

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BELRON US, INC
2400 Farmers Drive
Columbus, Ohio 43235

Plaintiff,

vs.

EDWARD LEE
35 Larch Court
Fishkill, New York 12524

Defendants.
-----X

Docket No. _____

**VERIFIED
COMPLAINT**

JURY DEMAND
ENDORSED HEREON

JUDGE ROBINSON

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
AUG 15 2008

Belron US, Inc. ("Belron" or the "Company"), by its attorneys, for its Verified
Complaint against Edward Lee ("Lee"), alleges as follows:

Nature of the Action

1. Belron brings this action to prevent one of its former key employees, Edward Lee, from disclosing Belron's trade secrets, from soliciting or attempting to solicit current Belron employees, and from conspiring with others to do so in violation of contractual, statutory, and/or common law obligations to Belron.

Background Facts

2. Until recently, Lee was the Director of Retail Initiatives for Belron. In May 2006, Lee executed an "Employment Compensation Agreement and Agreement Not to Compete, Solicit, and Disclose Confidential Information" ("Employment Agreement") under which Lee committed not to start a competing business, work for a competitor, solicit current

16. Upon information and belief, in or about January 2006, Diamond promoted Lee to Director of Retail Initiatives. A true and accurate copy of the letter to Lee outlining this new position is attached as Exhibit B and is incorporated herein by reference.

17. As Diamond's Director of Retail Initiatives, Lee had nationwide responsibility for all of Diamond's advertising, marketing, branding, and fuel reduction initiatives. Lee was also part of Diamond's mergers and acquisitions team, for which he analyzed and evaluated potential acquisitions throughout the country and assisted in the implementation of any mergers and acquisitions. Moreover, Lee was responsible for implementing Diamond's strategic plan to capture market share by targeting its major competitors. *See Exhibit B.*

18. Lee executed his Employment Agreement in May 2006 in return for a salary increase of \$383.07 per week. A true and accurate copy of Lee's Employment Agreement is attached as Exhibit C. Upon information and belief, Lee received this salary increase as promised.

19. Levesque was a long-time employee of Diamond who previously held the position of District Manager until November 2005. Levesque's responsibilities as District Manager included overseeing Diamond's operations in Massachusetts, and Levesque was instrumental in the growth and establishment of Diamond's business.

20. In or about November 2005, Diamond promoted Levesque to Director of Best Practices – Operations. A true and accurate copy of the letter to Levesque outlining this new position is attached as Exhibit D and is incorporated herein by reference.

21. As Diamond's Director of Best Practices – Operations, Levesque had nationwide responsibility for all of Diamond's field associate training and development

initiatives, as well as for enforcing compliance with company best practices policies and procedures.

22. On April 1, 2008, Diamond filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. In re: Diamond Glass, Inc., et al., Case No. 08-10601 (CSS), at p. 4, ¶D (Bankr. D. Del. June 20, 2008). A true and accurate copy of the Bankruptcy Court's Order is attached as Exhibit E.

23. The assets of Diamond were sold through the bankruptcy proceeding at auction on June 18, 2008. *See* Exhibit E, at p. 6, ¶J.

24. The employment agreements of Diamond's employees, including the Lee Employment Agreement, were expressly included within the sale of Diamond's assets as "Designated Contracts." *See* Exhibit E, at p. 4, ¶E.

25. The Bankruptcy Court found that "due and proper notice of the assumption, sale, and assignment of each executory contract..." had been provided. *See* Exhibit E, at p. 4, ¶E. The "executory contracts" are included within the Designated Contracts. *Id.* The Bankruptcy Court further found that "[a] reasonable opportunity to object or be heard" had been afforded to parties to those contracts, including to Lee. *See* Exhibit E, at p. 4, ¶F.

26. The Bankruptcy Court found that "[t]he assumption and assignment of the Designated Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtors, their estates, creditors and other parties-in-interest thereof, and represents the exercise of sound and prudent business judgment by the Debtors." *See* Exhibit E, at p. 10, ¶V.

27. The Bankruptcy Court held that "[t]he Designated Contracts are assignable notwithstanding any provision contained therein to the contrary." *See* Exhibit E, at

Employment Agreement, to be assigned to Belron pursuant to Belron's purchase of Diamond's assets. *See* Exhibit E, at p. 20, ¶22.

28. Lee did not file any objection with the Bankruptcy Court to the assignment of his Employment Agreement to the purchaser of Diamond's assets.

29. Belron purchased Diamond's assets for approximately \$50 million.

30. After Belron purchased Diamond's assets, Lee maintained the same position, duties, and responsibilities as Director of Retail Initiatives for Belron as when he had

See Exhibit D, at ¶4B.

33. Lee further agreed that during his employment and for a twelve-month period after the termination of his employment, for any reason, he would not:

(I) directly or indirectly, for himself or any other person or business entity, compete with the business of the Company; (II) become an employee of or perform services in any capacity for any person or business entity that competes with the business of the Company; (III) directly or indirectly have an ownership interest of any kind or any interest of any kind in the revenue or business entity which competes with the business, except that the provisions of this clause shall not be applicable to an investment by customary channels in stock that is publicly traded that does not exceed five percent (5%) of the total amount of such securities outstanding; (IV) do business with any customer of the Company, solicit, divert or attempt to divert from the Company any customer or business whatsoever; (V) call-on, solicit or contact any potential customer Associate called-on, solicited or contacted while employed with Company during the last twelve months of employment with Company; or (VI) solicit or attempt to solicit any associate of the Company or employ any person employed by the Company.

See Exhibit D, at ¶4A.

34. Lee's Employment Agreement defines a "competing business" as one:

engaged in any way in the business of selling, repairing or installing automobile or truck glass or windshields or other glass products, or selling and installing those kinds of automobile and truck accessories sold by the Company either during, at or after the

Access to Trade Secrets

36. As a Regional Manager and as the Director of Retail Initiatives, Lee was given access to and received trade secret and other confidential and proprietary information about Diamond (and now Belron), such as information about marketing, distribution, pricing and other strategy, cost structure, strategic planning, possible mergers and acquisitions, fuel reduction initiatives, personnel information, and key client account information. Each of these categories of information is kept confidential by Belron, is confidential information under Lee's Employment Agreement, and involves information that is critical to Belron's ongoing business efforts. Having this information would provide a competitor with a substantial and unfair competitive advantage.

37. As a District Manager and as the Director of Best Practices – Operations, Levesque was given access to and received trade secret and other confidential and proprietary information about Diamond (and now Belron), such as information about marketing, distribution, pricing and other strategy, cost structure, strategic planning, personnel information, and key client account information. Each of these categories of information is kept confidential by Belron and involves information that is critical to Belron's business efforts. Having this information would provide a competitor with a substantial and unfair competitive advantage.

38. Upon information and belief, Diamond expended significant amounts of time, expense, and effort in developing its employees, client base, good will, and its relationships with its employees and clients. These are significant assets that Belron obtained through its purchase of Diamond's assets. Further, Belron has expended significant amounts of additional resources in developing its employees, client base, and good will, which Lee and Levesque

became privy to as Belron's Director of Retail Initiatives and Director of Best Practices, respectively.

Solicitation of Current Belron Employees

39. Upon information and belief, Lee and Levesque have engaged and continue to engage in a plan or scheme to open a competing vehicle glass business with Kenneth Levine (Diamond's former owner and an unsuccessful bidder for the company at the bankruptcy auction) in violation of Lee's Employment Agreement and in violation of Lee's duties of good faith, loyalty, and confidentiality.

40. Upon information and belief, Lee and Levesque, together and/or in concert with Levine and/or others, and in furtherance of their plan to open a competing business venture,

Oliveira and Maria Karalis, Assistant Sales Managers for territories in Massachusetts and Rhode Island.

43. Upon information and belief, in furtherance of the conspiracy, Levesque called Oliveira and/or Karalis repeatedly on their personal phones to discuss with them her, Lee's, and Levine's plan to open a competing business venture and to invite them to join them in this venture.

44. Upon information and belief, in furtherance of the conspiracy, Levesque told Karalis that the business would be operating in the New York, Connecticut, and Boston areas.

45. Upon information and belief, in furtherance of the conspiracy, Lee and Levesque communicated with each other concerning their unlawful activities during the time they were soliciting Belron's employees.

46. Lee and Levesque knew that some or all of the current Belron employees with whom they spoke had existing non-compete agreements with Diamond that had been assigned by the Bankruptcy Court to Belron.

47. Upon information and belief, in the context of discussing her, Lee's, and Levine's plan for a competing business venture, and in furtherance of the conspiracy, Levesque asked Karalis and Oliveira to provide her with a copy of their non-compete agreements, and said there are "ways around" those agreements, or words to that effect.

48. Upon information and belief, while still employed by Belron, Lee spoke with Dunn several times, both at work and at Dunn's home, and told him that he, Levesque, and Levine were starting a competing vehicle glass business. Lee told Dunn that he wanted him to be part of his team and asked him not to sign any agreement with Belron. Lee further informed

Dunn that they had obtained telephone numbers, a yellow pages listing, and six vans for this competing business, and had access to properties owned by Levine in New York and New Jersey that could be used to open up the business. Lee also told Dunn that “there were ways around” Dunn’s non-compete agreement, or words to that effect.

49. Upon information and belief, while still employed by Belron, Lee spoke with Roveto and told him that he, Levesque, and Levine were starting a competing vehicle glass business. Lee also encouraged Roveto not to sign any agreement with Belron. Lee told Roveto that his noncompete agreement was “not any good” and that “there were ways around” it, or words to that effect.

50. In the context of his discussions with Roveto concerning the competing business venture with Levesque and Levine, Lee asked Roveto to tell him who his best sales people were.

51. Key employees at Belron, like Lee and Roveto, received certain confidential financial information each month about Belron’s business. Upon information and belief, in the context of conversations with Roveto about starting a competing business, Lee and/or Levesque asked Roveto to save that information because it would be helpful to them in their new business.

52. Upon learning that Lee and Levesque had been actively soliciting current employees to establish a competing business, and in so doing violating their duties of good faith and loyalty and contractual obligations, Belron terminated Lee and Levesque for cause.

53. Despite knowledge of his wrongful actions, upon information and belief, Lee has solicited Belron’s employees, continues to solicit those employees, threatens to violate

his non-disclosure obligations, and has conspired and continues to conspire with Levesque to solicit and threaten to violate his non-disclosure obligations.

54. Lee's actions were undertaken with malice, insult and oppression, and with a conscious disregard for the rights of Belron.

COUNT ONE

Preliminary and Permanent Injunction Against Lee

55. Belron incorporates the allegations contained in paragraphs 1 through 54 as if fully rewritten.

56. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Belron is entitled to temporary, preliminary and permanent injunctive relief, enjoining and restraining Lee from violating the non-solicitation and non-disclosure provisions of the Lee Employment Agreement, from interfering with Belron's contracts and employment relationships with its current employees, and from misappropriating Belron's confidential or trade secret information.

COUNT TWO

Breach of Contract

57. Belron incorporates the allegations contained in paragraphs 1 through 56 as if fully rewritten.

58. Lee has breached the terms of his Employment Agreement by the conduct described herein.

59. Belron was not in breach of any of its obligations under the Employment Agreement before the breaches by Lee.

61. If Lee is not enjoined from soliciting current employees of Belron and/or from using or disclosing Belron's trade secrets and other confidential proprietary information, Belron will suffer damages and be irreparably injured.

COUNT THREE

Misappropriation of Trade Secrets

62. Belron incorporates the allegations contained in paragraphs 1 through 61 as if fully rewritten.

63. Lee is using and/or disclosing and/or if permitted to begin work with or continue to work for a competitor will inevitably use and/or disclose Belron's trade secrets for his own benefit and the benefit of a competitor.

64. Lee's conduct constitutes a misappropriation of Belron's trade secrets.

65. As a result of Lee's misappropriation of Belron's trade secrets, Belron has and will continue to suffer damages and irreparable harm.

66. In light of Lee's willful and malicious conduct, Belron is also entitled to recover punitive damages from him.

COUNT FOUR

Tortious Interference

67. Belron incorporates the allegations contained in paragraphs 1 through 66 as if fully rewritten.

68. Lee knows that Belron's employees, including the employees he has contacted and solicited regarding the competing business venture, have non-compete and other employment-related contractual agreements with Belron.

COUNT FIVE

Breach of Duty of Loyalty

76. Belron incorporates the allegations contained in paragraphs 1 through 75 as if fully rewritten.

77. As an employee, Lee owed Belron a duty of loyalty.

78. Belron supplied Lee with confidential and trade secret information for Lee's use on Belron's behalf during his employment with Belron.

79. While still employed by Belron, Lee actively sought to induce Belron's current employees to leave their employment with Belron and join him, Levesque, and Levine in a competing business venture in violation of Lee's Employment Agreement and in violation of the employees' noncompete agreements.

80. Lee knows that Belron's employees have non-compete agreements.

81. The actions of Lee as set forth herein breached his duty of loyalty to Belron.

82. As a direct and proximate result of the breach of his duty of loyalty, Belron has been damaged by the amount of compensation it paid to Lee during his period of disloyalty.

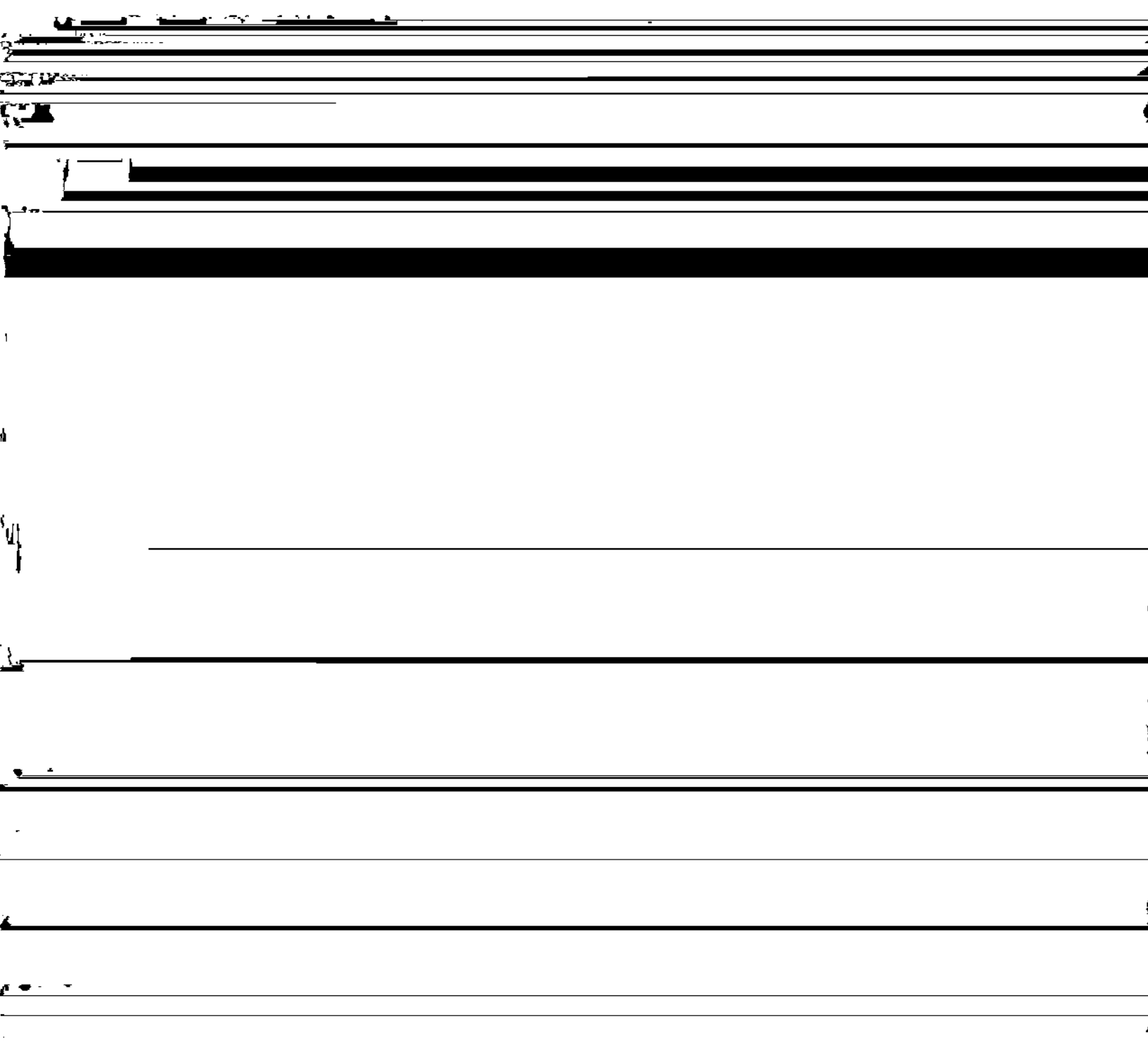
COUNT SIX

Breach of Fiduciary Duty

83. Belron incorporates the allegations contained in paragraphs 1 through 81 as if fully rewritten.

84. During his employment with Belron as a Director-level employee entrusted with confidential information, trade secrets and customer and employee relationships, Lee owed Belron a fiduciary duty.

85. Lee's actions in using or disclosing and/or threatening to use or disclose



induce them to leave their employment with Belron and join him, Levesque, and Levine in a

and/or threatening to use or disclose Belron's trade secrets and confidential information, Levesque was breaching her duty to Belron.

92. Lee knowingly and substantially participated in Levesque's breach of his fiduciary duty by assisting her in tortiously soliciting Belron's current employees to violate their contractual obligations to Belron and/or by disclosing and/or threatening to use or disclose Belron's trade secrets and confidential information.

93. As a direct and proximate result of Lee aiding and abetting Levesque's breach of her fiduciary duty, Belron has been damaged and is entitled to recover compensatory and punitive damages.

COUNT EIGHT

Civil Conspiracy to Tortiously Interfere with Contracts and Misappropriate Trade Secrets

94. Belron incorporates the allegations contained in paragraphs 1 through 93 as if fully rewritten.

95. Lee and Levesque planned to open a competing business venture in violation of Lee's Employment Agreement.

96. In furtherance of that competing venture, Lee and Levesque acted in concert and pursuant to an agreement to solicit current Belron employees to leave their employment and join them in that competing venture.

97. Lee and Levesque acted without privilege and/or justification in interfering with Belron's employees' contracts.

98. In furtherance of that conspiracy, and in violation of Lee's Employment Agreement and their common law duties to Belron, Lee and Levesque actively and repeatedly

solicited current Belron employees in order to tortiously interfere with their contractual obligations with Belron.

99. In furtherance of that conspiracy, Lee and Levesque have used and/or threatened to misappropriate Belron's trade secrets.

100. As a result of Lee's conduct, Belron has and will continue to suffer damages and irreparable harm.

WHEREFORE, Belron prays that the Court enter judgment in its favor providing the following relief:

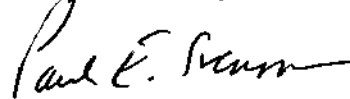
- A. Imposing temporary, preliminary, and permanent injunctions enjoining Lee from breaching the terms of his Employment Agreement with Belron by soliciting or employing Belron's current employees and/or by using or disclosing Belron's trade secrets, and from conspiring to carry out these activities.
- B. Awarding compensatory damages against Lee for his breach of his Employment Agreement.
- C. Awarding compensatory and punitive damages against Lee for his misappropriation of Belron's trade secrets and confidential business information.
- D. Awarding compensatory and punitive damages against Lee for his tortious interference with Belron's contracts.
- E. Awarding compensatory and punitive damages against Lee for his breach of the duty of good faith and loyalty to Belron;

- F. Awarding compensatory and punitive damages against Lee for his breach of fiduciary duty to Belron;
- G. Awarding Belron attorneys' fees, costs, and disbursements of this action; and
- H. Awarding Belron such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury on all issues so properly tried.

Respectfully submitted,



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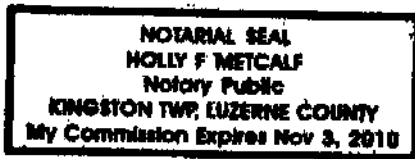
VERIFICATION

Brett Decker, being duly cautioned and sworn, states that he is a duly authorized representative of Belron US, Inc. and that all allegations contained in the Verified Complaint are in good faith believed to be true and accurate.

Belron US, Inc.

By: Brett Decker
Brett Decker

Sworn to before me on this 15 day of August, 2008.



Holly F. Metcalf
Notary Public

November 3, 2010
My Commission Expires