgan’s, Kirby Morgan’s valuable
10 goodwill, developed at great expense and effort by Kirby Morgan, is being harmed
11 by Universal Distributors’ unauthorized use of the confusingly similar marks, and is
12 at risk of further damage.

13
14 32. The goodwill of Kirby Morgan’s business under the KIRBY
15 MORGAN mark, or formatives thereof, and registered helmet designs is of
16 enormous value, and Kirby Morgan will suffer irreparable harm should Universal
17 Distributors’ infringement be allowed to continue to the detriment of Kirby
18 Morgan’s reputation and goodwill.

19
20 33. Upon information and belief, Kirby Morgan avers that, at all times
21 relevant to this action, including when Universal Distributors first adopted the
22 KIRBY MORGAN mark, or formatives thereof, and registered helmet designs,
23 Universal Distributors knew of Kirby Morgan’s prior adoption and widespread
24 commercial use of the KIRBY MORGAN mark and registered helmet designs in
25 connection with dive equipment and related products. Universal Distributors’
26 infringement of the KIRBY MORGAN mark, or formatives thereof, and
27 registered helmet designs is therefore willful, knowing, and deliberate.

28

1 34. Universal Distributors’ infringement will continue unless enjoined.

2
3 **CLAIM III – VIOLATION OF THE ANTICYBERSQUATTING**
4 **CONSUMER PROTECTION ACT (15 U.S.C. 1125(d))**
5

6 35. Plaintiff repeats and incorporates the allegations set forth in paragraphs
7 1 through 34 above.

8
9 36. Kirby Morgan owns federal trademark registrations in its KIRBY
10 MORGAN and KIRBY MORGAN DIVE SYSTEMS, INC. marks (Exhibit 2).
11 These marks are strong marks in light of the substantial marketing and promotion
12 of Kirby Morgan dive equipment by Kirby Morgan over the past more than thirty
13 years, the substantial sales volume of Kirby Morgan’s products, its critical acclaim,
14 and its widespread public recognition. Over the years Kirby Morgan has expended
15 substantial sums of money and effort, and extensively advertised and successfully
16 promoted its products and marks in numerous trade publications and at trade shows.
17 Kirby Morgan has established a valuable business and substantial good will in the
18 design of its products in the use of its products in interstate commerce and
19 throughout the world.

20 37. Universal Distributors registered the www.kirbymorgandivers.com
21 domain name on November 19, 2008 (Exhibit 3).

22
23 38. Universal Distributors’ domain name www.kirbymorgandivers.com
24 encompasses the KIRBY MORGAN mark in its entirety, and uses the descriptive
25 term “divers” to further cause confusion with Kirby Morgan.

26 39. Upon information and belief, Kirby Morgan avers that, at all times
27 relevant to this action, including when Universal Distributors first registered the
28 www.kirbymorgandivers.com domain, Universal Distributors knew of Kirby

1 Morgan's prior adoption and widespread commercial use of the KIRBY
2 MORGAN mark in connection with dive equipment and products, including all of
3 the goods specified in Kirby Morgan's federally registered trademarks listed
4 above. Universal Distributors' registration of the www.kirbymorgandivers.com
5 domain name therefore shows its bad faith intent to profit from Kirby Morgan's
6 marks.

7
8 40. On the www.kirbymorgandivers.com webpage, Universal Distributors
9 uses images of Kirby Morgan's registered helmets with the KIRBY MORGAN
10 mark emblazoned across the top over the large helmet images. See Exhibit 4. The
11 webpage then automatically resolves and/or has links to Universal Distributors'
12 other website at www.universaldistributors.us where it sells dive products.
13 Universal Distributors is therefore making no bona fide noncommercial or fair use
14 of Kirby Morgan's marks and helmet designs in connection with the
15 www.kirbymorgandivers.com domain and website.

16 41. Also, the fact that the www.kirbymorgandivers.com webpage
17 automatically resolves and/or has links to Universal Distributors' other website at
18 www.universaldistributors.us where it sells dive products shows Universal
19 Distributors' intent to divert customers looking for Kirby Morgan to Universal
20 Distributors' own website for its own commercial gain.

21
22 42. Universal Distributors' bad faith intent to profit from Kirby
23 Morgan's marks and helmet designs in connection with is
24 www.kirbymorgandivers.com website, and its registration and use of the domain,
25 will continue unless it is required to forfeit, cancel, or transfer the domain name.
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1 **CLAIM IV – COMMON LAW TRADEMARK INFRINGEMENT**

2
3 43. Plaintiff repeats and incorporates the allegations set forth in paragraphs
4 1 through 42 above.

5
6 44. Kirby Morgan owns and uses its KIRBY MORGAN mark, or
7 formatives thereof, and registered helmet designs and enjoys common law rights in
8 the trademark in California and throughout the United States in connection with
9 dive equipment. Such rights are senior and superior to any rights which Universal
10 Distributors may claim in and to its infringing mark.

11
12 45. Universal Distributors’ use of the confusingly similar KIRBY
13 MORGAN mark, or formatives thereof, and registered helmet designs in
14 commerce is intentionally designed to mimic Kirby Morgan’s trademark for similar
15 products so as to likely cause confusion regarding the source of Universal
16 Distributors’ products, in that purchasers will be likely to associate such products
17 with, as originating with, or as approved by Kirby Morgan, all to the detriment of
18 Kirby Morgan.

19
20 46. Universal Distributors’ infringement will continue unless enjoined.

21
22 **CLAIM V – UNFAIR COMPETITION UNDER STATE LAW**
23 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, 17203)**

24
25 47. Plaintiff repeats and incorporates the allegations set forth in paragraphs
26 1 through 46 above.

1 48. Kirby Morgan's KIRBY MORGAN and KIRBY MORGAN DIVE
2 SYSTEMS, INC. marks and registered helmet designs are wholly associated with
3 Kirby Morgan due to its extensive use of the marks, and as such, Kirby Morgan is
4 deserving of having its marks adequately protected with respect to the conduct of its
5 business.

6
7 49. Universal Distributors' use of a mark that is confusingly similar to
8 Kirby Morgan's KIRBY MORGAN and KIRBY MORGAN DIVE SYSTEMS,
9 INC. marks and registered helmet designs constitutes unfair competition in that
10 customers and would-be customers are likely to be confused concerning the origin
11 of products using similar marks in the marketplace and false designations
12 concerning the origin of the mark.

13
14 50. Universal Distributors' acts constitute unfair competition in violation
15 of the California Business and Professions Code §§ 17200 and 17203.

16
17 51. Kirby Morgan avers that the acts of unfair competition undertaken by
18 Universal Distributors were intentionally and knowingly undertaken and were
19 directed toward perpetuating a business competing unfairly with Kirby Morgan and
20 were done with a willful disregard for the rights of Kirby Morgan.

21
22 52. By reason of Universal Distributors' acts of unfair competition, Kirby
23 Morgan has suffered and will continue to suffer irreparable injury unless and until
24 this Court enters an order enjoining Universal Distributors from any further acts of
25 unfair competition. Universal Distributors' continuing acts of unfair competition,
26 unless enjoined, will cause irreparable damage to Kirby Morgan in that it will have
27 no adequate remedy at law to compel Universal Distributors to cease such acts.
28 Kirby Morgan will be compelled to prosecute a multiplicity of actions, one action

1 each time Universal Distributors commits such acts, and in each such action it will
2 be extremely difficult to ascertain the amount of compensation which will afford
3 Kirby Morgan adequate relief. Kirby Morgan is therefore entitled to an injunction
4 against further infringing conduct by Universal Distributors.

5
6 53. In doing the acts alleged, Universal Distributors acted fraudulently,
7 oppressively, and maliciously, and, as such, Kirby Morgan is entitled to exemplary
8 and punitive damages.

9
10 **PRAYER FOR RELIEF**

11
12 WHEREFORE, Kirby Morgan requests judgment against Universal
13 Distributors, as follows:

14
15 A. For an order permanently enjoining Universal Distributors, and its
16 officers, directors, agents, servants, attorneys, and employees and all other persons
17 acting in concert with them, from: (1) committing any further acts of trademark
18 infringement, including using the KIRBY MORGAN mark, or formatives thereof,
19 and registered helmet designs in connection with any dive equipment; (2) using any
20 term or images that are likely to be confused with the KIRBY MORGAN mark, or
21 formatives thereof, and registered helmet designs asserted in this Complaint; (3)
22 representing directly or indirectly in any form or manner whatsoever that any
23 product it offers for sale is associated with or approved by Kirby Morgan when, in
24 fact, it is not; and/or (4) passing off or inducing or enabling others to sell or pass off
25 any non-Kirby Morgan product as a Kirby Morgan product or as a product endorsed
26 or approved by Kirby Morgan;

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1 B. For an order directing Universal Distributors to file with this Court and
2 to serve on Kirby Morgan within thirty (30) days after service on Universal
3 Distributors of each injunction granted herein, or such extended period as the Court
4 may direct, a report in writing, under oath, setting forth in detail the manner and
5 form in which Universal Distributors has complied with the injunction and order of
6 the Court;

7
8 C. For a judgment that Universal Distributors has willfully and
9 deliberately infringed Kirby Morgan's rights and that this is an exceptional case
10 entitling Kirby Morgan to enhanced damages under the Trademark Laws of the
11 United States;

12
13 D. For an award of costs, including attorneys' fees, incurred in bringing
14 this action;

15
16 E. For a judgment awarding to Kirby Morgan prejudgment and post-
17 judgment interest until the award is fully paid;

18
19 F. For an order instructing Universal Distributors to forfeit or cancel the
20 www.kirbymorgandivers.com domain name, or for an order requiring the GoDaddy
21 registrar to transfer the domain to Kirby Morgan and to further preclude Universal
22 Distributors from obtaining any domain name registrations using Kirby Morgan's
23 registered marks, or formatives thereof;

24
25 G. For such other and further relief as this Court may deem just and
26 equitable under the circumstances; and
27
28

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1 H. Kirby Morgan does not seek damages at this time with respect to
2 Universal Distributors' trademark infringing activities as any damages are unknown
3 at the present.
4

5 Respectfully submitted:
6 CISLO & THOMAS LLP

7
8
9 Dated: December 5, 2008

10 _____
11 Daniel M. Cislo, Esq.
12 Kristin B. Kosinski, Esq.

13 Attorneys for Plaintiff,
14 Kirby Morgan Dive Systems, Inc.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint that are triable.

Respectfully submitted,

CHELO & THOMAS LLP

Dated: December 5, 2008

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Kristin B. Kosinski, Esq.

Attorneys for Plaintiff
Kubly Morgan Diva Systems, Inc.

FILED IN COMPLIANCE WITH LOCAL RULES

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Courtesy of www.iptrademarkattorney.com

EXHIBIT 1

Int. Cl.: 9 and 25

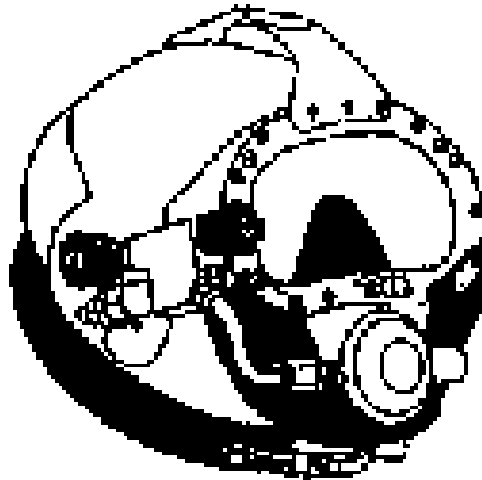
Prior U.S. Cls.: 21, 22, 23, 26, 36, 38 and 39

Reg. No. 2,634,533

Registered Oct. 15, 2012

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**



DIVING SYSTEMS INTERNATIONAL (CALIFORNIA CORPORATION)

428 CANTON STREET

SANTA BARBARA, CA 93101

FOR: DIVING EQUIPMENT, NAMELY DIVING HELMETS, INSULATORS, HEAD PROTECTORS, MASKS, MASK BUCKS, COLD WATER NECK FLAME, WET SUITS, DECK BREATHING GAS CONTROLLERS, AND SPARE PARTS FOR SAME, BY CLASS 9 (U.S. CLS. 21, 22, 23, 26 AND 36)

FIRST USE 04-1964; IN COMMERCE 04-1964

FOR: T-SHIRTS AND SWEATSHIRTS, IN CLASS 25 (U.S. CLS. 23 AND 39)

FIRST USE 04-1964; IN COMMERCE 04-1964

APPLICANT CLAIMS THE COLOR YELLOW IN THE HELMETS DISTINCTIVE OF APPLICANT'S MARK. THE HELMET COLOR FOR APPLICANT'S MARK IS A BRIGHT CANARY YELLOW COLOR. THE COLOR YELLOW IS A FEATURE OF THE MARK.

SER. NO. 75-001,990. FILED 6-16-2010

GIANCARLO CASTRO, EXAMINING ATTORNEY

Int. Cls.: 9 and 25

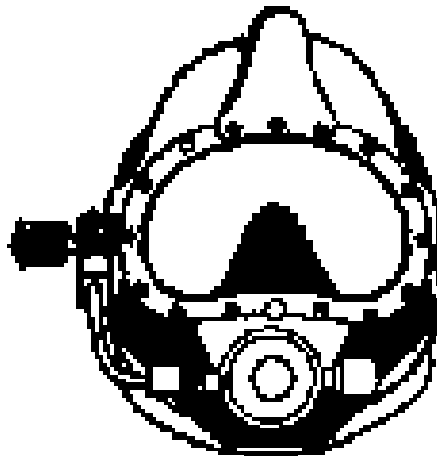
Prior U.S. Cls.: 21, 22, 23, 26, 36, 38 and 39

Reg. No. 2,670,928

Registered Jan. 7, 2014

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**



**DIVING SYSTEMS INTERNATIONAL (CALI-
FORNIA CORPORATION)
425 CHARDEN STREET
SANTA BARBARA, CA 93101**

**FOR: DIVING EQUIPMENT, NAMELY HULL
MOUNT, IN CLASSES (U.S. CLS. 11, 21, 24, 26 AND 38)**

FIRST USE 4-20-1988; IN COMMERCE 4-20-1988.

**FOR: T-SHIRTS AND SWEATSHIRTS, IN CLASS
25 (U.S. CLS. 21 AND 26)**

FIRST USE 4-20-1988; IN COMMERCE 4-20-1988.

SER. NO. T6-071,397, FT-400 6-16-2003.

OLIVARULLO CASTRO, EQUINOXIO ATTORNEY

Int. Cl.: 9

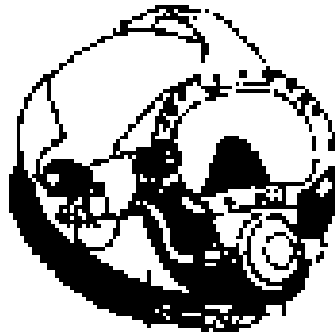
Prior U.S. Cls.: 21, 13, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,852,106

Registered June 16, 2004

**TRADEMARK
PRINCIPAL REGISTER**



**KERRY MORGAN DIVE SYSTEMS, INC. (CALIFORNIA CORPORATION), FORMERLY KNOWN AS DIVING SYSTEMS INTERNATIONAL
425 GARDEN STREET
SANTA ANA, CA 92701**

FOR: DIVING EQUIPMENT, NAMELY HELMETS, IN CLASS 9 (U.S. CLS. 21, 13, 26, 36 AND 38)

FIRST USE IN COMMERCE 04-01-02

THE MARK CONSISTS OF THE CONFIGURATION OF A DIVING HELMET. THE YELLOW COLOR OF THE HELMET IS CONSIDERED ORNAMENTATION FOR WHICH A SECONDARY MEANS HAS BEEN ACCEPTED.

SER. NO. 15401343, FILED 6-16-2004

ORLANDO CASTRO, EXAMINING ATTORNEY

Int. Cl.: 9 and 25

First U.S. Cl.: 21, 22, 23, 26, 36, 38 and 39

United States Patent and Trademark Office

Reg. No. 2,901,683

Registered Jan. 6, 2004

**TRADEMARK
PRINCIPAL REGISTER**



KIRBY HERGEN DIVE SYSTEMS, INC. (FOR
WELLY KNOWN AS DIVING SYSTEMS IN-
TERNATIONAL) (CALIFORNIA
CORPORATION)

45 GARDEN STREET

SANTA BARBARA, CA 93101, BY OFFICE OF
MARINE DIVING SYSTEMS INTERNATIONAL
CALIFORNIA CORPORATION, SANTA BAR-
BARA, CA 93101

FOR DIVING EQUIPMENT, NAMELY HEL-
METS, IN CLASS 9 (U.S. CLS. 21, 23, 36, 38 AND 39)

FIRST USE 4-20-1969; IN COMMERCE 4-20-1969

FOR T-SHIRTS AND SWEATSHIRTS, IN CLASS
25 (U.S. CLS. 23 AND 28)

FIRST USE 4-20-1969; IN COMMERCE 4-20-1969

THE COLOR YELLOW IS A FEATURE OF THE
MARK.

THE HELMET IS A BRICOT CANARY YELLOW
COLOR EXCEPT FOR THE BRASS AND OTHER
FITTINGS AND THE REGULATOR ATTACHED TO
THE HELMET.

ENC. 27A

REG. NO. 2,901,683, FILED 4-16-2004

NICHOLAS ALTHEIM BRAMMING ATTORNEY

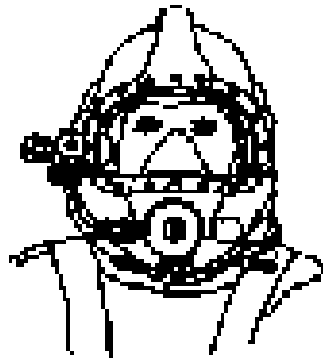
Int. Cl.: 9, 25 and 40

Prior U.S. Cl.: 21, 22, 23, 26, 36, 38, 39, 180, 183 and 186

Reg. No. 2,803,529
Registered Jan. 13, 2004

United States Patent and Trademark Office

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



RODNY MORGAN DIVE SYSTEMS, INC. (CALIFORNIA CORPORATION), FORMERLY KNOWN AS DIVING SYSTEMS INTERNATIONAL, 425 GARDEN STREET, SANTA BARBARA, CA 93101, BY CHANGE OF NAME DIVING SYSTEMS INTERNATIONAL (CALIFORNIA CORPORATION), SANTA BARBARA, CA 93101

FOR: MANUFACTURE OF DIVING EQUIPMENT, NAMELY DIVING HELMETS, REGULATORS, HEAD PROTECTORS, MASKS, MASK BAGS, COLD WATER HOCKEY MASKS, WEBSITE, DIVE BREATHING GAS CONTROLLER, AND SPARE PARTS FOR SAME, IN CLASS 9 (U.S. CLS. 100, 103 AND 106).

FOR: DIVING EQUIPMENT, NAMELY DIVING HELMETS, REGULATORS, HEAD PROTECTORS, MASKS, MASK BAGS, COLD WATER HOCKEY MASKS, WEBSITE, DIVE BREATHING GAS CONTROLLER, AND SPARE PARTS FOR SAME, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38)

FIRST USE 8-3-1982, IN COMMERCE 8-3-1982.

THE HELMET ITSELF IS A BRIGHT CANARY YELLOW COLOR. THE COLOR YELLOW IS A FEATURE OF THE MARK.

FIRST USE 8-3-1982 IN COMMERCE 8-3-1982

SEE 207).

FOR: T-SHIRTS, SWIMTRUNKS AND WET SUITS, IN CLASS 25 (U.S. CLS. 22 AND 37).

U.S. NO. 2607,382, FILED 6-16-2003.

FIRST USE 8-3-1982 IN COMMERCE 8-3-1982.

NICHOLAS ALTRUS, EXAMINING ATTORNEY

Courtesy of www.iptrademarkattorney.com

EXHIBIT 2

Int. Cls: 9 and 25

Prior U.S. Cls: 26, 39 and 44

United States Patent and Trademark Office

Reg. No. 1,767,264

Registered Apr. 27, 1993

**TRADemark
PRINCIPAL REGISTER**

KIRBY MORGAN

DIVING SYSTEMS INTERNATIONAL (CALIFORNIA CORPORATION)
425 GARDEN STREET
SANTA BARBARA, CA 93101

FOR: DIVING SUITS, NAMELY, WET SUITS AND DRY SUITS; UNDERWATER LIFE SUPPORT SYSTEM USED IN SCUBA DIVING COMPRISED OF MASK, REGULATOR AND TANK, SOLD SEPARATELY AND AS A UNIT; UNDERWATER LIFE SUPPORT SYSTEM USED IN SCUBA DIVING COMPRISED OF HELMET, REGULATOR, DECK BREATHING GAS CONTROLLER AND UMBILICAL CORD.

SOLD SEPARATELY AND AS A UNIT, IN CLASS 9 (U.S. CLS. 16, 17 AND 44).

FIRST USE 0-0-1977; IN COMMERCE 0-0-1961.

FOR: CLOTHING; NAMELY, SHIRTS, HATS AND JACKETS, IN CLASS 25 (U.S. CL. 39).

FIRST USE 0-0-1977; IN COMMERCE 0-0-1967.

SER. NO. 74-343,513, FILED 2-12-1972

KATHLEEN M. VANITON, EXAMINING ATTORNEY

Courtesy of www.iptrademarkattorney.com

Int. Cl.: 9, 15 and 40

Prior U.S. Cls: 21, 22, 23, 26, 36, 38, 39, 100, 103 and 106

United States Patent and Trademark Office

Reg. No. 3,333,120

Registered Nov. 13, 2007

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



KIRBY MORGAN DIVE SYSTEMS, INC. (A
PENNSYLVANIA CORPORATION)
210 JASON WAY
SANTA BARBARA, CA 93101

FOR: DIVING EQUIPMENT, NAMELY DIVING HELMETS, REGULATORS, HEAD PROTECTORS, MASKS, MASK BAGS, COLD WATER PNEUMONIA DAMS, DECK BREATHING GAS CONTROLLERS, BREATHER VALVES, EXHAUST VALVES, FINEBUBBLE UNDERWATER LIFE SUPPORT SYSTEM USED IN SCUBA DIVING COMPRISED OF MASK, REGULATOR AND TANK, SOLD SEPARATELY AND AS A UNIT, NON-RESPIRATIONAL UNDERWATER LIFE SUPPORT SYSTEM USED IN SCUBA DIVING COMPRISED OF HELMET, DEMAND BREATHING REGULATORS, INHEM BREATHING GAS CONTROLLER, BREATHER VALVES, EXHAUST VALVES AND LUNGEICAL CORD, BOMB SIGNAL RIFLES AND AS UNIT AND SPARE PARTS FOR SAME, IN CLASS 9 (U.S. CLS. 21, 22, 23, 26 AND 39).

FIRST USE 1-1-2006; IN COMMERCE 1-1-2006.

FOR: SHIRTS, HATS, JACKETS, T-SHIRTS, TANK TOPS, POLO SHIRTS, SHORTS, BATHING SUITS, DRESS SHORTS, SWEATSHIRTS AND TWEET SUITS, IN CLASS 25 (U.S. CLS. 23 AND 37).

FIRST USE 1-1-2006; IN COMMERCE 1-1-2006.

FOR: MANUFACTURE OF DIVING EQUIPMENT, NAMELY DIVING HELMETS, REGULATORS, HEAD PROTECTORS, MASKS, MASK BAGS, COLD WATER PNEUMONIA DAMS, DECK BREATHING GAS CONTROLLERS, AND SPARE PARTS FOR SAME, TO ORDER UNDER SPECIFICATION OF OTHERS, IN CLASS 40 (U.S. CLS. 26, 101 AND 106).

FIRST USE 1-1-2006; IN COMMERCE 1-1-2006.

OWNER OF U.S. REG. NO. 1,487,264.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KIRBY MORGAN DIVE SYSTEMS, INC." AND "SANTA BARBARA, CALIFORNIA", APART FROM THE MARK AS SHOWN.

THE LIKENESS OF, OR, TRADUIT, IN THE MARK IDENTIFIES A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD. THE TERMS "KIRBY MORGAN" DO NOT IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 16-819,732, FILED 3-13-2006.

METTY PARK, EXAMINING ATTORNEY

Courtesy of www.iptrademarkattorney.com

EXHIBIT 3

Courtesy of www.iptrademarkattorney.com

Customer Dashboard | Overview | My Account | My Profile | My Profile | My Profile | My Profile

Logout | My Profile

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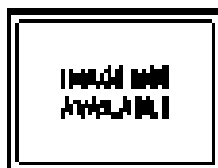
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Courtesy of www.iptrademarkattorney.com

The domain name **GOOAGDY.COM** and its associated IP address are being transferred to the registrant of the domain name **GOOAGDY.COM** as of 12/9/2006 2:41 PM. This transfer is being performed for the purpose of making you the registrant responsible for the domain name and its associated IP address. By submitting an inquiry you agree to accept all terms of use and conditions of availability. In addition, you agree to hold the domain name, and its associated IP address, in trust for the registrant of the domain name, in good faith and to transfer the domain name and its associated IP address to the registrant of the domain name upon request. You agree to hold the domain name and its associated IP address in trust for the registrant of the domain name, in good faith and to transfer the domain name and its associated IP address to the registrant of the domain name upon request. You agree to hold the domain name and its associated IP address in trust for the registrant of the domain name, in good faith and to transfer the domain name and its associated IP address to the registrant of the domain name upon request.

Please note: the registrant of the domain name is located in the registrant's field. In some cases, GoDaddy.com, Inc. is the registrant of domain names listed in the domain name.

REGISTRAR

World Wide Web, Inc.
14250 Washington Blvd.
Houston, Texas 77047
United States

Administrative Contact
Name: **John A. Goetz**
14250 Washington Blvd.
Houston, Texas 77047
United States

Administrative Contact

Scott H. Hines
14250 Washington Blvd.
Houston, Texas 77047
United States

Technical Contact

Scott Hines
14250 Washington Blvd.
Houston, Texas 77047
United States

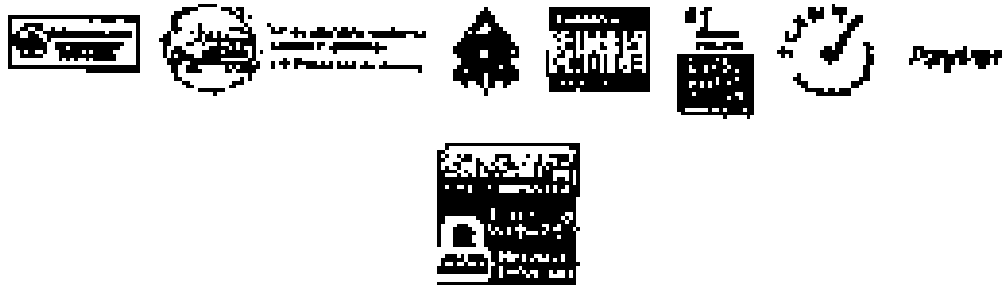
Administrative Contact
Name: **John A. Goetz**
14250 Washington Blvd.
Houston, Texas 77047
United States

The registrant agrees to pay the fees associated with the registration of a registrant of the domain name. The registrant agrees to pay the fees associated with the registration of a registrant of the domain name.

3/12/2006 2:41 PM

Current Registrant: **GOOAGDY.COM, INC**
IP Address: **66.155.142.100**
IP Location: **UNITED STATES - ARIZONA - SCOTTSDALE**
Last Contact: **12/9/2006 2:41 PM**
CNAME: **www.gooagdy.com**
YI URL: **http://www.gooagdy.com**
WHOIS: **http://www.gooagdy.com**

Courtesy of www.iptrademarkattorney.com



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EXHIBIT 4

Courtesy of www.iptrademarkattorney.com



KirbyMorganDivers.com

1230 Westheimer Houston, TX 77077

Phone: (281) 493-4358

KirbyMorganDivers.com has merged with www.UniversalDistributors.US

This site will be redirected to www.UniversalDistributors.US in 5 seconds.

If the redirect does not work [Click Here](#)

www.kirbymorgandivers.com is associated with or affiliated with www.kirbymorgandivers.com Kirby Morgan Divers, Inc. Call 1-435- Jason Way Sales Office 93455

UniversalDistributors.US

14230 Westheimer

Houston, TX 77077

Phone: (281) 493-4358

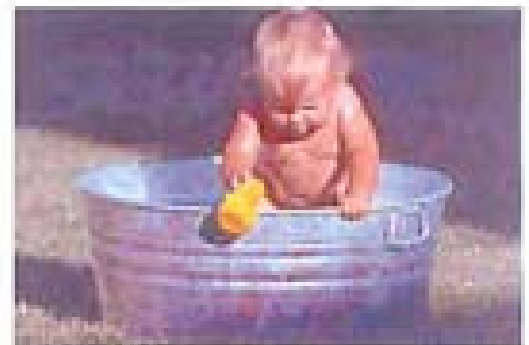
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Courtesy of www.iptrademarkattorney.com



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Buoyancy Compensators



Regulators, Octopuses



Dive Computers



Scuba Packages



Gear Bags

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Customer Service

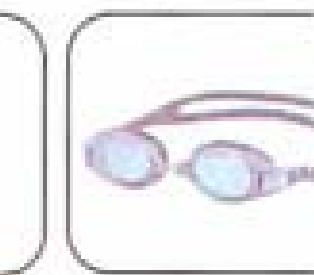
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Kids Corner

Inflatable Boats

Wetsuits

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Vehicles

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Our goals remain unchanged: Great products, reasonable prices, and excellent service.



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Watches



Commercial



Ocean Corporation
Students



Technical Gear



Dry Suits

Our Trade in and Trade up programs are better than ever this year. We have an excellent product line up of high quality proven products. We feel our customers deserve more than imported made in the 3rd world low grade equipment. Who wants to use potentially dysfunctional life support hardware? What business wants unhappy or dissatisfied customers? Unlike many stores who are only driven by higher profits, we have made the decision to avoid all the questionable products. Having to talk with lawyers and widows after the fact means somebody did not do their job, so we let the other internet stores play those games. We get it right the first time.



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Full Face Mask



Dive Texas



Motorcycle Accessories



Paint Ball & Pellet Gun



Personal Protection

Scuba Equipment

Snorkeling

Unique Gifts

Photography

Binoculars

Courtesy of www.iptrademarkattorney.com

Kids Corner

LaserMax

Spearguns

Blackhawk

Boats

Personal Defense

Motorcycle

Shipping

Wet & Dry Suits

About US

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge J. Spencer Letts and the assigned discovery Magistrate Judge is Charles Rink

The case number on all documents filed with the Court should read as follows:

2:CV008 - 0258 JSL (JCR)

The United States District Judge assigned to this case will review all filed discovery motions and thereafter, on a case-by-case or motion-by-motion basis, may refer discovery related motions to the Magistrate Judge for hearing and determination.

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a return is required) and a copy of this notice must be served on all plaintiffs.

Subsequent documents must be filed at the following location:

Western Division
212 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Civil on
411 West Fourth St., Rm. 3-037
Santa Ana, CA 92701-4310

Eastern Division
1470 Tenth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your filing being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Kirby Morgan Dive Systems, Inc.
A CALIFORNIA CORPORATION
PLAINTIFF(S)

CASE NUMBER
CV08-08.258 JSL (Ex)

v.
Universal Scuba Distributors, *a proprietorship*
DEFENDANT(S)

SUMMONS

TO: DEFENDANT(S): Universal Scuba Distributors

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Daniel M. Cisló, Esq., whose address is Cisló & Thomas, LLP, 1333 2nd Street, Suite 500, Santa Monica, CA 90401. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DEC 15 2008

Clerk, U.S. District Court

Dated: _____

By: Natalie Georgia
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

1. (a) IS FEDERAL CASE? Yes No (b) IS FEDERAL CASE? Yes No
 (c) IS FEDERAL CASE? Yes No

2. (a) FEDERAL RELATED CASES: Have any federal courts entered orders in this case and if so, have they been reviewed by this court? Yes No
 (b) (Yes, list case number(s)) _____

3. (a) How many judgments entered in this case and other pending cases
 (b) (How many judgments entered) 1 2 3 4 5 6
 7 8 9 10 11 12 13 14 15 16 17
 18 19 20 21 22 23 24 25 26 27 28 29 30
 31 32 33 34 35 36 37 38 39 40

4. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

5. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

County or the District [*]	County or the District, State of California, County of Fresno
Case or Case Number	_____

6. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

County or the District [*]	County or the District, State of California, County of Fresno
Case or Case Number	_____

7. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

County or the District [*]	County or the District, State of California, County of Fresno
Case or Case Number	_____

8. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

9. SIGNATURE OF ATTORNEY FOR PLAINTIFF _____ DATE 12-15-20

Noting to the court that the Plaintiff is a party in this case and the defendant is a party in this case and the court is required to review the case and make a determination as to whether the defendant is entitled to summary judgment. The court is required to review the case and make a determination as to whether the defendant is entitled to summary judgment.

10. FEDERAL CASES LISTING IN FEDERAL COURT

Federal Case No.	Abbreviation	Summary Description of Current Status
101	N/A	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
102	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
103	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
104	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
105	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
106	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.
107	BL	All claims for breach of contract between Plaintiff and Defendant, as well as for breach of contract, are dismissed.