

The State of Texas



Citations Unit
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Austin, Texas 78711-2079

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Secretary of State

October 8, 2010

MGA Entertainment Inc
Issac Larian
16380 Roscoe Blvd
Van Nuys, CA 91406

2011-189976-1
Include reference number in
all correspondence

RE: IP Defenders Inc VS MGA Entertainment Inc
354th Judicial District Court Of Hunt County, Texas
Cause No: 75999

Dear Sir/Madam,

Pursuant to the Laws of Texas, we forward herewith by CERTIFIED MAIL, return receipt requested, a copy of process received by the Secretary of State of the State of Texas on October 7, 2010.

CERTIFIED MAIL #71603901984864451554

Refer correspondence to:

Kelly D Hine
Fish & Richardson P C
1717 Main St
Suite 5000
Dallas, TX 75201



Sincerely,

A handwritten signature in cursive script that reads "Helen Lupercio".

Helen Lupercio
Team Leader, Citations Unit
Statutory Documents Section

hl/vo
Enclosure



CITATION FOR PERSONAL SERVICE - DISTRICT COURT

75999

CLERK OF THE COURT
STACEY LANDRUM, DISTRICT CLERK
HUNT COUNTY
P.O. BOX 1437
GREENVILLE, TEXAS 75403-1437

ATTORNEY FOR PLAINTIFF OR PLAINTIFF
KELLY D. HINE
1717 MAIN STREET
SUITE 5000
DALLAS, TEXAS 75201

RECEIVED
SECRETARY OF STATE
OCT - 7 2010
2:30PM
CITATIONS UNIT

THE STATE OF TEXAS

NOTICE OF DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO MGA ENTERTAINMENT INC.
ESPERANZA "HOPE" ANDRADE
BY & THROUGH TEXAS SECRETARY OF STATE - PO BOX 12887
1019 BRAZOS STREET
AUSTIN, TRAVIS CO., TX 78711-2697
MGA ENTERTAINMENT INC.
ISSAC LARIAN
16380 ROSCOE BLVD
VAN NUYS, CA 91406

Defendant, Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at of before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 354TH DISTRICT COURT Judicial District of Hunt County, Texas at the Courthouse of said County in Greenville, Texas.

Said Plaintiff's Petition was filed in said court on the 30TH day of September A.D. 2010 in this case numbered 75999 on the docket of said court, and styled,

IP DEFENDERS, INC. , Plaintiff,
VS MGA ENTERTAINMENT INC. , Defendant.

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand seal of said Court, at Greenville, Texas this SEPTEMBER 30, 2010.

00189976

STACEY LANDRUM, DISTRICT CLERK
DISTRICT COURT, HUNT COUNTY, TEXAS

By  , DEPUTY

SHERIFF'S RETURN

Came to hand the _____ day of _____ A.D. 20____,
 at _____ o'clock _____ m., and executed in _____ County,
 by delivering to the within named defendants in person, a true copy of this citation,
 having first endorsed thereon the date of delivery, together with the accompanying true
 and correct copy of the Plaintiff's Petition, at the following times, to-wit:

NAME	DATE	TIME
	MONTH/DAY/YEAR	HOUR/MIN/ M

And not executed as to the defendant, _____
 the diligence used in finding said defendant, being _____
 and the cause of failure to execute this process is: _____
 _____ and the information received as to the
 whereabouts of the said defendant, being _____

FEES - Serving cop--\$ _____
 Total \$ _____
 Sheriff of _____ County, Texas
 By _____, Deputy.

AT FILED M
3:50 P

SEP 30 2010

CLERK, DISTRICT COURT, HUNT CO. TX
(Signature)

NO. 15 999

IP DEFENDERS, INC.,
Plaintiff,

v.

MGA ENTERTAINMENT INC.,
Defendant.

IN THE DISTRICT COURT

354^{LL} JUDICIAL DISTRICT

HUNT COUNTY, TEXAS

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PLAINTIFF'S ORIGINAL PETITION

Plaintiff IP Defenders, Inc. ("IP Defenders" or "Plaintiff") files this Original Petition against Defendant MGA Entertainment Inc. ("MGA" or "Defendant") and would respectfully show this Court as follows:

I. INTRODUCTION

Plaintiff brings this action as the exclusive assignee of Innovation First, Inc. ("Innovation First") a robotics and toy company headquartered in Greenville, Texas. Innovation First has expended substantial time, labor, skill, money, and other resources engineering, developing, and perfecting its HEXBUG® NANO™ micro robotic toys. MGA is a copycat attempting to take a free ride on Innovation First's efforts by manufacturing, advertising, promoting, distributing, selling, and/or offering for sale products that were derived from essential and innovative components of the HEXBUG® NANO™. In this lawsuit, Plaintiff seeks to recover the damage caused by MGA's unlawful misappropriation and to prevent MGA from becoming unjustly enriched by its wrongful actions.

II. DISCOVERY

1. Plaintiff requests that discovery be conducted under “Level 2” of Rule 190.3 of the Texas Rules of Civil Procedure. Plaintiff, however, reserves the right to move for entry of a “Level 3” discovery control order.

III. PARTIES

2. Plaintiff IP Defenders, Inc. is a corporation organized and existing under the laws of the State of California that pursues certain legal claims of Innovation First, Inc., a Texas corporation with its headquarters in Greenville, Texas, and other related entities. IP Defenders is the sole and exclusive assignee of all claims and causes of action of IFI that arise or exist under laws of the State of Texas asserted herein against MGA.

3. Defendant MGA Entertainment Inc. is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 16380 Roscoe Blvd., Van Nuys, CA 91406. MGA may be served with process through its registered agent, Isaac Larian at 16380 Roscoe Blvd., Van Nuys, CA 91406. Alternatively, because MGA engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of MGA’s business in this state, MGA may be served with process by serving the Texas Secretary of State, Esperanza “Hope” Andrade, as its agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, TX 78711-2079, Travis County, Texas. See FED. R. CIV. P. 4(h); TEX. CIV. PRAC. & REM. CODE ANN. § 17.044(b); TEX. REV. CIV. STAT. art. 1396-8.09(B).

IV. JURISDICTION AND VENUE

4. This action is brought pursuant to the common law of the State of Texas to recover for Defendant's acts of misappropriation and unjust enrichment against Plaintiff. The amount of damages sought by Plaintiff exceeds the minimum jurisdictional limits of the Court.

5. Venue is proper in Hunt County, Texas because a substantial part of the events giving rise to this claim occurred in Hunt County, Texas.

V. FACTUAL BACKGROUND

6. Innovation First is a robotics and toy company headquartered in Greenville, Texas. Founded on the belief that innovation early in the design process is necessary to produce simple and elegant product designs, Innovation First began producing electronics for autonomous mobile ground robots in the 1990's.

7. Now, Innovation First is a world leader in educational and competitive robotics products and a developer of consumer robotics toys. These consumer robotics toys include the HEXBUG® line of micro robotic toys that are sold in retail stores, such as RadioShack, Hastings, Walgreens, and Wal-Mart, in Texas and at other locations throughout the United States and are also sold via the Internet.

8. The original line of HEXBUG® toys were small, autonomous robots that would easily fit in the palm of a child's hand. They contained sensors that allowed the toys to change directions in response to loud noise or in reaction to physical objects in their path. Later versions were designed to react in different ways to different stimuli or in response to a hand-held controller. Innovation First expended many thousands of

work-hours, money and other resources engineering, developing and perfecting these unique designs.

9. In 2009, Innovation First launched a new line of micro robotic toys called the HEXBUG® NANO™. The HEXBUG® NANO™ is smaller than its predecessors (about the size of a child's thumb), and unlike its predecessors, it does not contain sensors. Instead, Innovation First spent substantial amounts of time and money engineering the HEXBUG® NANO™ to mimic the movements of a real insect without sophisticated electronics and sensors. Although it took some thirty iterations, years in development, and dozens of designs (Innovation First engineered and prototyped over 150 variations of the legs alone), the result was a bug-like toy that would right itself if flipped on its back and that moved with clean, random insect-like motion. Much of that "magic" is created by the combination of the motor housing design that dictates the physical location of components and the unique leg design of the HEXBUG® NANO™.

10. The substantial time, labor, skill, money, and other resources that Innovation First spent in engineering, developing, and perfecting the HEXBUG® NANO™ was well spent. The HEXBUG® NANO™ is considered one of the most unique toys to appear on the market in the last decade, and it has been well received by the toy trade, the press and—most importantly—the public. The HEXBUG® NANO™ micro robotic toys have been featured on NBC's "Today Show" among other national media, have been featured on AOL Shopping's blog and numerous other blogs, were named Creative Child Magazine's 2010 Toy of the Year, and have been discussed in numerous magazine articles.

11. Unfortunately, the success of the HEXBUG® NANO™, and its uniquely engineered low-cost manufacturing design, has attracted those who would seek to obtain an unfair competitive advantage and unearned profits by free-riding on the extensive time, labor, skill, money and other resources that Innovation First expended in the creation of the HEXBUG® NANO™.

12. Upon information and belief, MGA is a copycat engaged in manufacturing, advertising, promoting, distributing, selling, and/or offering for sale products that are imitations of, or that were derived from, components of the HEXBUG® NANO™. For example, it appears, as shown in the photograph attached hereto as Exhibit "1," that MGA has copied the motor assembly, internal workings and housing that Innovation First developed for the HEXBUG® NANO™ for use in MGA's "Legend of Nara Battling Bugs" ("LONBB") toy.

13. Moreover, the process of developing a product from scratch often results in non-functional features from earlier designs being left in the final product because those non-functional features don't effect the operation of the final product and re-tooling to remove those features would be expensive. Several of the non-functional features that Innovation First left in HEXBUG® NANO™ tooling appear in the LONBB toys, providing further proof that those parts of the LONBB toys are blatant copies of the HEXBUG® NANO™ and that MGA engaged in little, if any, independent engineering or design on those parts.

14. MGA, on information and belief, has thereby gained a special advantage in competition with Innovation First because MGA's misappropriation has enabled it to develop the LONBB product more quickly and cheaply than it could have without the

misappropriation by avoiding the engineering and development time and expense that Innovation First had incurred in developing the HEXBUG® NANO™. Because Toy products that retail for less than \$10 (like versions of the HEXBUG® NANO™ and the LONBB) commonly have a one to two year life as a “hot” toy, MGA has gained an unfair competitive advantage during the critical sales window by taking this development shortcut. Moreover, MGA is able to obtain unjust profits from its sales of the LONBB toys because it is not burdened with the true development costs.

15. Because, on information and belief, MGA has taken advantage of the time, labor, skill, money and other resources that Innovation First spent developing the HEXBUG® NANO™, MGA has gained an unfair competitive advantage by foregoing the time and expense associated with its own development. This unfair competition has caused, and will continue to cause, substantial damage to Innovation First.

VI. CLAIMS FOR RELIEF

A. Texas Common Law Misappropriation

16. Plaintiff repeats and realleges the facts contained in the preceding paragraphs and incorporates them fully herein.

17. Innovation First spent extensive time, labor, skill, money and other resources in the creation of the HEXBUG® NANO™.

18. MGA, on information and belief, has copied, at least, the HEXBUG® NANO™ motor assembly, components and housing and is using them in the LONBB toy in competition with Innovation First.

19. MGA, on information and belief, has thereby gained a special advantage in competition with Innovation First because it is burdened with little or none of the

development expenses or development time that were incurred in developing these aspects of the HEXBUG® NANO™.

20. MGA's unfair competition has, on information and belief, caused damage within the jurisdiction of this Court.

B. Texas Common Law Unjust Enrichment

21. Plaintiff repeats and realleges the facts contained in the preceding paragraphs and incorporates them fully herein.

22. MGA has, on information and belief, taken undue advantage of the time, labor, skill, money and other resources expended to create the HEXBUG® NANO™.

23. MGA will be unjustly enriched if allowed to retain any profits it has made, or may make, from the sale of any products, including the LONBB products which, on information and belief, incorporate the motor assembly, components and housing developed for the HEXBUG® NANO™.

24. MGA should be ordered to disgorge and/or make restitution for any such ill-gotten profits.

VI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendant be cited to appear and answer herein, and that on final hearing, Plaintiff have judgment as follows:

- a. Awarding Plaintiff all such actual damages caused by Defendant's actions;

- b. Awarding Plaintiff all current and future profits gained by Defendant as a result of its sale of products incorporating the HEXBUG® NANO™ motor assembly and components;
- c. Awarding Plaintiff pre- and post-judgment interest at the highest lawful rate, costs of suit, and such other and further relief to which Plaintiff may be justly entitled.

Dated: September 30, 2010

Respectfully submitted,

FISH & RICHARDSON P.C.

By: 

Kelly D. Hine
Texas Bar No. 24002290
hine@fr.com
J. Kristopher Long
Texas Bar No. 24060181
klong@fr.com

1717 Main Street
Suite 5000
Dallas, Texas 75201
(214) 747-5070
(214) 747-2091 - facsimile

SCOTT, MONEY & RAY, PLLC

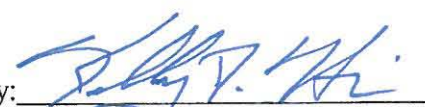
Robert L. Scott
Texas Bar No. 17910500
Bob@ScottMoneyRay.com

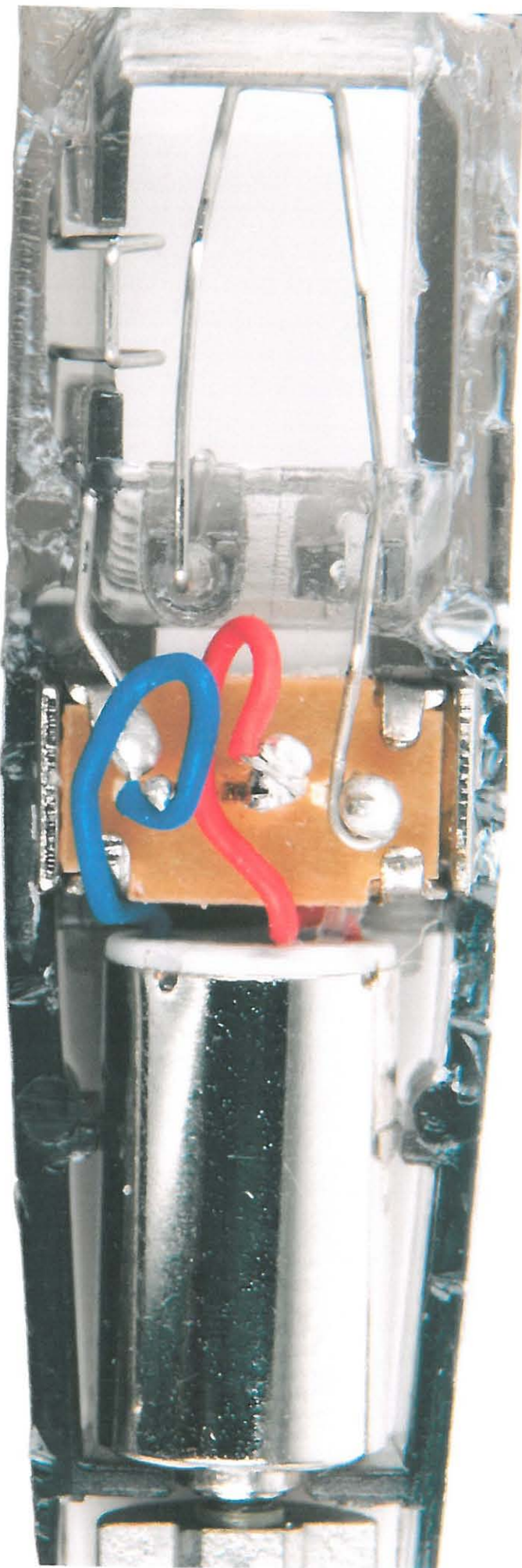
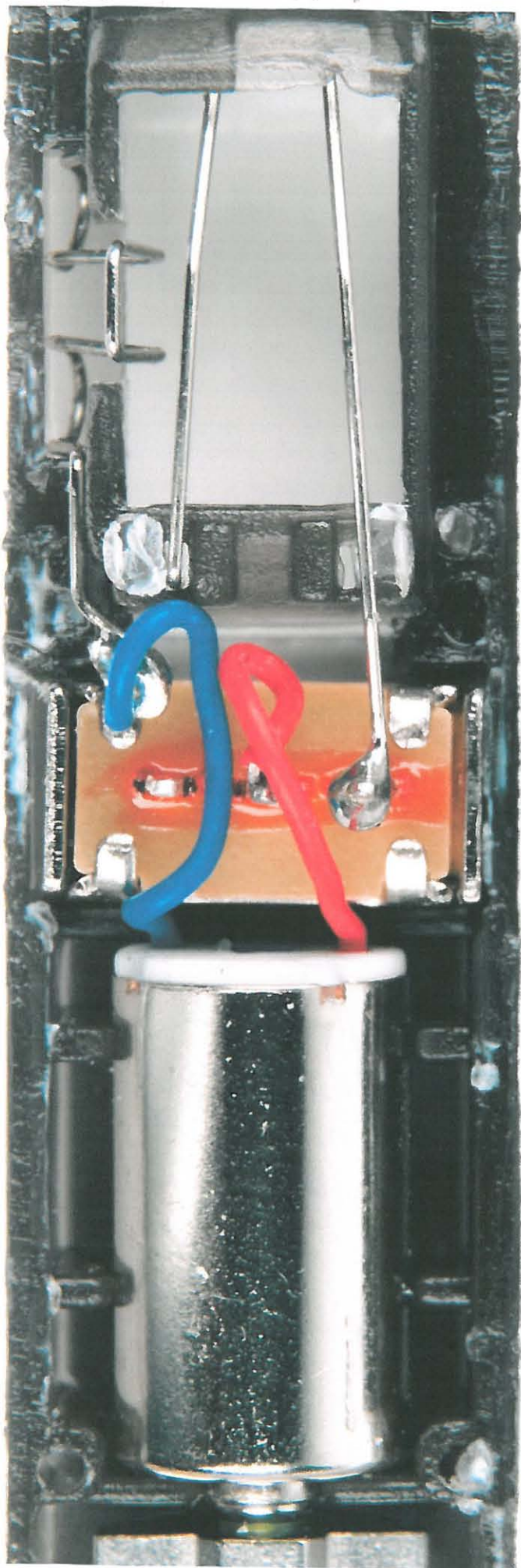
P.O. Box 1065
Greenville, Texas 75403
(903) 454-0044
(903) 454-1514 - facsimile

COUNSEL FOR PLAINTIFF

JURY DEMAND

Plaintiff demands a trial by jury on all issues properly triable to a jury in this matter.

By: 
Attorney for Plaintiff



AT FILED M
SEP 30 2010

NO. 75999

IP DEFENDERS, INC.,

Plaintiff,

v.

MGA ENTERTAINMENT INC.,

Defendant.

IN THE DISTRICT COURT

CLERK, DISTRICT COURT, HUNT CO. TX
Heather Rose

354th JUDICIAL DISTRICT

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HUNT COUNTY, TEXAS

PLAINTIFF'S REQUEST FOR DISCLOSURE TO DEFENDANT

TO: Defendant MGA Entertainment, Inc., by and through its registered agent, Isaac Larian at 16380 Roscoe Blvd., Van Nuys, CA 91406.

Plaintiff IP Defenders, Inc. ("IP Defenders" or "Plaintiff"), serves this its Request for Disclosure to Defendant MGA Entertainment, Inc. ("MGA" or "Defendant"), and hereby requests that Defendant disclose the information set forth in Texas Rule of Civil Procedure 194.2(a) through (k) within thirty (30) days after service of this Request.

Dated: September 30, 2010

Respectfully submitted,

FISH & RICHARDSON P.C.

By:



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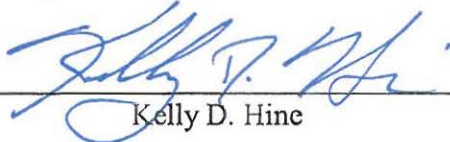
SCOTT, MONEY & RAY, PLLC
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Greenville, Texas 75403
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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of PLAINTIFF'S REQUEST FOR DISCLOSURE TO DEFENDANT has been served upon the Defendant contemporaneously with the service of Plaintiff's Original Petition.



Kelly D. Hine