

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SEVILLE MARKETING, LTD., a British  
Columbia, Canada, corporation, and

GREGORY STEPHEN WONG, individually  
and as the owner and principal of Seville  
Marketing, Ltd.,

Defendants.

Case No. C04-1181L

**STIPULATED JUDGMENT FOR  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (hereinafter "Commission" or "FTC"), has filed a Complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Seville Marketing, Ltd., and Gregory Stephen Wong (collectively, "Defendants") with deceptive acts and practices and the making of false advertising in connection with the marketing and sale of the Discreet HIV home test kit to consumers in the United States. The Commission's complaint alleges that Defendants' deceptive acts and practices and false advertisements violate Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

1 The Commission and Defendants Seville Marketing, Ltd., and Gregory Stephen Wong have  
2 consented to the entry of this Stipulated Judgment for Permanent Injunction and Other Equitable Relief  
3 (“Stipulated Judgment”) without a trial or adjudication of any issue of law or fact herein.

4 NOW, THEREFORE, the Commission and Defendants having requested the Court to enter this  
5 Stipulated Judgment, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

6  
7 **FINDINGS**

8 1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15  
9 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained  
10 herein.

11 2. The Commission’s Complaint states a claim upon which relief may be granted against  
12 defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act, 15 U.S.C.  
13 §§ 45(a), 52, and 53(b).

14 3. This Court has jurisdiction over the subject matter of this case, and all parties hereto.  
15 Venue in the Western District of Washington is proper.

16 4. The alleged activities of Defendants are in or affecting commerce, as defined in Section  
17 4 of the FTC Act, 15 U.S.C. § 44.

18 5. The parties shall each bear their own costs and attorney’s fees incurred in this action.

19 6. Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412  
20 concerning the prosecution of this action, and all rights to seek judicial review or otherwise challenge  
21 the validity of this Stipulated Judgment.

22 7. This Stipulated Judgment does not constitute, and shall not be interpreted to constitute,  
23 either an admission by Defendants or a finding by the Court that Defendants have engaged in any  
24 violations of the FTC Act.

25 8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Stipulated  
26 Judgment are binding upon Defendants, and their officers, agents, servants, employees, and all other  
27 persons or entities in active concert or participation with them, who receive actual notice of this  
28 Stipulated Judgment by personal service or otherwise.

1 9. Nothing in this Stipulated Judgment obviates Defendants' obligation to comply with  
2 Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

3 10. This Stipulated Judgment was drafted jointly by plaintiff and Defendants and reflects  
4 the negotiated agreement of the parties.

5 11. The paragraphs of this Stipulated Judgment shall be read as the necessary requirements  
6 for compliance and not as alternatives for compliance and no paragraph serves to modify another  
7 paragraph unless expressly so stated.

8 12. Entry of this Stipulated Judgment is in the public interest.  
9

### 10 DEFINITIONS

11 For the purposes of this Stipulated Judgment, the following definitions shall apply unless  
12 otherwise indicated:

13 1. "**Defendants**" means Seville Marketing, Ltd., and Gregory Stephen Wong, and each of  
14 them, by whatever names each might be known.

15 2. "**Covered product or service**" shall refer to any device, as defined in 15 U.S.C.  
16 § 55(d), and any service advertised, marketed, promoted, offered for sale, distributed, or sold to assist  
17 in the diagnosis of any disease or condition.

18 3. "**Document**" is synonymous in meaning and equal in scope to the usage of the term in  
19 Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs,  
20 audio and video recordings, computer records, electronic mail, and other data compilations from which  
21 information can be obtained and translated, if necessary, through detection devices into reasonably  
22 usable form. A draft or non-identical copy is a separate document within the meaning of the term.

23 4. "**Human immunodeficiency virus**" ("HIV") shall refer to all types or strains of the  
24 virus that causes acquired immunodeficiency syndrome ("AIDS"), an infectious disease characterized  
25 by immune system failure.

26 5. "**HIV test**" shall refer to any product that is advertised, marketed, promoted, offered for  
27 sale, distributed, or sold with express or implied representations that the product will or may detect the  
28 presence or absence of any type or strain of HIV in any human.



- 1 C. Misrepresenting any other fact material to a consumer's decision to purchase any  
2 covered product or service.

3  
4 **NOTICE TO PAST PURCHASERS**

5 **IT IS FURTHER ORDERED** that:

- 6 A. Within seven (7) business days after entry of this Stipulated Judgment, Defendants shall  
7 provide plaintiff with a written list setting forth the names and addresses of all  
8 consumers who purchased the Discreet HIV home test since January 1, 2002, to the  
9 extent that such persons can be located by Defendants' best efforts. The Federal Trade  
10 Commission shall be permitted to use this list for the sole purpose of providing notice to  
11 consumers as provided in Paragraph B of this part. The Federal Trade Commission  
12 shall destroy this list and any copies of it within seven (7) business days of the  
13 completion of sending notice to consumers as provided in Paragraph B of this part.
- 14 B. The Federal Trade Commission is authorized to send a copy of the notice set forth in  
15 Appendix A to this Stipulated Judgment to any person or entity that, according to  
16 Federal Express, Defendants, or any other source of shipping information, has received  
17 a shipment from Defendants or has purchased any of Defendants' HIV home tests, since  
18 January 1, 2002. To the extent that the Federal Trade Commission receives, or has  
19 received, the names and addresses of persons who have received shipments from  
20 Defendants or purchased any of Defendants' HIV home tests from sources other than  
21 the list provided to the Court pursuant to Paragraph A of this part, above, the Federal  
22 Trade Commission shall maintain the confidentiality of this information in accordance  
23 with 5 U.S.C. § 552 (b)(6) and 7( c) and 15 U.S.C. § 57b-2(f).

24  
25 **DISCLOSURE OF CONSUMER LISTS**

26 **IT IS FURTHER ORDERED** that, except as required by the provision above entitled  
27 "NOTICE TO PAST PURCHASERS," Defendants, and their officers, agents, servants, and employees,  
28 and all other persons or entities in active concert or participation with them who receive actual notice

1 of this Stipulated Judgment by personal service, facsimile, or otherwise, are permanently restrained and  
2 enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address,  
3 telephone number, credit card number, bank account number, e-mail address, or other identifying  
4 information of any person who paid any money to any Defendant, at any time prior to entry of this  
5 Stipulated Judgment, in connection with promoting, offering for sale, selling, or participating in the  
6 sale of, directly or indirectly, the Discreet HIV home test kit. *Provided*, however, that Defendants may  
7 disclose such identifying information to a law enforcement agency or as required by any law,  
8 regulation, or court order.

9  
10 **CONSUMER REDRESS**

11 **IT IS FURTHER ORDERED** that Defendants Gregory Stephen Wong and Seville Marketing,  
12 Ltd., shall:

- 13 A. Release to the President and Chief Executive Officer of the Business Practices and  
14 Consumer Protection Authority of British Columbia (“CEO”), pursuant to Sections  
15 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, any and all claims they may  
16 have to any assets frozen by the CEO subject to the agreement entered into between  
17 the CEO and the Defendants, including, but not limited to:

18 Account 248799 held by Gregory Stephen Wong at VanCity  
19 Account 2G5-058S-4 held by Gregory Stephen Wong at Credential Securities  
20 Account 705400001015 held by Seville Marketing, Ltd., at Scotiabank  
21 Account 705400141216 held by Seville Marketing, Ltd., at Scotiabank  
22 Account 7129331 held by Gregory Stephen Wong at Scotiabank; and  
23 Account 705400048623 held by Gregory Stephen Wong at Scotiabank.

- 24 B. Not object to or otherwise seek to prevent the transfer of the assets listed in  
25 Subparagraph A herein, or their proceeds by the CEO, who may first disburse funds  
26 according to this agreement with Defendants and also may deduct his investigation costs  
27 and any related settlement costs, to the Regional Director, Northwest Region, Federal  
28 Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington, 98174.

*Provided further*, that Defendants agree, as evidenced by their signatures to this Stipulated  
Order, that all funds paid to the Commission pursuant to this Part shall be deposited into a fund

1 administered by the Commission or its agent to be used for equitable relief, including, but not limited  
2 to, consumer redress and any attendant expenses for the administration of any redress fund. If the  
3 Commission determines in its sole discretion that redress to consumers is wholly or partially  
4 impracticable or funds remain after redress is completed, the Commission may apply any remaining  
5 funds for such other equitable relief, including consumer information remedies, as it determines to be  
6 reasonable related to the Defendants' practices alleged in the complaint. Any funds not used for such  
7 equitable relief shall be deposited in the United States Treasury as disgorgement. Defendants shall  
8 have no right to challenge the Commission's choice of remedies under this Paragraph.

### 10 **RIGHT TO REOPEN**

11 **IT IS FURTHER ORDERED** that:

- 12 A. The Commission's agreement to this Order, requiring that the Defendants be liable for  
13 less than the full amount of consumer injury, is expressly premised on the truthfulness,  
14 accuracy, and completeness of their sworn financial statements and supporting  
15 documents submitted to the Commission, namely the Financial Statements of Seville  
16 Marketing, Ltd. and Gregory Stephen Wong, dated August 26, 2004, and attachments  
17 thereto, and the Supplemental Disclosure dated January 21, 2005. Such financial  
18 statements and supporting documents contain material information upon which the  
19 Commission relied in negotiating and agreeing to this Order.
- 20 B. If, upon motion by the Commission, this Court finds that Defendants have failed to  
21 disclose any material asset, or made any other material misrepresentation or omission in  
22 the above-referenced Financial Statements and attachments, the Court shall enter  
23 judgment against Defendants, jointly and severally, in the amount of One Million,  
24 Thirty-Seven Thousand, One Hundred Thirty-Eight Dollars (\$1,037,138.00) in U.S.  
25 currency, minus any funds previously received from the CEO as set forth in the prior  
26 Part, which amount would be rendered immediately due and payable. Interest computed  
27 at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the  
28 balance. For the purposes of this Part and any subsequent proceedings to enforce

1 payment, the Defendants waive any right to contest any of the allegations in the  
2 Complaint filed in this action. *Provided however*, that in all other respects this  
3 Stipulated Final Order shall remain in full force and effect unless otherwise ordered by  
4 the Court; and *provided further*, that proceedings instituted under this Part are in  
5 addition to, and not in lieu of, any other civil or criminal remedies that may be provided  
6 by law, including any other proceedings the Commission may initiate to enforce this  
7 Order.

8  
9 **DESTRUCTION OF TEST KITS**

10 **IT IS FURTHER ORDERED** that any HIV home test kits seized or detained by United States  
11 Customs and Border Protection or any commercial mail delivery service, including but not limited to  
12 Federal Express, pursuant to prior orders of this Court, shall be destroyed within ten (10) days of entry  
13 of this Stipulated Judgment.

14  
15 **ACKNOWLEDGMENT OF RECEIPT OF**  
16 **STIPULATED JUDGMENT BY DEFENDANTS**

17 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of entry of  
18 this Stipulated Judgment by the Court, must submit to the Commission a truthful sworn statement  
19 acknowledging receipt of this Stipulated Judgment.

20  
21 **DISTRIBUTION OF STIPULATED JUDGMENT BY DEFENDANTS**

22 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this  
23 Stipulated Judgment, defendants shall deliver copies of the Stipulated Judgment as directed below:

- 24 A. Defendant Seville Marketing, Ltd., must deliver a copy of this Stipulated Judgment to  
25 all of its principals, officers, directors, and managers. Defendant Seville Marketing,  
26 Ltd., also must deliver copies of this Stipulated Judgment to all of its employees, agents,  
27 and representatives who engage in conduct relating to the subject matter of the  
28 Stipulated Judgment. For current personnel, delivery shall be within five (5) business

1 days of entry of this Stipulated Judgment. For new personnel, delivery shall occur prior  
2 to them assuming their responsibilities.

3 B. Defendant Gregory Stephen Wong as Control Person: For any business that is engaged  
4 in conduct related to the subject matter of this Stipulated Judgment that Gregory  
5 Stephen Wong controls, directly or indirectly, or in which Gregory Stephen Wong has a  
6 majority ownership interest, Gregory Stephen Wong must deliver a copy of this  
7 Stipulated Judgment to all principals, officers, directors, and managers of that business  
8 and to all employees, agents, and representatives of that business who engage in conduct  
9 related to the subject matter of this Stipulated Judgment. For current personnel, delivery  
10 shall be within five (5) business days of entry of this Stipulated Judgment. For new  
11 personnel, delivery shall occur prior to them assuming their responsibilities.

12 C. Defendant Gregory Stephen Wong as employee or non-control person: For any business  
13 where Gregory Stephen Wong is not a controlling person of a business but otherwise  
14 engages in conduct related to the subject matter of this Stipulated Judgment, Gregory  
15 Stephen Wong must deliver a copy of this Stipulated Judgment to all principals and  
16 managers of such business before engaging in such conduct.

17 D. Defendants each must secure a signed and dated statement acknowledging receipt of the  
18 Stipulated Judgment, within thirty (30) days of delivery, from all persons receiving a  
19 copy of the Stipulated Judgment pursuant to this Part.  
20

21 **COMPLIANCE REPORTING BY DEFENDANTS**

22 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this  
23 Stipulated Judgment may be monitored:

- 24 A. For a period of three (3) years from the date of entry of this Stipulated Judgment:  
25 1. Defendant Gregory Stephen Wong shall notify the Commission of the following:  
26 a. Any changes in residence, mailing address, and telephone numbers of  
27 Gregory Stephen Wong, within ten (10) business days of the date of such  
28 change;

- 1           b. Any changes in employment status (including self-employment) of  
2           Gregory Stephen Wong, and any change in the ownership of Gregory  
3           Stephen Wong in any business entity, within ten (10) business days of  
4           such change. Such notice shall include the name and address of each  
5           business that such Gregory Stephen Wong is affiliated with, employed  
6           by, creates or forms, or performs services for; a statement of the nature of  
7           the business; and a statement of Gregory Stephen Wong's duties and  
8           responsibilities in connection with the business or employment; and  
9           c. Any changes in Gregory Stephen Wong's name or use of any aliases or  
10          fictitious names; and

- 11          2. Defendants Seville Marketing, Ltd., and Gregory Stephen Wong shall notify the  
12          Commission of any changes in the corporate structure of Seville Marketing, Ltd.,  
13          or any business entity that Gregory Stephen Wong directly or indirectly controls,  
14          or has an ownership interest in, that may affect compliance obligations arising  
15          under this Stipulated Judgment, including but not limited to a dissolution,  
16          assignment, sale, merger, or other action would result in the emergence of a  
17          successor entity; the creation or dissolution of a subsidiary, parent, or affiliate  
18          that engages in any acts or practices subject to this Stipulated Judgment; the  
19          filing of a bankruptcy petition; or a change in the corporate name or address, at  
20          least thirty (30) days prior to such change, *provided* that, with respect to any  
21          proposed change in the corporation about which the Defendants learn less than  
22          thirty (30) days prior to the date such action is to take place, Defendants shall  
23          notify the Commission as soon as is practicable after obtaining such knowledge.

- 24          B. One hundred (100) days after the date of entry of this Stipulated Judgment, Defendants  
25          Seville Marketing, Ltd., and Gregory Stephen Wong each shall provide a written report  
26          to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and  
27          form in which they have complied and are complying with this Stipulated Judgment.  
28          This report shall include, but not be limited to:

- 1           1.     For Gregory Stephen Wong:
- 2                 a.     The then-current residence address, mailing addresses, and telephone
- 3                         numbers of Gregory Stephen Wong;
- 4                 b.     The then-current employment and business addresses and telephone
- 5                         numbers of Gregory Stephen Wong, a description of the business
- 6                         activities of each such employer or business, and the title and
- 7                         responsibilities of Gregory Stephen Wong, for each such employer or
- 8                         business; and
- 9                 c.     Any other changes required to be reported under subparagraph A of this
- 10                         part.

- 11           2.     For Defendants Seville Marketing, Ltd., and Gregory Stephen Wong:
- 12                 a.     A copy of each acknowledgment of receipt of this Stipulated Judgment,
- 13                         obtained pursuant to the provision above entitled, "DISTRIBUTION OF
- 14                         STIPULATED JUDGMENT BY DEFENDANTS";
- 15                 b.     Any other changes required to be reported under subparagraph A of this
- 16                         part; and
- 17                 c.     A statement describing the manner in which Defendants have complied
- 18                         and are complying with (a) the injunctive provisions of this Stipulated
- 19                         Judgment, and (b) the monetary relief provisions of this Stipulated
- 20                         Judgment.

21           C.     For the purposes of this Stipulated Judgment, Defendants Seville Marketing, Ltd., and

22                         Gregory Stephen Wong shall, unless otherwise directed by the Commission's authorized

23                         representatives, mail all written notifications to the Commission to:

24   Regional Director  
25   Federal Trade Commission  
26   915 Second Avenue, Room 2896  
27   Seattle, WA 98174  
28   Re: *FTC v. Seville Marketing, Ltd., et al.*

27           D.     For purposes of the compliance reporting and monitoring required by this Stipulated

28                         Judgment, the Commission is authorized to communicate directly with Defendants.

**COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Stipulated Judgment:

- A. Within ten (10) business days of receipt of written notice from a representative of the Commission, Defendants Seville Marketing, Ltd., and Gregory Stephen Wong each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Stipulated Judgment by all other lawful means, including but not limited to the following:
  - 1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Federal Rules of Civil Procedure 30, 31, 33, 34, 36, and 45; and
  - 2. posing as consumers and suppliers to Seville Marketing, Ltd., and Gregory Stephen Wong, their employees, or any other entity managed or controlled in whole or in part by Seville Marketing, Ltd., or Gregory Stephen Wong, without the necessity of identification or prior notice; and
- C. Seville Marketing, Ltd., and Gregory Stephen Wong shall permit representatives of the Commission to interview any officer, director, employee, employer, consultant, independent contractor, representative, or agent who has agreed to such an interview, relating in any way to any conduct subject to this Stipulated Judgment. The person interviewed may have counsel present.

*Provided*, however, that nothing in this Stipulated Judgment shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that for a period of six (6) years from the date of entry of this Stipulated Judgment, Defendants, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Stipulated Judgment by personal service or otherwise, in connection with any business where: (1) any defendant is the majority owner of the business, or directly or indirectly manages or controls the business, and (2) the business is engaged, participating, or assisting in any manner whatsoever, directly or indirectly, in the advertising, marketing, promotion, offering for sale, distribution, or sale of any covered product or service, are hereby permanently restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. All documents evidencing or referring to the accuracy or efficacy of any covered product or service advertised, marketed, promoted, offered for sale, distributed or sold by defendants, including but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirms, contradicts, qualifies, or calls into question the accuracy or efficacy of such covered product or service;
- F. All documents referring or relating to the advertisement, marketing, promotion, offering for sale, distribution or sale of any covered product or service by defendants; and

1 G. Copies of all sales scripts, training materials, advertisements, or other marketing  
2 materials.

3 H. All records and documents necessary to demonstrate full compliance with each  
4 provision of this Stipulated Judgment, including but not limited to copies of  
5 acknowledgments of receipt of this Stipulated Judgment, required by Paragraph D of the  
6 provision above entitled "DISTRIBUTION OF STIPULATED JUDGMENT BY  
7 DEFENDANTS," and all reports submitted to the FTC pursuant to the provision above  
8 entitled "COMPLIANCE REPORTING BY DEFENDANTS."  
9

10 **RETENTION OF JURISDICTION**

11 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all  
12 purposes of construction, modification and enforcement of this Stipulated Judgment.  
13

14 **SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, at \_\_\_\_\_m.  
15

16 \_\_\_\_\_  
17 The Honorable Robert S. Lasnik  
United States District Judge

18 Plaintiff, by its counsel, and Defendants hereby consent to the terms and conditions of the Stipulated  
19 Judgment as set forth above and consent to the entry thereof.  
20

21 **FOR FEDERAL TRADE COMMISSION:**

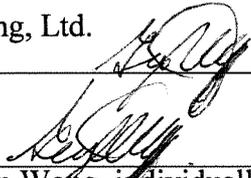
22   
Nadine S. Samter, WSBA # 23881  
Janet M. Evans, DC Bar # 358467  
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Federal Trade Commission  
915 Second Ave., Suite 2896  
Seattle, WA 98174  
voice: (206) 220-6350  
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26 Attorneys for Plaintiff  
27 FEDERAL TRADE COMMISSION  
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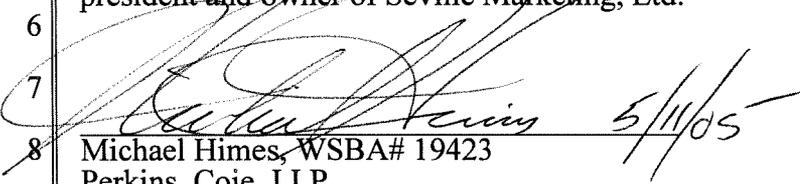
1 **FOR DEFENDANTS:**

2 Seville Marketing, Ltd.

3 BY: \_\_\_\_\_



4 \_\_\_\_\_  
5 Gregory Stephen Wong, individually and as  
6 president and owner of Seville Marketing, Ltd.



8 Michael Himes, WSBA# 19423  
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14 Attorney for Defendants Seville Marketing, Ltd.,  
15 and Gregory Stephen Wong  
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