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 15 Big Lots, Inc., Big Lots Stores, Inc. and
 16 PNS Stores, Inc.

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

18 EQUAL EMPLOYMENT
 19 OPPORTUNITY
 20 COMMISSION,

Plaintiff,

21 v.
 22 BIG LOTS, INC., BIG LOTS
 23 STORES, INC., PNS STORES,
 24 INC., AND; DOES 1-10
 25 Inclusive

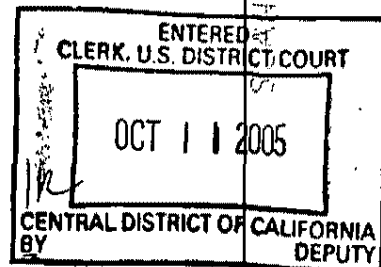
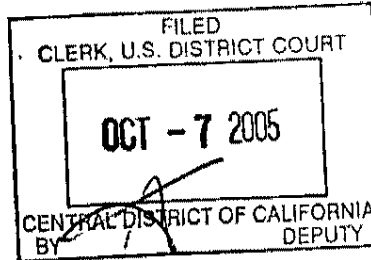
Defendants.

Case No. CV04-7703 RGK (VBKx)

The Honorable R. Gary Klausner

[PROPOSED] CONSENT DECREE

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).



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 JS-2/JS-3 ☐
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I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC") and Defendants Big Lots, Inc. ("BL"), Big Lots Stores, Inc. ("BLS"), and PNS Stores, Inc. ("PNS") (collectively Defendants) hereby stipulate and agree to entry of this Consent Decree to resolve the EEOC's First Amended Complaint, filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). The EEOC's First Amended Complaint alleged that Charging Party Toya Stamps ("Charging Party" or "Stamps") was subjected to sexual harassment by the Store Manager of Big Lots Store 4171 in Long Beach, California. The EEOC further alleged that Defendants subjected Stamps to tangible employment actions, including but not limited to termination. Defendants deny liability and deny that they have violated Title VII. Defendants have entered into this Consent Decree to avoid the further expense and distractions of litigation.

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

- A. The parties to this Consent Decree ("Decree") are the EEOC and Defendants ("Parties"). This Decree shall be binding on and enforceable against Defendants and their successors and assigns.
- B. Defendants deny liability or that there was a basis for the action. The EEOC brought its action against Defendants for the following purposes:
1. To provide appropriate monetary and injunctive relief;
 2. To ensure that Defendants' employment practices comply with federal law;
 3. To ensure a work environment free from hostility and retaliation;
 4. To ensure training for Defendants' managers and employees with respect to their obligations under Title VII; and
 5. To provide an appropriate and effective mechanism for handling

1 discrimination complaints in the workplace.

2 **III.**

3 **RELEASE OF CLAIMS**

4 A. This Decree fully and completely resolves all issues, claims and allegations
5 by the EEOC against Defendants that are raised in the First Amended Complaint
6 filed in this action in the United States District Court, Central District of California
7 on October 13, 2004, captioned *U.S. Equal Employment Opportunity Commission*
8 *v. Big Lots, Inc., Big Lots Stores, Inc., PNS Stores, Inc. and Does 1-10 Inclusive*;
9 Case No. CV 04-7703 RGK (VBKx).

10 B. Nothing in this Decree shall be construed to preclude any Party from
11 bringing suit to enforce this Decree in the event that any Party hereto fails to
12 perform the promises and representations contained herein.

13 C. Nothing in this Decree shall be construed to limit or reduce Defendants'
14 obligation to comply fully with Title VII or any other federal employment statute.

15 D. This Decree in no way affects the EEOC's right to bring, process,
16 investigate or litigate other charges that may be in existence or may later arise
17 against Defendants in accordance with standard EEOC procedures.

18 **IV.**

19 **JURISDICTION**

20 A. The Court has jurisdiction over the Parties and the subject matter of this
21 lawsuit. The terms and provisions of this Decree are fair, reasonable and just.
22 This Consent Decree conforms with the Federal Rules of Civil Procedure and Title
23 VII and is not in derogation of the rights or privileges of any person.

24 B. The Court shall retain jurisdiction of this action during the duration of the
25 Decree for the purposes of entering all orders, judgments and decrees that may be
26 necessary to implement the relief provided herein.

27 ///

28 ///

V.

EFFECTIVE DATE AND DURATION OF DECREE

A. The provisions and agreements contained herein are effective immediately upon the date which this Decree is entered by the Court ("the Effective Date").

B. Except as otherwise provided herein, this Decree shall remain in effect for two (2) years after the Effective Date.

C. Per the Court's Order, this action will be dismissed with prejudice as of the Effective Date but subject to the Court retaining jurisdiction to enforce the terms of this Decree regardless of the dismissal.

VI.

MONETARY RELIEF

A. In settlement of this lawsuit, Defendants shall pay a total of \$132,500 to Toya Stamps as compensation for alleged emotional distress. Defendants shall issue a check payable to Toya Stamps in the amount of \$132,500 without taking any withholdings and issue a form 1099 in the regular course of business.

Defendants shall forward, via Federal Express, a check to Stamps within 21 days of the Effective Date of this Decree. Defendants shall make appropriate reports to the Internal Revenue Service and other tax authorities. Within three (3) business days of the issuance of the settlement check, Defendants shall submit a copy of the settlement check and related correspondence to the Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California 90012.

VII.

INJUNCTIVE REMEDIES**A. Non-Discrimination****1. Harassment Based on Sex**

Defendants, their successors and assigns, hereby agree not to: (a) harass or tolerate sexual harassment against persons by any of their officers, management

1 and non-management employees; (b) engage in or be a party to any action, policy
2 or practice that is intended or is known to them to have the effect of harassing or
3 intimidating any employee on the basis of sex; (c) create, facilitate or permit the
4 existence of a work environment that is hostile to employees on the basis of sex;
5 and (d) impose or permit any tangible employment actions against employees
6 because such employees resist, oppose, or otherwise object to harassment based on
7 sex.

8 2. Retaliation

9 Defendants, their successors and assigns hereby agree not to engage in,
10 implement or permit any action, policy or practice with the purpose of retaliating
11 against any current or former employee or applicant of Defendants, because he or
12 she has in the past, or during the term of this Decree: (a) opposed any practice
13 made unlawful under Title VII; (b) filed a charge of discrimination alleging such
14 practice; (c) testified or participated in any manner in any proceeding in connection
15 with this case and/or relating to any claim or investigation of a Title VII violation
16 (including without limitation, any internal investigation undertaken by Defendants
17 and/or their agents of a Title VII violation); (d) was identified as a possible witness
18 or claimant in this action; (e) asserted any rights under this Decree; or (f) sought or
19 received any relief in accordance with this Decree.

20 **B. Posting**

21 Within ten (10) business days after the Effective Date and throughout the
22 term of this Decree, Defendants shall post a notice in the form attached as Exhibit
23 "A", in a clearly visible location frequented by employees at its Long Beach store
24 known as store 4171 ("Long Beach Store"). The size of the notice shall be no
25 smaller than 8½ inches by 11 inches. The notice shall remain posted for two (2)
26 years.

27 **C. Anti-Discrimination Policies**

28 Defendants shall, within ten (10) business days after the Effective

1 Date, provide a copy to the EEOC of their policy against discrimination,
2 harassment, and retaliation.

3 **D. Written National Guideline for Investigations**

4 Defendants shall issue a written guideline approved by the EEOC to be
5 followed in all investigations of complaints of sexual harassment and/or
6 retaliation. This guideline is to provide step by step instructions to be followed by
7 those who investigate any complaint of sexual harassment or retaliation on
8 Defendants' behalf including, but not limited, to all Regional Human Resources
9 Managers for any Big Lots Store. The written guideline must be followed and all
10 documents generated in accordance with the guideline must be retained through
11 the duration of this Consent Decree and provided in the Reporting required under
12 Section VIII(B) below.

13 **E. Training**

14 Within sixty (60) days after the Effective Date, all of Defendants'
15 managerial/supervisory employees at or above the Associate Manager level,
16 human resources, and staff/hourly employees for the Long Beach Store shall be
17 required to attend an intensive training program of at least three (3) hours for
18 managerial employees and one and a half (1½) hours for staff/hourly employees.
19 The training shall be mandatory and occur once every year for the term of this
20 Decree. Any manager, supervisor, or employee who failed to attend scheduled
21 training shall be trained within (30) days of the live training set forth above.

22 1. All trainings for employees of the Long Beach Store shall include
23 coverage of the subjects of discrimination, harassment, retaliation, and
24 Defendants' policies and procedures for reporting and responding to complaints
25 of discrimination, harassment and retaliation.

26 2. The training of Long Beach Store employees at or above the
27 Associate Manager level shall additionally include training on how to properly
28 receive and report complaints of harassment in a neutral manner, how to take

1 preventive and corrective measures against harassment and/or retaliation, and
2 how to recognize and prevent harassment and/or retaliation.

3 During the term of this Consent Decree, Defendants and their successors
4 and assigns shall ensure that each of their managers at or above the Associate
5 Manager position in the Long Beach Store are aware of any term(s) of this Decree
6 which may be related to his/her job duties as covered in their respective training.

7 3. Training for Human Resources employees for the Long Beach
8 Store shall be specific to their obligations, including the receipt and
9 investigation of complaints of discrimination and retaliation. This training
10 shall be above and beyond the supervisor/manager training as set forth above.

11 Defendant's Vice President of Associate Relations and Development or
12 a person in an equivalent or higher position shall monitor the issuance of
13 appropriate levels of discipline for Long Beach Store employees accused of
14 harassment and Long Beach store supervisors who fail to act in compliance
15 with Defendants' anti-discrimination policies and Title VII.

16 4. For the remainder of the term of this Decree, all new employees hired
17 in a managerial position at the Long Beach Store and all Long Beach Store
18 employees recently promoted from a staff/hourly to a managerial position shall
19 receive the managerial training within sixty (60) days of hire or promotion. For the
20 remainder of the term of this Decree all new staff/hourly employees hired at the
21 Long Beach Store shall receive the staff/hourly training within 6 months of hire.

22 5. After the initial training as specified above, all employees of the Long
23 Beach Store shall receive the training at least annually thereafter for the remainder
24 of the term of this Decree.

25 6. All employees required to attend such training shall verify their
26 annual attendance in writing.

27 7. Within forty-five (45) days after the Effective Date, Defendants shall
28 submit to the EEOC a description of the training to be provided and an outline of

1 the curriculum developed for the trainees.

2 **F. Discipline for Failing to Respond to Complaints**

3 Defendants' managers at or above the Associate Manager level who fail to
4 properly respond to harassment complaints shall be subject to appropriate
5 discipline.

6 **G. Complaint Procedure**

7 Within sixty (60) days of the Effective Date, Defendants shall ensure that
8 they have publicized an internal complaint procedure to employees at the Long
9 Beach Store to provide for the filing, investigation and, if appropriate, remedying
10 of complaints of discrimination or retaliation. Defendants shall establish a
11 designated toll-free number that shall be disseminated to all Defendants'
12 employees at the Long Beach Store informing them that a discrimination complaint
13 can be made twenty-four (24) hours a day. The toll-free number shall be
14 monitored by Defendants' Vice President of Associate Relations and Development
15 who will also monitor Defendants' response and investigation. All calls shall be
16 tracked by Defendants' Vice President of Associate Relations and Development
17 during the term of the Decree. Defendants shall also publicize the EEOC call
18 center number of (800) 669-4000.

19 1. Defendants shall:

- 20 a. Publicize the complaint procedure at the Long Beach Store;
21 b. Track and collect all complaints filed thereunder;
22 c. Investigate and resolve such complaints in a timely and
23 effective manner; and
24 d. Retain records regarding resolution of all such complaints.

25 2. The internal complaint procedure shall incorporate the following
26 elements:

- 27 a. A prompt commencement and thorough investigation by
28 designated employees of Defendants trained to conduct such investigations who

1 are not connected with the complaint;

2 b. Defendants shall maintain all notes regarding witness
3 statements and a written record of any findings and conclusions, and any
4 actions taken in response to the complaint;

5 c. Provision for the prompt resolution of such complaints;

6 d. Confidentiality of the complaint and investigation to the
7 extent possible;

8 e. The complainant and the accused shall be informed that the
9 investigation has been completed, that each of the issues raised has been
10 reviewed and that appropriate action is being taken.

11 f. A notice to employees of the Long Beach Store that
12 employees complaining of discrimination may use the company's internal
13 complaint procedure or contact the EEOC or state or local Fair Employment
14 Practice Agencies ("FEPA"). The notice shall also state that filing an internal
15 complaint does not relieve the complainant of meeting any applicable deadline
16 for the filing of a charge or complaint with EEOC or state or local FEPA.

17 3. The Internal Complaint Procedure publicized to the Long Beach Store
18 employees will permit, but not require, an employee to initiate the complaint
19 process by submitting a written complaint.

20 4. Defendants will maintain a policy of nondiscrimination and equal
21 treatment, including a policy of zero tolerance for unlawful discrimination, in all of
22 its employment practices.

23 5. The Internal Complaint Procedure publicized to the Long Beach
24 Store employees is not intended to supplant the right of any employee to file a
25 charge or complaint of discrimination or retaliation under any available
26 municipal, state, or federal law.

27 6. The Internal Complaint Procedure publicized to the Long
28 Beach Store employees will include the following elements:

1 a. A statement that it is unacceptable to retaliate against any
2 associate for use of the Internal Complaint Procedure, for assisting in the
3 investigation of a complaint, otherwise assisting in the utilization of the procedure,
4 or reporting discrimination to the EEOC or a FEPA.

5 b. A statement that if an allegation of discrimination or retaliation
6 against a manager or other associate is substantiated, then such conduct will result
7 in appropriate discipline, up to and including discharge.

8 c. A statement that supervisors found to have condoned
9 subordinate employees engaging in discrimination or retaliation may also be
10 subject to appropriate discipline.

11 **H. Neutral Reference for Stamps**

12 Upon inquiry by any prospective employer, Defendants through their Vice
13 President of Associate Relations and Development, shall hereafter provide a
14 neutral reference for Stamps limited to the following information: date of hire,
15 position held, and date of departure. Defendants shall notify Stamps of the
16 contact information for their Vice President of Associate Relations and
17 Development within ten (10) days of the Effective Date and within ten (10) days
18 if there is a change to the person holding that Vice President position or their
19 contact information.

20 Within ten (10) days of the Effective Date, Defendants shall also
21 submit in writing to the California Employment Development
22 Department with a courtesy copy to Stamps and the EEOC, a letter
23 explaining that Stamps was not terminated for failure to return from a
24 leave of absence or any other reason on or before December 5, 2003.

25 **VIII.**

26 **RECORD KEEPING AND REPORTING**

27 **A. Record Keeping**

28 Defendants shall establish a record-keeping procedure that provides for

1 the monitoring of such complaints to prevent retaliation. The records to be
2 maintained shall be:

3 1 All documents generated in connection with any complaint,
4 investigation into, or resolution of every complaint of discrimination or
5 retaliation by any employee at the Long Beach Store for the duration of the
6 Decree and the identities of the parties involved;

7 2. All forms from employees of the Long Beach Store
8 acknowledging receipt of Defendants' discrimination and anti-retaliation
9 policy;

10 3. All documents verifying the occurrence of all training sessions and
11 names and positions of all attendees for each session as required under this Decree

12 4. All documents reflecting complaints filed by employees at the Long
13 Beach Store and the response to the complaints.

14 **B. Reporting**

15 In addition to the notices to the EEOC specified above, Defendants shall
16 provide the following reports to the EEOC in writing, by mail or facsimile,
17 without assertion of the attorney-client privilege or attorney work-product
18 privilege as to such reports:

19 1. Within ninety (90) days after the Effective Date, Defendant shall
20 submit to the EEOC an initial report which contains:

21 (a) A copy of the current discrimination and anti-retaliation
22 policy;

23 (b) A summary of the procedures and record-keeping methods
24 developed for centralized tracking of discrimination complaints at
25 the Long Beach Store and the monitoring of such complaints;

26 (c) A statement confirming that the required notices pertaining to
27 this Decree have been posted; and

28 (d) Copies of all Long Beach Store employee acknowledgment

1 forms indicating receipt of the discrimination and anti-retaliation
2 policy.

3 2. Defendant shall also provide the following on an annual basis
4 throughout the term of this Decree;

5 (a) The attendance lists of all attendees for all training sessions
6 required under this Decree;

7 (b) Acknowledgments of receipt of the current discrimination and
8 anti-retaliation/harassment policy;

9 (c) A description of all discrimination and/or retaliation complaints
10 made at the Long Beach Store since the submission of the
11 immediately preceding report hereunder. This description shall
12 include the names of the individuals alleging harassment or
13 retaliation, the nature of the harassment or retaliation, the names of
14 the alleged perpetrators of harassment or retaliation, the dates of the
15 alleged harassment or retaliation, a brief summary of how each
16 complaint was resolved, the identity of the Defendants' employee(s)
17 who investigated or resolved each complaint, a copy of the written
18 complaint, if any, statements or documentation of statements
19 generated from any investigation of the complaint, findings from the
20 investigation, and documents reflecting electronic, written or other
21 communications with the complainant and/or witnesses. If no results
22 have been reached as of the time of the report, the result shall be
23 included in the next report;

24 (d) An analysis of the monitoring done for repeat complaints by
25 any employees at the Long Beach Store and investigation of such
26 complaints; and

27 (e) Defendants shall provide a report to the EEOC detailing any
28 changes in the procedures or record-keeping methods for centralized

1 tracking of discrimination complaints at the Long Beach Store and the
2 monitoring of such complaints within thirty (30) days before
3 implementing such changes.

4 **IX.**

5 **MODIFICATION AND SEVERABILITY**

6 A. This Decree constitutes the complete understanding of the parties with
7 respect to the matters contained herein. No waiver, modification or amendment
8 of any provision of this Decree will be effective unless made in writing and
9 signed by an authorized representative of each of the parties.

10 B. If one or more provisions of the Decree are rendered unlawful or
11 unenforceable, the parties shall make good faith efforts to agree upon appropriate
12 amendments to this Decree in order to effectuate the purposes of the Decree. In
13 any event, the remaining provisions will remain in full force and effect unless the
14 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

15 C. By mutual agreement of the parties, this Decree may be amended or
16 modified in the interests of justice and fairness in order to effectuate the
17 provisions of this Decree.

18 **X.**

19 **COMPLIANCE AND DISPUTE RESOLUTION**

20 A. The parties expressly agree that if the EEOC has reason to believe that
21 Defendants have failed to comply with any provision of this Consent Decree, the
22 EEOC may bring an action before this Court to enforce the Decree. Prior to
23 initiating such action, the EEOC will notify Defendants' legal counsel of record, in
24 writing, of the nature of the dispute. This notice shall specify the particular
25 provision(s) that the Commission believes Defendants have breached. Defendants
26 shall have sixty (60) days to attempt to resolve or cure the breach.

27 B. The parties agree to cooperate with each other and use their best efforts to
28 resolve any dispute referenced in the EEOC notice. If after thirty (30) days the

1 parties are unable to resolve a dispute regarding an alleged breach, the parties shall
2 submit the dispute to mediator Carla Barboza, who will assist the parties to resolve
3 the dispute prior to any petition being filed with this Court. Defendants shall bear
4 all costs associated with disputes submitted to mediator Carla Barboza pursuant to
5 this provision of this Decree.

6 C. After sixty (60) days have passed with no resolution or agreement to extend
7 the time further, the EEOC may petition this Court for resolution of the dispute,
8 seeking all available relief, including an extension of the term of the Decree for
9 such period of time as Defendants are shown to be in breach of the Decree.

10 **XI.**

11 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**

12 **OF CONSENT DECREE**

13 Defendants shall bear all costs associated with the administration and
14 implementation of their obligations under this Consent Decree. However,
15 Defendants shall not be obligated to bear the costs incurred by the EEOC
16 associated with the administration and implementation of this Consent Decree.

17 **XII.**

18 **COSTS AND ATTORNEYS' FEES**

19 Each party shall bear its own costs of suit and attorneys' fees.

20 **XIII.**

21 **MISCELLANEOUS PROVISIONS**

22 A. During the term of this Consent Decree, Defendants shall provide any
23 potential successor with a copy of this Consent Decree within a reasonable time of
24 not less than sixty (60) days after the execution of any agreement for acquisition or
25 assumption of control of any or all of Defendants' facilities or any other material
26 change in corporate ownership structure and shall simultaneously inform the
27 EEOC of same.

28 B. Unless otherwise stated, all notices, reports and correspondence required

SCANNED

under this Decree shall be delivered to the attention of the Regional Attorney, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA. 90012.

C. The parties agree to entry of this Decree subject to final approval by the Court.

XIV.

COUNTERPARTS

This Consent Decree may be executed in counterparts and shall be deemed fully executed when each party signed and transmitted a counterpart to the other party. All counterparts taken together shall constitute the single Consent Decree. A facsimile signature shall have the same force and effect of an original signature.

Dated: October 5, 2005

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: 

Anna Y. Park, Regional Attorney
Attorneys for Plaintiff

BIG LOTS, INC., BIG LOTS STORES,
INC., PNS STORES, INC.

Dated: October __, 2005

By: _____

Brad Waite, Executive Vice
President

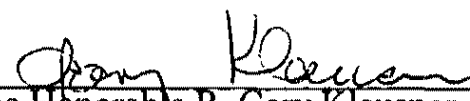
[PROPOSED ORDER]

GOOD CAUSE APPEARING:

The Court hereby retains jurisdiction and the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

IT SO ORDERED.

Dated: _____


The Honorable R. Gary Klausner
United States District Court Judge

under this Decree shall be delivered to the attention of the Regional Attorney,
U.S. Equal Employment Opportunity Commission, Los Angeles District Office,
255 E. Temple St., 4th Fl., Los Angeles, CA. 90012.

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of an original signature.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Dated: October __, 2005

By: Anna Y. Park, Regional Attorney
Attorneys for Plaintiff

BIG LOTS, INC., BIG LOTS STORES, INC., PNS STORES, INC.

Dated: October 5, 2005

By: Brad Waite
Brad Waite, Executive Vice
President

[PROPOSED ORDER]

GOOD CAUSE APPEARING:

The Court hereby retains jurisdiction and the provisions of the
foregoing Consent Decree are hereby approved and compliance with all provisions
thereof is **HEREBY ORDERED**.

IT SO ORDERED.

Dated: OCT 17 2005

The Honorable R. Gary Klausner
United States District Court Judge

DECLARATION OF MAILING

I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission.

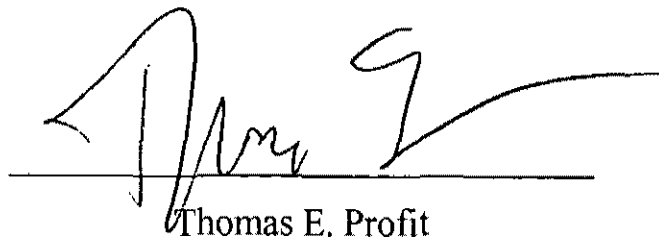
My business address is Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012.

On the date that this declaration was executed, as shown below, I served the foregoing **[PROPOSED] CONSENT DECREE** by mail in a sealed envelope with postage therein fully prepaid, in regular mail at Los Angeles, County of Los Angeles, State of California, which was addressed as follows:

C. Craig Woo
Aryn Sobo
JACKSON & LEWIS LLP
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2005 at Los Angeles, California.



Thomas E. Profit

SCANNED