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FILED  
Clerk of the Superior Court

JAN 10 2012

By: A. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER,

Plaintiff,

vs.

RMC CAPITAL MANAGEMENT, INC., a California corporation; BURGESS NATHANIEL HALLUMS, an individual; INNOVATION FUND 2000, LLC, a California limited liability company; and DOES 1-10, inclusive,

Defendants,

and

IMMCAPNMOTION, INC., a Delaware corporation; MISTNET MEDICAL DEVICES, INC., aka, MIST NET, INC., a Delaware corporation; THORNTON CAPITAL ADVISORS, INC., a California corporation; SEGUE CAPITAL, INC., a California corporation; and RELIEF DOES 1-10, inclusive,

Relief Defendants.

Case No.: 37-2011-00103198-CU-MC-CTL

**[PROPOSED] TEMPORARY RESTRAINING ORDER; FREEZING OF ASSETS; APPOINTING A RECEIVER; AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, APPOINTMENT OF A RECEIVER AND FREEZING OF ASSETS**

**IMAGED FILE**

Judge: Hon. Timothy B. Taylor  
Dept: 72

Ex Parte Hearing Date: January 10, 2012  
Ex Parte Hearing Time: 8:30 a.m.  
Date Action Filed: December 30, 2011  
Trial Date:

1 TO ALL DEFENDANTS, RELIEF DEFENDANTS AND THEIR ATTORNEYS:

2 The Ex Parte Application for an Order for a Temporary Restraining Order; Freezing of  
3 Assets; Appointing a Receiver; and an Order to Show Cause Re: Preliminary Injunction,  
4 Appointment of a Receiver and Freezing of Assets came regularly on January 10, 2012 at 8:30 a.m.  
5 in Department 72 of the San Diego Superior Court, located at 330 W. Broadway, San Diego  
6 California 92101. Plaintiff, the People of the State of California by and through the California  
7 Corporations Commissioner (“Plaintiff” or “Commissioner”) was represented by Corporations  
8 Counsels, Afsaneh Eghbaldari and Alex M. Calero.

9 THE COURT FINDS, after consideration of Plaintiff’s Ex Parte Application, Complaint,  
10 Memorandum of Points and Authorities in support thereof, declarations and evidence in support  
11 thereof, that the People have demonstrated a substantial likelihood of prevailing on the merits of the  
12 action and the absence of any substantive opposition or defense to the request for injunctive relief.

13 FOR GOOD CAUSE APPEARING IT IS ORDERED THAT:

14 Pursuant to Code of Civil Procedure section 527(d)(1), an Order to Show Cause hearing shall  
15 be held on January 19, 2012, at 9 a.m./~~p.m.~~, in Department 72 of this Court, at which  
16 time Defendants RMC Capital Management, Inc., Burgess Nathaniel Hallums, Innovation Fund  
17 2000, LLC, and Does 1 through 10, inclusive, (collectively, “Defendants”) and Relief Defendants  
18 Immcapnmotion, Inc., Mistnet Medical Devices, Inc., also known as, Mist Net, Inc., Thornton Capital  
19 Advisors, Inc., Segue Capital Inc., and Relief Does 1-10, (collectively, “Relief Defendants”), shall  
20 show why a preliminary injunction, confirming the appointment of a receiver and freezing of assets  
21 should not be granted. The hearing shall be held in accordance with Code of Civil Procedure section  
22 527(e).

23 The following briefing schedule shall apply: If Defendants and Relief Defendants choose to  
24 submit written statements or objections to the issuance of a preliminary injunction, confirming the  
25 appointment of a receiver and freezing of assets, papers must be filed with this Court no later than  
26 January 17, 2012, at noon., and served by facsimile or overnight mail on Afsaneh Eghbaldari at  
27 1350 Front Street, Room 2034, San Diego, CA 92101. If the Commissioner chooses to file a reply,

1 papers must be filed no later than January 18, 2012, at 3:00 p.m., and served on the Defendants  
2 and Relief Defendants by facsimile or overnight mail.

3 A copy of this Order, the Complaint, the Memorandum of Points and Authorities in support  
4 thereof, the declarations in support thereof, and all other exhibits in support thereof, together with a  
5 copy of the Order to Show Cause shall be served on all Defendants and Relief Defendants no later  
6 than January 11, 2012, pursuant to the Code of Civil Procedure section 527(d)(2).

7 IT IS FURTHER ORDERED THAT:

8 1. Pursuant to California Corporations Code section 25530, a Temporary Restraining  
9 Order is hereby issued restraining and enjoining Defendants and their officers, directors, successors  
10 in interest, agents, employees, attorneys in fact, and all persons acting in concert or participating with  
11 them, or any of them, from directly or indirectly:

12 a. Violating Corporations Code section 25235 by directly or indirectly, engaging  
13 in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, including  
14 but not limited to, operating a Ponzi scheme, misusing clients funds, and employing fraudulent  
15 practices and engaging in transactions that operated as a fraud to the detriment of clients;

16 b. Violating Corporations Code section 25238 and California Code of  
17 Regulations section 260.238 by engaging in investment advisory activities in an unfair, inequitable  
18 and unethical manner, including but not limited to charging clients inflated advisory fees based on an  
19 overstated fund value;

20 c. Violating Corporations Code section 25241 and California Code of  
21 Regulations section 260.241.3 by maintaining false and inaccurate books and records;

22 d. Violating Corporations Code section 25404 by knowingly making an untrue  
23 statement to the Commissioner during the course of his investigation and examination, with the intent  
24 to impede, obstruct, or influence the administration or enforcement of CSL; and

25 e. Violating California Code of Regulations section 260.237, by failing to have  
26 clients' funds and securities audited and failing to provide itemized statements to clients.

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1 FOR GOOD CAUSE APPEARING IT IS FURTHER ORDERED THAT A FREEZE IS  
2 PLACED ON:

3 1. All funds, negotiable instruments and/or assets held in any bank, savings or checking,  
4 brokerage or other accounts, certificates of deposit, safe deposit box, or otherwise, without limitation,  
5 in the name of Defendants and Relief Defendants, or for the benefit of Defendants and Relief  
6 Defendants directly or indirectly, and each of them, and any depository or investment account in any  
7 financial institution that the Receiver may discover at a later date containing client and or investor  
8 funds.

9 2. All funds, negotiable instruments and/or assets held in Bank of America, N.A.,  
10 account number 24679-01067, in the name of Defendants.

11 3. All funds, negotiable instruments and/or assets held in Bank of America, N.A.,  
12 account numbers ending in 5431, 5971, 4999, 1249, 0561, 6538, and 6595, in the name of Defendants  
13 and Relief Defendants, directly or indirectly, and each of them.

14 4. The banks and financial institutions, including, but not limited to Bank of America,  
15 N.A., shall not notify the account holders of this Order, unless further ordered to do so by this Court.

16 THE COURT FURTHER FINDS AND IT IS FURTHER ORDERED THAT:

17 1. Good cause exists for an Appointment of a receiver over Defendants and Relief  
18 Defendants and such Does as may be subsequently named, and their respective subsidiaries,  
19 affiliates, agents, employees, representative, successor in interest and assigns, wherever situated  
20 (collectively, "Receivership Defendants and Relief Defendants"):

21 2. Eric J. Benink of the Law Firm of Krause Kalfayan Benink & Slavens, LLP is  
22 qualified to act as the Receiver with the full powers to take custody and control over Receivership  
23 Defendants and Relief Defendants' business and assets until an accounting can be performed by the  
24 Receiver and recommendations made to this court.

25 3. The Receiver, prior to entry of his duties, shall take an oath to support the  
26 constitutions of the United States and the State of California and shall be bonded according to law.

27 4. The Receiver shall be authorized, empowered and directed:

1 a. To take possession of all “Receivership Assets,” defined as:

2 i. Any and all real and personal property, investor funds, client funds,  
3 collateral, premises, choses of action and other assets, books, records and papers in the possession,  
4 custody or control of Receivership Defendants and Relief Defendants, or to which Receivership  
5 Defendants and Relief Defendants have any right of possession, custody or control, beneficially or  
6 otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership  
7 Defendants and Relief Defendants carry or maintain, or which may be received during the pendency  
8 of this receivership;

9 ii. Distributions, salaries, bonuses, funds, or other forms of compensation  
10 which were derived from client funds, in the possession, custody or control of Receivership  
11 Defendants and Relief Defendants to which Defendants have any right of possession, custody or  
12 control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such  
13 assets which Receivership Defendants and Relief Defendants carry or maintain, or which may be  
14 received during the pendency of this receivership;

15 iii. All funds, negotiable instruments and/or assets held in Bank of  
16 America, N.A., account number 24679-01067, in the name of Defendants; and

17 iv. All funds, negotiable instruments and/or assets held in Bank of  
18 America, N.A., account numbers ending in 5431, 5971, 4999, 1249, 0561, 6538, and 6595, in the  
19 name of Defendants and Relief Defendants, in the name of Defendants and Relief Defendants,  
20 directly or indirectly, and each of them.

21 b. Except for an act of gross negligence, the Receiver shall not be liable for any  
22 loss or damage incurred by any of the Receivership Defendants and Relief Defendants, and their  
23 owners, officers, directors, shareholders, agents, employees, representatives, salespersons, successors  
24 in interest, attorneys, assigns, subsidiaries, affiliates, or any other person, by reason of any act  
25 performed or omitted to be performed by the Receiver in connection with the discharge of his duties  
26 and responsibilities. For good cause appearing, the Receiver’s bond is ~~hereby waived~~ set at \$10,000.

27 c. The Receiver shall have full power to marshal, collect, receive, review,  
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1 observe, discover and take charge of all Receivership Assets and all accounts or safe deposit boxes  
2 held in the name of Receivership Defendants and Relief Defendants in any financial depositories or  
3 other institutions, including, but not limited to all Bank of America accounts, on an ongoing and  
4 continual basis pursuant to this Court's order.

5 d. The Receiver may employ other such persons, including accountants,  
6 investigators, clerical and professional personnel, and the Receiver's law firm's in-house staff,  
7 counsel, paralegals and attorneys, to perform such tasks as may be necessary to aid the Receiver in  
8 the performance of his duties and responsibilities, ~~without further~~ only with prior order of the court.

9 e. The Receiver may, with court approval in advance, employ outside attorneys  
10 upon further order of this Court to assist the Receiver in the performance of his duties and  
11 responsibilities, such employment to be approved by the Court upon ex parte application of the  
12 Receiver.

13 f. Periodically, as set forth in paragraphs (g) and (h), below, the Receiver shall  
14 report to this Court the results of the collection, receiving, review, observation, discovery and  
15 abstracts resulting from the activities of the Receiver as ordered by this Court, and specifically on any  
16 commingling of funds, unauthorized use of, or other disposition of assets of whatever description by  
17 and between any and each of the Receivership Defendants and Relief Defendants and/or any person,  
18 corporation, entity, sole proprietorship, affiliate, association of whatever type of structure, whether or  
19 not said entities are or are not defendants or relief defendants in this action.

20 g. The Receiver shall file, within 30 days of his appointment, an initial inventory  
21 of all Receivership Assets, which he shall then have collected, received, reviewed, observed and/or  
22 discovered pursuant to this Court's order. Additionally, the Receiver is to file one or more  
23 supplemental inventories when and if he shall subsequently come into knowledge of additional items  
24 appropriate to the inventory.

25 h. The Receiver shall undertake an independent review into the affairs and  
26 transactions of Receivership Defendants and Relief Defendants and file with this Court, within 120  
27 days, and every six months thereafter, a report detailing the Receiver's findings of his review of the

1 condition of the Receivership Assets and Receivership Defendants and Relief Defendants, or other  
2 affairs and transactions of Receivership Defendants and Relief Defendants, reflecting the existence of  
3 any liabilities, both those claimed by others to exist and those to which the Receiver believes to be  
4 the legal obligations of each of said Receivership Defendants and Relief Defendants, including a  
5 review of any possible conflicts of interest and any further information the Receiver believes may  
6 assist in an equitable disposition of this matter, and to include in the report the Receiver's opinion  
7 regarding the ability of the Receivership Defendants and Relief Defendants to meet their obligations  
8 as they come due, and the Receiver's recommendation regarding the necessity for, and the best  
9 method of handling, preserving, or disposing of the Receivership Assets.

10 i. The Receiver shall invest the funds of the Receivership Assets in any interest-  
11 bearing obligations of the United States or in any interest-bearing accounts in financial institutions  
12 approved by the United States Trustee as an authorized depository for funds of bankruptcy estates,  
13 without further order of the Court, and will be the signatory on the bank accounts of Receivership  
14 Defendants and Relief Defendants, and each of them, including, but not limited to all of Receivership  
15 Defendants and Relief Defendants' Bank of America accounts and any depository or investment  
16 account in any financial institution that the Receiver may discover at a later date containing  
17 Receivership Assets.

18 j. The Receiver shall bring such proceedings as are necessary to enforce the  
19 provisions hereof, including issuance of subpoenas to compel testimony or production of documents  
20 as to the existence or location of Receivership Assets or any other information pertinent to the  
21 business, financial affairs, or other transactions of Receivership Defendants and Relief Defendant.

22 k. If the Receiver discovers that funds have been transferred from Receivership  
23 Defendants and Relief Defendants to other persons or entities, and deems it advisable, the Receiver  
24 may extend and expand the receivership over any person or entity holding such funds, without further  
25 order of the Court.

26 l. The Receiver shall bring such proceedings as are necessary to modify the  
27 provisions hereof, as the Receiver deems appropriate.

1           m.     The Receiver shall make such payments and disbursements from the funds of  
2 the Receivership Assets so taken into possession, custody and control of the Receiver or otherwise  
3 received by him, as may be necessary and advisable in discharging his duties as receiver, without  
4 further order of the Court, including, without limitation, the payment of interim compensation to the  
5 Receiver and persons or entities under paragraphs (d) and (e), above, subject to the provisions of  
6 paragraphs (z) and (aa), below.

7           n.     The Receiver shall carry on any lawful business activities of Receivership  
8 Defendants and Relief Defendants, to preserve Receivership Assets, and to foreclose and/or actively  
9 seek and negotiate with potential buyers, assignees or other parties who may be interested in  
10 acquiring, purchasing, leasing, subleasing or renting Receivership Assets and to sell, lease, sublease  
11 or rent Receivership Assets, subject to Court approval.

12           o.     The Receiver shall institute, prosecute, defend, compromise, intervene in and  
13 become a party, either in his own name or in the name of Receivership Defendants and Relief  
14 Defendants, to such suits, actions or proceedings as may be necessary for the protection,  
15 maintenance, recoupment or preservation of the Receivership Assets in his custody, in his discretion,  
16 without further order of the Court.

17           p.     The Receiver shall divert, take possession of and secure all mail of  
18 Receivership Defendants and Relief Defendants, in order to screen such mail, retaining so much as  
19 relates to the business of Receivership Defendants and Relief Defendants, and forwarding to the  
20 individual or other appropriate addresses so much as is not, in the Receiver's opinion, appropriate for  
21 retention by him, and to effect a change in the rights to use any and all post office boxes and other  
22 mail collection facilities used by Receivership Defendants and Relief Defendants.

23           q.     Upon the Receiver's appointment, the Receiver shall undertake an immediate  
24 review of all readily available Receivership Assets in order to determine the economic viability of a  
25 receivership. Upon such review, if the Receiver determines that sufficient Receivership Assets are  
26 readily available to fund the receivership, then the Receiver shall file such finding with the Court, and  
27 the receivership shall continue until further order of the Court. If upon initial review the Receiver  
28 determines that readily available funds are insufficient to maintain the receivership, then the Receiver

1 shall so notify the Court, and may request that the Court dissolve the receivership, or modify the  
2 duties and responsibilities of the Receiver and Receivership Defendants and Relief Defendants, and  
3 Plaintiff will not oppose such request, it being understood that the Receiver and professionals  
4 employed by the Receiver shall not be expected to perform services unless readily available assets  
5 exist to pay the expenses of the receivership.

6 r. The Receiver shall cooperate fully with the California Department of  
7 Corporations or other regulatory agencies having jurisdiction over matters relating to the conduct of  
8 business of Receivership Defendants and Relief Defendants so as not to impair the ability of said  
9 regulatory agencies to perform their duly authorized investigative and enforcement duties.

10 s. Any regulatory agency having jurisdiction over matters relating to  
11 Receivership Defendants and Relief Defendants' business shall be permitted to review, without  
12 exception, all reports of the Receiver and all books, records and files of Receivership Defendants and  
13 Relief Defendants at any time during normal business hours, with reasonable notice, and to make any  
14 abstracts or copies of said documents as it desires, provided that nothing herein shall waive or  
15 abrogate any applicable attorney-client or other legally recognized privilege.

16 t. The Receiver's powers shall be in addition to, and not by way of limitation of,  
17 the powers described in California Corporations Code section 25530, subdivision (a), California  
18 Government Code section 13975.1 and California Code of Civil Procedure section 564 *et seq.*

19 u. The Receiver shall be vested with, and is authorized, directed and empowered  
20 to exercise, all of the powers of Receivership Defendants and Relief Defendants, their owners,  
21 officers, directors, shareholders, general partners or persons who exercise similar powers and perform  
22 similar duties; and that Receivership Defendants and Relief Defendants, their owners, officers,  
23 directors, shareholders, agents, employees, representatives, successors in interest, attorneys in fact  
24 and all persons acting in concert or participating with them, are hereby divested of, restrained and  
25 barred from exercising any of the powers vested herein in the Receiver.

26 v. Receivership Defendants and Relief Defendants, including, but not limited to  
27 their owners, officers, directors, shareholders, agents, employees, representatives, salespersons,

1 successors in interest, attorneys, assigns, subsidiaries, affiliates, and any other persons or entities  
 2 under their control and all persons or entities in active concert or participation with Receivership  
 3 Defendants and Relief Defendants, and all persons owing a duty of disclosure to Receivership  
 4 Defendants and Relief Defendants, and each of them, shall cooperate with the Receiver in his  
 5 investigation and shall immediately turn over to the Receiver Receivership Assets, books, records,  
 6 papers, documentations, charts and/or descriptive material of all Receivership Assets, owned  
 7 beneficially or otherwise, and wherever situated, and all books and records of accounts, title  
 8 documents and other documents in the possession or under their control, which relate, directly or  
 9 indirectly, to the Receivership Assets.

10 x. Except by leave of this Court and during the pendency of this receivership, all  
 11 clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors and all other persons  
 12 or entities seeking relief of any kind, in law or in equity, from Receivership Defendants and Relief  
 13 Defendants and Receivership Assets, and all others acting on behalf of any such persons, including  
 14 sheriffs, marshals, agents, employees, and attorneys are hereby restrained and enjoined, directly or  
 15 indirectly, with respect to Receivership Defendants and Relief Defendants and Receivership Assets,  
 16 from:

- 17 i. Commencing, prosecuting, continuing or enforcing any suit or  
 18 proceeding, including arbitration, except by motion before this Court;
- 19 ii. Executing or issuing or causing the execution or issuance of any court  
 20 attachment, subpoena, replevin, execution or other process for the  
 21 purpose of impounding or taking possession of or interfering with or  
 22 creating or enforcing a lien;
- 23 iii. Commencing or continuing judicial or non-judicial foreclosure  
 24 proceedings or proceedings for the appointment of a receiver;
- 25 iv. Creating, perfecting, or enforcing any lien or encumbrance;
- 26 v. Accelerating the due date of any obligation or claimed obligation;
- 27 vi. Exercising any right of set-off;



1 jurisdiction over any causes of action that have arisen or may otherwise arise under any such  
2 provision.

3           z.       Receivership Defendants and Relief Defendants are responsible for the  
4 payment of costs, fees and expenses of Receiver incurred in connection with the performance of his  
5 duties, including the costs, fees and expenses of those persons who may be engaged or employed by  
6 the Receiver to assist him in carrying out his duties and obligations. The Receiver, the Receiver's  
7 employees and agents, and professionals employed by the Receiver, are entitled to monthly payment  
8 of interim compensation for services rendered, at their normal hourly rate, and monthly  
9 reimbursement for all expenses incurred by them on behalf of the receivership estate, and the  
10 Receiver is authorized to make such payments without further order of the Court. Within 10 days  
11 after such monthly payments, the Receiver shall serve written notice upon the counsel of record for  
12 Receivership Defendants and Relief Defendants and Plaintiff of the amount paid to each payee, with  
13 an itemization of the services rendered or expenses incurred.

14           aa.     Interim monthly fees paid shall be subject to review and approval by the Court,  
15 on a quarterly basis. This Court retains jurisdiction to award a greater or lesser amount as the full,  
16 fair and final value of such services. In the event that extraordinary services are performed by the  
17 Receiver, or any professionals employed by the Receiver, the Court may approve extraordinary  
18 compensation to such persons.

19           ab.     Neither Plaintiff, the State of California, the California Corporations  
20 Commissioner, the California Department of Corporations, nor any officer, employee or agent thereof  
21 shall have any liability for the payment, at any time, for any such fees or expenses in connection with  
22 said receivership.

23           ac.     That Receivership Defendants and Relief Defendants, their owners, officers,  
24 directors, shareholders, agents, employees, representatives, successors in interest, attorneys, and any  
25 other persons shall not take any action or purport to take any action, in the name of or on behalf of  
26 any Receivership Defendants and Relief Defendants or any of their subsidiaries and affiliates,  
27 without the written consent of the Receiver or order of this Court.

1           ad.     That Receivership Defendants and Relief Defendants and their subsidiaries and  
2 affiliates and their owners, officers, directors, shareholders, agents, employees, representatives,  
3 successors in interest, and attorneys, shall cooperate with and assist the Receiver and shall take no  
4 action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the  
5 conduct of his duties or interfere in any manner, directly or indirectly, with the custody, possession,  
6 management, or control by the Receiver of the Receivership Defendants and Relief Defendants and  
7 Receivership Assets, as described above.

8           ae.     Receivership Defendant and Relief Defendant shall, within 10 days of the  
9 entry of the appointment, prepare and deliver to the Receiver and Plaintiff a detailed and complete  
10 schedule of all of their real and personal properties, and other assets, with a minimum value of  
11 \$1,000, including a description of the source of funds for the purchase of such assets. For purposes  
12 of this Order, the term “assets” shall include, but is no way limited to, income/compensation or right  
13 of income/compensation from any source, and any financial or controlling interest in any business  
14 entity, including, but not limited to, a partnership, trust, corporation, or limited liability company.  
15 Such accounting shall be filed with the Court and a copy shall be delivered to the Receiver. After  
16 completion of the accounting, each Receivership Defendant and Relief Defendant shall produce to  
17 the Receiver at a time agreeable to the Receiver, all books, records and other documents supporting  
18 or underlying his accountings.

19           af.     Receivership Defendants and Relief Defendants, within 20 days from the date  
20 of entry of the appointment, all shall transfer to a trust account of the Receiver all Receivership  
21 Assets that are presently held in domestic and foreign locations, to the extent said assets are  
22 transferable.

23           ag.     The Receiver shall determine upon taking possession of all real property of the  
24 Receivership Assets whether in the Receiver’s judgment there is sufficient insurance coverage. With  
25 respect to any insurance coverage in existence or obtained, the Receiver shall be named as an  
26 additional insured on the policies for the period that the Receiver shall be in possession of the real  
27 property of the Receivership Assets. If sufficient insurance coverage does not exist, the Receiver

1 shall immediately notify the parties to this lawsuit and shall take reasonable measures, within 30  
2 days, to procure sufficient all-risk and liability insurance on all real property (excluding earthquake  
3 and flood insurance) provided, however, that if the Receiver does not have sufficient funds to do so,  
4 the Receiver shall seek instructions from the Court with regard to whether insurance shall be obtained  
5 and how it is to be paid for. The Receiver shall not be responsible for claims arising from the lack of  
6 procurement or inability to obtain insurance.

7 THE COURT FURTHER ORDERED THAT:

8 1. For such and further relief as this Court may deem just and proper.

9 IT IS SO ORDERED.

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11 Dated: January 10, 2012  
12 San Diego, CA

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Timothy B. Taylor  
JUDGE OF THE SUPERIOR COURT