

1 Jeffrey A. LeVee (State Bar No. 125863)
jlevee@jonesday.com
2 Samantha S. Eisner (State Bar No. 230344)
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3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071-2300
5 Telephone: (213) 489-3939
Facsimile: (213) 243-2539

6 Attorneys for Plaintiff
7 The Internet Corporation for Assigned Names
and Numbers

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

2007 MAY -2 PM 3:13
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

11
12 The Internet Corporation for Assigned
Names and Numbers,

13 Plaintiff,

14 v.

15 RegisterFly.Com, Inc., and
16 UnifiedNames, Inc.,

17 Defendants.

Case No. CV 07-2089 R (PLAx)

**DECLARATION OF JEFFREY
A. LEVEE IN SUPPORT OF EX
PARTE APPLICATION FOR
CIVIL CONTEMPT SANCTIONS**

[*Ex Parte* Application for Civil
Contempt Sanctions and
Memorandum in Support of *Ex Parte*
Application filed concurrently
herewith; [Proposed] Order lodged
concurrently herewith]

Date: TBD
Time: TBD
Judge: Hon. Manuel L. Real

1 I, Jeffrey A. LeVee, declare:

2 1. I am a partner with the law firm Jones Day, counsel of record for
3 plaintiff Internet Corporation for Assigned Names and Numbers (“ICANN”) in this
4 action. I am admitted to practice before this Court. I submit this declaration in
5 support of the *Ex Parte* Application for Civil Contempt Sanctions against
6 RegisterFly.Com, Inc., and UnifiedNames, Inc. (collectively referred to as
7 “RegisterFly”). I have personal knowledge of the facts set forth in this declaration
8 and am competent to testify if called as a witness.

9 **NOTICE OF EX PARTE APPLICATION**

10 2. On the afternoon of Monday, April 30, 2007, I directed Samantha
11 Eisner, an associate with Jones Day, to send by facsimile and electronic mail a
12 letter drafted by me, entitled “Notice of *Ex Parte* Application for Contempt
13 Sanctions” (the “Notice Letter”) to:

14
15 President of RegisterFly, Inc.
and UnifiedNames, Inc.:

Kevin Medina
RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Email: kevin@unifiednames-inc.com
Fax: (306) 674-0144

16
17
18
19 Counsel for Kevin Medina,
RegisterFly, Inc., and
UnifiedNames, Inc.:

Harold Rabner, Esq.
Rabner, Allcorn, Baumgart & Ben Asher,
P.C.
52 Upper Montclair Plaza (Upper Montclair)
Montclair, New Jersey 07043
Email: hrabner@rabnerallcorn.com
Fax: (973) 783-1524

20
21
22
23 Counsel for Kevin Medina,
RegisterFly, Inc., and
UnifiedNames, Inc.:

Mitchell Novick, Esq.
Law Offices of Mitchell P. Novick
66 Park Street
Montclair, New Jersey 07042
Email: mnovick@mitchellnovick.com
Fax: (973) 744-2227

24
25
26 I also directed Ms. Eisner to send the Notice Letter to each of the above recipients
27 via Federal Express. Attached hereto as Exhibit A is a true and correct copy of the
28 email, sent at my direction at 1:25 p.m. P.D.T. by Ms. Eisner showing the

1 transmission of the document by electronic mail. Attached hereto as Exhibit B is a
2 true and correct copy of the facsimile transmission sheet generated at 1:24 p.m.
3 P.D.T. confirming transmission of the letter via facsimile to Messrs. Rabner and
4 Novick. Attached hereto as Exhibit C is a true and correct copy of the Notice
5 Letter.

6 3. On the afternoon of May 1, 2007, I directed Ms. Eisner to send, by
7 facsimile and email, a letter drafted by me, entitled "Revised Notice of *Ex Parte*
8 Application for Contempt Sanctions" (the "Revised Notice Letter") to all persons
9 listed above in paragraph 2. I also directed Ms. Eisner to send the Revised Notice
10 Letter via Federal Express to each of the above recipients. Attached hereto as
11 Exhibit D is a true and correct copy of the email, sent at my direction at 2:03 p.m.
12 P.D.T. on May 1, 2007 by Ms. Eisner showing the transmission of the document by
13 electronic mail. Attached hereto as Exhibit E is a true and correct copy of the
14 facsimile transmission sheet generated at 2:10 p.m. P.D.T. on May 1, 2007
15 confirming transmission of the letter via facsimile to Messrs. Rabner and Novick.
16 Attached hereto as Exhibit F is a true and correct copy of the Revised Notice Letter.

17 4. The Notice Letter specifically informs RegisterFly that ICANN "will
18 be filing an *ex parte* application in the above-referenced case seeking the
19 imposition of civil contempt sanctions against RegisterFly for its violations of the
20 Preliminary Injunction." The Revised Notice Letter specifically informs
21 RegisterFly that the application will be filed on May 2, 2007 instead of May 1.

22 5. Between the Notice Letter and the Revised Notice Letter, RegisterFly
23 is informed of: (1) why ICANN is filing its application ("Because RegisterFly has
24 not complied with the Preliminary Injunction and continues to place its customers
25 in great jeopardy"); and (2) when the application will be filed.

26 6. Neither facsimile transmission to Mr. Medina was successful because
27 the phone number associated with the fax machine was not operable. At my
28 direction, my office attempted to call the telephone number previously provided for

1 Mr. Medina, and that phone number was also not operable. My office has
2 successfully sent Mr. Medina facsimiles to the same number in the past. In
3 addition, RegisterFly has previously listed the inoperable facsimile number and
4 phone number in corporate communications. Attached hereto as Exhibit G is a
5 March 16, 2007 facsimile cover sheet from RegisterFly to Kurt Pritz of ICANN
6 listing the (now) inoperable numbers.

7 7. My office has not received any "bounceback" notifications for the
8 April 30, 2007 email transmission of the Notice Letter or the May 1, 2007 email
9 transmission of the Revised Notice Letter.

10 8. I will oversee the providing of courtesy copies of the Application and
11 supporting materials to Mr. Medina, Mr. Rabner and Mr. Novick by close of
12 business on May 2, 2007 via Federal Express. Additionally, I will cause the
13 electronic mailing of a courtesy copy of all the TRO papers to Mr. Medina,
14 Mr. Rabner, and Mr. Novick.

15 9. I have not been contacted by RegisterFly or its representatives to state
16 whether RegisterFly intends to oppose the Application.

17 **FACTS SUPPORTING THE APPLICATION**

18 10. This matter is appropriate for decision on an *ex parte* basis because
19 irreparable harm is occurring on a daily basis for every day RegisterFly is not
20 complying with the Preliminary Injunction.

21 11. Neither of the RegisterFly defendants has responded to ICANN's
22 Complaint or made any other appearance in this case. ICANN is in the process of
23 seeking entry of default of both of the RegisterFly defendants.

24 12. Although RegisterFly has failed to acknowledge this suit, it continues
25 to pursue a related arbitration. Mr. Novick is RegisterFly's counsel in that
26 arbitration (he has identified himself as RegisterFly's general counsel), and he has
27 corresponded regarding the arbitration through the email address I use for all
28 service and correspondence relating to this litigation.

1 13. As I have with all documents in this action, after the April 26, 2007
2 hearing on Preliminary Injunction (“PI”), I immediately caused a notice of entry of
3 the PI to be served on RegisterFly. I attached a signed copy of the PI to the notice
4 of entry. I also had a copy of the notice of entry filed with the Court. My office
5 served the notice of entry on RegisterFly through its chief executive officer, Kevin
6 Medina, its general counsel, Mitchell Novick, and Harold Rabner, a New Jersey
7 attorney that represented RegisterFly in its corporate litigation in New Jersey. My
8 office served each person via both email and Federal Express.

9 14. Pursuant to this Court’s order at the April 26, 2007 hearing, I caused a
10 Notice of Hearing on Permanent Injunction (scheduled for June 5, 2007) to be
11 personally served on RegisterFly. I attached a copy of the PI to the Notice of
12 Hearing.

13 15. RegisterFly is violating the Court’s preliminary injunction. For
14 example, ICANN *still* does not have *any* Data relating to the equitable registrants of
15 the domain names registered by a proxy service; RegisterFly continues to refuse to
16 comply with nearly all of the other technical specifications for Data submissions
17 imposed by this Court in the PI, and earlier in the TRO; and ICANN still has not
18 received an MD5 algorithm with RegisterFly’s submissions, nor has ICANN
19 received any submissions in the industry-standard .csv format.

20 16. RegisterFly’s Data submissions to ICANN have not cured ICANN’s
21 concerns over the completeness of the Data when compared to samples provided by
22 the global top level domain (“gTLD”) registries such as .com and .org.

23 17. RegisterFly’s website indicates that it is still actively continuing to
24 solicit and accept customer requests for domain name registrations, renewals and
25 transfers – without providing any information to consumers that it is operating
26 under the specter of termination. The PI required RegisterFly to post on its
27 websites a notice to consumers to inform them that ICANN issued a notice of
28 termination. As of 5:00 p.m. on May 1, 2007, RegisterFly’s website does not yet

1 have any such notice to consumers. Attached hereto as Exhibit H is a true and
2 correct copy of a May 1, 2007 printout from RegisterFly.com demonstrating that no
3 notice has been posted.

4 18. While it continues to accept registrations, I am informed and believe
5 that RegisterFly continues to fail to fund its registry accounts to allow for those
6 registrations, renewals or transfers to be accepted by the registries.

7 19. On April 16, 2007, immediately after ICANN received notice that this
8 Court entered a Temporary Restraining Order against RegisterFly, I sent a letter to
9 Messrs. Medina, Novick and Rabner demanding immediate access to audit
10 RegisterFly's records and books, as allowed for in that Order. RegisterFly has not
11 responded to that audit demand, an obligation that was again imposed on
12 RegisterFly in this Court's PI.

13 20. On April 27, 2007, after this Court granted ICANN the right to
14 immediately terminate the RAA and to use the collected Data for the public purpose
15 of protecting RegisterFly's registrants, ICANN announced that it is accepting
16 statements of interest from accredited registrars to act as a transfer provider for all
17 of RegisterFly's customers. A true and correct copy of the ICANN announcement,
18 *available at <http://www.icann.org/announcements/announcement-27apr07.htm>*, is
19 attached hereto as Exhibit I.

20
21 I declare under penalty of perjury under the laws of the United States that the
22 foregoing is true and correct. This declaration was signed on May 1, 2007 in Los
23 Angeles, California.

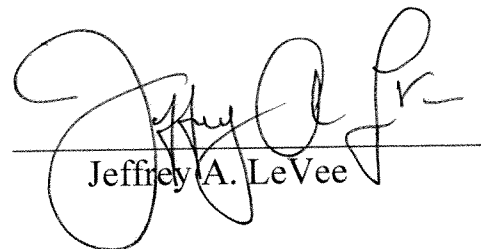
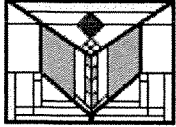
24
25
26
27
28

Jeffrey A. LeVee

EXHIBIT A



Samantha Eisner /JonesDay
Extension 32220
04/30/2007 01:25 PM

To kevin@unifiednames-inc.com, mnovick@mitchellnovick.com,
hrabner@rabnerallcorn.com
cc jleee@JonesDay.com, amy.stathos@icann.org
bcc dfutrowsky@JonesDay.com; Kristina P
Ayers/JonesDay@JonesDay
Subject ICANN v. RegisterFly, CV 07-2089 R (PLAx)

Gentlemen:

Please see the attached letter.



ICANN v RF 4.30.07 Notice of Contempt Application.pdf

Samantha Eisner
Jones Day
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071
(213) 243-2220
Fax: (213) 243-2539
seisner@JonesDay.com

=====

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=====

EXHIBIT B

*** MULTI TX/RX REPORT ***

TX/RX NO 3516
PGS. 2
TX/RX INCOMPLETE
TRANSACTION OK (1) 15172210635001#913066740144
(2) 15172210635001#919737831524
(3) 15172210635001#919737442227
ERROR INFORMATION -----



Facsimile Transmission

555 South Flower Street, Fiftieth Floor • Los Angeles, California 90071-2300 • (213) 489-3939
Facsimile: (213) 243-2539
seisner@jonesday.com

April 30, 2007

Please hand deliver the following facsimile to:

- | | Name/Company: | Facsimile No.: | Telephone No.: |
|----|--|----------------|----------------|
| 1. | Mr. Kevin Medina / RegisterFly.com, Inc. | 306-674-0144 | 306-674-0165 |
| 2. | Harold Rabner, Esq./ Rabner Allcorn Baumgart & Ben-Asher | 973/783-1524 | 973-744-4000 |
| 3. | Mitchell P. Novick / Law Offices Of Mitchell P. Novick | 973-744-2227 | 973-744-5150 |

Copies distributed

Operator's Initials

From: **Samantha S. Eisner**

Direct Telephone No.: **(213) 243-2220**

JP No.: **JP002375**

CAM No.: **172210-635001**

Send Copies To:

Number of pages (including this page): 2

Re: **ICANN v. RegisterFly, USDC Case No. 07-CV-2089**

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Message:

EXHIBIT C

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2572
jlevee@jonesday.com

April 30, 2007

VIA ELECTRONIC MAIL, FACSIMILE AND OVERNIGHT MAIL

RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina

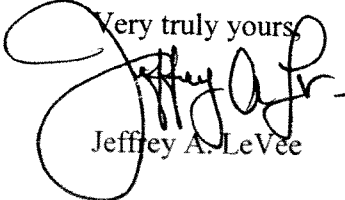
Re: ICANN v. RegisterFly, Case No. 07-2089, U.S. District Court for the
Central District of California;
Notice of Ex Parte Application for Contempt Sanctions

Dear Mr. Medina:

Defendants RegisterFly.Com, Inc. and UnifiedNames, Inc. (collectively, "RegisterFly") have failed to comply with the District Court's Preliminary Injunction entered on April 26, 2007. Because RegisterFly has not complied with the Preliminary Injunction and continues to place its customers in great jeopardy, ICANN is applying to the court for civil contempt sanctions.

This letter constitutes official notice that ICANN will be filing, on May 1, 2007, an *ex parte* application in the above-referenced case seeking the imposition of civil contempt sanctions against RegisterFly for its violations of the Preliminary Injunction.

We urge you and your counsel to consult the Local Rules of the Federal District Court for the Central District of California and, in particular, Local Rule 7-19. We will serve you with a copy of the papers via Federal Express and email. ICANN also will send copies to your counsel, as requested in Mitchell Novick's March 22, 2007 email to Amy A. Stathos of ICANN.

Very truly yours,

Jeffrey A. LeVee

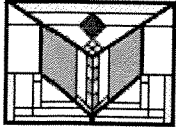
cc: Mitchell Novick, Esq.
Harold Rabner, Esq.
Amy Stathos, Esq.

LAI-2868572v1

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EXHIBIT C, PAGE 8

EXHIBIT D



Samantha Eisner / JonesDay
Extension 32220
05/01/2007 02:03 PM

To kevin@unifiednames-inc.com, mnovick@mitchellnovick.com,
hrabner@rabnerallcorn.com
cc jlevec@JonesDay.com, amy.stathos@icann.org
bcc Kristina P Ayers/JonesDay@JonesDay;
dfutrowsky@JonesDay.com
Subject ICANN v. RegisterFly, CV 07-2089 R (PLAx)

Gentlemen -

Please see the attached letter.



05.01.07 Revised Contempt Notice.pdf

Samantha Eisner
Jones Day
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071
(213) 243-2220
Fax: (213) 243-2539
seisner@JonesDay.com

=====

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=====

EXHIBIT E

*** MULTI TX/RX REPORT ***

TX/RX NO 4630
PGS. 2
TX/RX INCOMPLETE
TRANSACTION OK (1) 15172210635001#913066740144
(2) 15172210635001#919737831524
(3) 15172210635001#919737442227
ERROR INFORMATION



Facsimile Transmission

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Facsimile: (213) 243-2539
jlevee@jonesday.com

May 1, 2007

Please hand deliver the following facsimile to:

	Name/Company:	Facsimile No.:	Telephone No.:
1.	Mr. Kevin Medina / RegisterFly.com, Inc.	306-674-0144	306-674-0165
2.	Harold Rabner, Esq.	973/783-1524	973-744-4000
3.	Mitchell P. Novick / Law Offices Of Mitchell P. Novick	973-744-2227	973-744-5150

Copies distributed

Operator's initials

From: Jeffrey A. LeVee

Direct Telephone No.: (213) 243-2572

JP No.: JP883005

CAM No.: 172210-635-001

Send Copies To:

Number of pages (including this page): 2

Re:

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EXHIBIT F

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2572
jleeve@jonesday.com

May 1, 2007

VIA ELECTRONIC MAIL, FACSIMILE AND OVERNIGHT MAIL

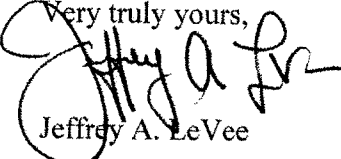
RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina

Re: ICANN v. RegisterFly, Case No. 07-2089, U.S. District Court for the
Central District of California:
Revised Notice of Ex Parte Application for Contempt Sanctions

Dear Mr. Medina:

This letter constitutes official notice that ICANN will be filing, on May 2, 2007, rather than May 1, 2007, an *ex parte* application in the above-referenced case seeking the imposition of civil contempt sanctions against RegisterFly for its violations of the Preliminary Injunction.

We urge you and your counsel to consult the Local Rules of the Federal District Court for the Central District of California and, in particular, Local Rule 7-19. We will serve you with a copy of the papers via Federal Express and email. ICANN also will send copies to your counsel, as requested in Mitchell Novick's March 22, 2007 email to Amy A. Stathos of ICANN.

Very truly yours,

Jeffrey A. LeVee

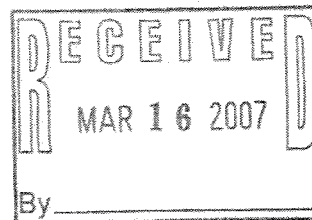
cc: Mitchell Novick, Esq.
Harold Rabner, Esq.
Amy Stathos, Esq.

LAI-2868764v1

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EXHIBIT F, PAGE 11

EXHIBIT G



RegisterFiy.com, Inc.

960 41st Street
Suite 402
Miami Beach, FL 33140

Phone Number: 305-674-0165

Fax Number: 306-674-0144

FAX TRANSMITTAL FORM

To: <u>KURT PRATZ</u>	From:
Name:	Date Sent:
CC:	Number of Pages:
Phone:	
Fax:	

Message: 310 823 8649

EXHIBIT H



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- Domain Forwarding & Masking
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- Domain Locking
- Change of ownership
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- Auto-renewals
- Multiple payment options
- Domain Delete option

[more features »](#)

The Single Source for all of
 your Internet Presence Needs

OVER 900,000 CUSTOMERS
 SERVING 120 COUNTRIES
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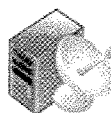


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Multiple templates/styles
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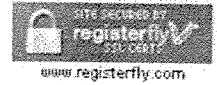


EXHIBIT I

Search:

Court Decision Allows Imminent Termination of RegisterFly

— ICANN granted the right to act on transfers as soon as possible; plan in action

27 April 2007

Marina del Rey, CA: Under a preliminary injunction issued yesterday by US Federal Court Judge, Manuel J. Real, ICANN now has the right to terminate RegisterFly's accreditation as soon as possible. The provision to ICANN of current and accurate data for all of RegisterFly's domain names has also been ordered by the Court as RegisterFly failed to meet the conditions of a temporary restraining order (TRO) which the Court issued on April 16, 2007.

Following the injunction, ICANN is immediately inviting statements of interest from accredited registrars starting Monday, 30 April 2007, to act as a transfer provider, so domain name registrants can gain full access to their domains. The registrar handling the transfers will temporarily hold the names and help registrants transfer to any ICANN accredited registrar of their choice.

"Registrants are our first concern. ICANN is following a very determined approach to returning access to domain name registrants impacted by the collapse of RegisterFly," said Dr Paul Twomey, ICANN President and CEO.

"ICANN knows that many registrants are anxious for a transfer to occur. We are committed to making sure this process is put in place as quickly as possible," Dr. Twomey added. "While we understand that this process may be frustrating for some RegisterFly customers, it is the first time that ICANN has had to intercede in such a way and these steps are being taken to ensure that the system introduced works as effectively as possible" he said.

In order to become the transfer provider, registrars must be:

- ICANN accredited for at least two years;
- in compliance with the Registrar Accreditation Agreement;
- able to demonstrate that it possesses the technical and financial qualifications necessary to operate a registrar with the number of registrations that the applicant will need to manage if it is selected as the services provider.

The draft Terminated Registrar Procedure is available online at <http://www.icann.org/announcements/terminated-registrar-procedure-27apr07.htm>.

The Court decision also requires RegisterFly to immediately post a notice on its web site as follows:

NOTICE TO CONSUMERS: THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, THE NOT-FOR-PROFIT ENTITY THAT ADMINISTERS THE INTERNET'S DOMAIN NAME SYSTEM, HAS ISSUED A NOTICE OF TERMINATION OF THIS COMPANY'S ACCREDITATION TO SERVE AS AN INTERNET DOMAIN REGISTRAR. PLEASE SEE www.icann.org FOR FURTHER INFORMATION.

Once ICANN finalizes RegisterFly's termination, the website notice must be revised to reflect the actual termination of RegisterFly's accreditation.

About ICANN:

ICANN is an internationally organized, public benefit non-profit responsible for coordinating Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. For more information please visit: www.icann.org.

Media Contacts:

Jason Keenan

EXHIBIT I, PAGE 15

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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On May 2, 2007, I deposited with Federal Express, a true and correct copy of the within documents:

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**DECLARATION OF JEFFREY A. LEVEE IN
SUPPORT OF *EX PARTE* APPLICATION FOR CIVIL
CONTEMPT SANCTIONS**

in a sealed envelope, addressed as follows:

Kevin Medina
RegisterFly.Com, Inc.
960 Arthur Godfrey Road, St402
Miami Beach, FL 33140
Email:
kevin@unifiednames-inc.com
President of RegisterFly.Com,
Inc. and Unified Names, Inc.

Mitchell Novick, Esq.
Law Offices of Mitchell P.
Novick
66 Park Street
Montclair, NJ 07042
Email:
mnovick@mitchellnovick.com
Counsel for Kevin Medina,
Registerfly, and Unified Names

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Harold Rabner, Esq.
Rabner, Allcorn, Baumgart &
Ben Asher, P.C.
52 Upper Montclair Plaza
(Upper Montclair)
Montclair, NJ 07043
Email:
hrabner@rabnerallcorn.com
Counsel for Kevin Medina,
RegisterFly, and Unified Names

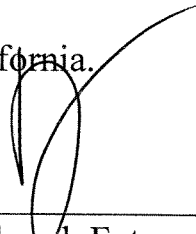
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Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I have submitted a courtesy copy of the above described document via email to all parties listed above.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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Executed on May 2, 2007, at Los Angeles, California.



Deborah Futrowsky