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10 Attorneys for Defendants and Counterclaimants
Dennis Montgomery, Brenda Montgomery, and the
11 Montgomery Family Trust

12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 FRIENDLY CAPITAL PARTNERS, L.P., a)
16 California Limited Partnership,)

17 Plaintiff,)

18 vs.)

19 DENNIS MONTGOMERY, BRENDA)
MONTGOMERY, and the MONTGOMERY)
20 FAMILY TRUST, a California trust, and DOES)
1 through 10, individually,)

21 Defendants.)

22)
23)
24)
25)
26)
27)
28)
AND RELATED CASES.

Case No. 3:07-CV-00250-PMP-VPC
NOTICE OF ERRATA AND AMENDED
MOTION RE MONTGOMERY PARTIES'
MOTION FOR A NINETY TO ONE
HUNDRED-TWENTY DAY
CONTINUANCE OF THE DISCOVERY
CUT-OFF DATE, DISPOSITIVE
MOTIONS CUT-OFF DATE; AND THE
DATE FOR FILING A JOINT PRETRIAL
ORDER; DECLARATION OF SKLAR TOY
RE REASON FOR NOTICE OF ERRATA;
AMENDED DECLARATION OF
DEBORAH A. KLAR IN SUPPORT
THEREOF

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NOTICE OF ERRATA

This Notice of Errata is being filed because the Notice of Motion and Memorandum of Points and Authorities in Support of the Motion for Continuance and Declaration of Deborah Klar filed concurrently herewith were filed prematurely before Ms. Klar had an opportunity to review and approve the filing and her sworn declaration. The mistake, a result of a miscommunication, was inadvertent. The Amended Declaration of Deborah A. Klar has been reviewed and approved by Ms. Klar and is accurate. The declaration of Ms. Klar which was prematurely filed with the Court has parts of sentences missing and is not entirely accurate.

Dated: May 16, 2008

Respectfully submitted,

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

By: _____ /S/

Deborah A. Klar
Tuneen E. Chisolm
Attorneys for DENNIS
MONTGOMERY, the MONTGOMERY
FAMILY TRUST, EDRA BLIXSETH,
AND OPSRING LLC

NOTICE OF MOTION AND AMENDED MOTION

1
2 Defendants Dennis Montgomery, Brenda Montgomery, and The Montgomery Family Trust
3 (the "Montgomery Parties"), hereby move for a ninety to one hundred and twenty day continuance
4 of: (i) the date by which discovery must be completed in this action (currently, May 16, 2008); (ii)
5 the deadline for the filing of dispositive motions (June 16, 2008); and the date for filing a joint
6 pretrial order (July 16, 2008 or thirty days after the decision on any pending dispositive motions).
7 The Montgomery Parties seek to conduct discovery in this case the extent and nature of which will
8 depend on the results of the Montgomery Parties' inspection of the books and records of
9 counterdefendant eTreppid Technologies, LLP ("eTreppid"). In January 2008, The court ordered
10 that eTreppid submit to that inspection in the related case known as *Dennis Montgomery, et al. v.*
11 *eTreppid Technologies, LLC*, et al. Case No. 3:06-CV-PMP-VPC (Consolidated with Case No.
12 3:06-CV-00145 –PMP-VPC) (the "eTreppid Action."). eTreppid has yet to comply fully and
13 completely with that Order, however, and, as a consequence, the Montgomery Parties have been
14 unable to conduct discovery based on the Court-ordered inspection of eTreppid's books and
15 records. Additionally, counsel for the Montgomery Parties has been fully occupied by intensive
16 activity in the eTreppid Action. Pursuant to F.R.Civ.P. 16(b)(4), the Montgomery Parties seek a
17 continuance of the discovery cut-off, dispositive motion cut-off, and the joint pretrial order
18 deadline for ninety to one hundred-twenty days for good cause.

19 This motion is based upon this Notice of Motion, the attached Memorandum of Points and
20 Authorities, the Declaration of Deborah Klar, the pertinent pleadings and orders of record, and all
21 such further evidence and argument as may be considered in further support hereof.

22 Dated: May 16, 2008

Respectfully submitted,

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

25 By: _____ /S/

26 Deborah A. Klar
27 Tuneen E. Chisolm
Attorneys for DENNIS
28 MONTGOMERY, the MONTGOMERY
FAMILY TRUST, EDRA BLIXSETH,
AND OPSRING LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust
4 (jointly, the "Montgomery Parties") move for a ninety to one hundred-twenty day continuance of
5 (i) the discovery cut-off date (currently, May 16, 2008); (ii) the cut-off date for the filing of
6 dispositive motions (June 16, 2008); and (iii) the date for filing a joint pretrial order (July 16, 2008
7 or thirty days after the decision on any pending dispositive motions). No discovery has yet been
8 taken by any party in this case. The Montgomery Parties seek to conduct discovery in this case
9 based on facts and documents revealed by an inspection of eTreppid's books and records that the
10 Court ordered in the related case known as *Dennis Montgomery, et al. v. eTreppid Technologies,*
11 *LLC, et al.* Case No. 3:06-CV-PMP-VPC (Consolidated with Case No. 3:06-CV-00145 –PMP-
12 VPC) (the "eTreppid Action"). However, despite the Court having ordered eTreppid to allow a
13 complete inspection of its books and records by the Montgomery Parties in the eTreppid Action,
14 eTreppid has failed to permit this. This circumstance justifies a continuance of the discovery cut-
15 off date and other dates in the Scheduling Order.

16 Counsel for the Montgomery Parties requests a continuance of the discovery cut-off,
17 dispositive motion cut-off, and deadline for filing a joint pre-trial order for the additional reason
18 that there has been very intensive activity in the eTreppid Action over the last three months that
19 has fully occupied the resources of counsel for the Montgomery Parties. Good cause thus exists
20 for a ninety to one hundred-twenty day extension of these deadlines in the Scheduling Order.

21 **II. PROCEDURAL BACKGROUND**

22 This action was originally commenced in the Second Judicial District Court of the State of
23 Nevada in and for the County of Washoe on April 23, 2007. [Ex. 1 (Summons and Complaint) to
24 Petition for Removal (Docket # 1-2).] It was removed to this Court on May 25, 2007. [Petition
25 for Removal (Docket # 1).] Defendants filed their answer to the complaint and a Counterclaim
26 against Friendly Capital Partnership, LP ("FCP"), Warren Trepp ("Trepp"), eTreppid
27 Technologies, LLP ("eTreppid"), and Douglas J. Frye ("Frye") on June 8, 2007. [Answer and
28 Counterclaim (Docket # 3).]

1 To date, the activity in this action has consisted primarily of challenges to the pleadings.
2 On July 25, 2007 counterdefendants Trepp, FCP and eTreppid (collectively, the “Trepp
3 Counterdefendants”) each filed motions to dismiss the Montgomery Parties’ Counterclaim, or, in
4 the alternative, for a more definite statement. [Docket # 21, 23 and 25.] Additionally, FCP filed a
5 motion to strike portions of the Counterclaim. [Docket # 27.] On August 17, 2007, Frye filed a
6 motion to dismiss the claims against him or, in the alternative, for a more definite statement.
7 [Docket # 40.] On August 20, 2007, the Montgomery Parties voluntarily dismissed their
8 counterclaims against Douglas Frye without prejudice. [Docket # 41.]

9 On August 20, 2007, the Montgomery Parties filed their First Amended Counterclaim
10 against the Trepp Counterdefendants. [Docket # 42.] FCP and Trepp moved to dismiss the First
11 Amended Counterclaim or, in the alternative, for a more definite statement on September 17,
12 2007. [Docket # 46.] eTreppid filed a reply to the First Amended Counterclaim on September 17,
13 2007. [Docket # 47.] The Montgomery Parties filed an opposition to the motion to dismiss on
14 October 5, 2007 and FCP and Trepp filed their reply in support of the motion on October 19, 2007.
15 [Docket #50 and 54.]

16 The Court issued a Scheduling Order in the action on December 5, 2007. [Docket # 62.]
17 Among other things, the Scheduling Order requires discovery to be completed by May 16, 2008.

18 On December 21, 2007, the Court heard argument on Counterdefendants’ motion to
19 dismiss the Counterclaim. The Court raised the issue of whether it has jurisdiction and ordered
20 defendants to file a supplemental brief on the court’s jurisdiction on or before January 22, 2008.
21 Counterdefendants were also permitted to file an additional brief concerning certain issues on
22 January 22, 2008. [Minutes of Proceedings (Docket # 63).] On January 22, 2008, pursuant to the
23 Court’s Order, the parties filed supplemental briefs regarding Friendly Capital Partners, L.P.’s and
24 Warren Trepp’s motion to dismiss and the issues raised by the Court at the hearing on December
25 21, 2007. [Docket #s 65 and 66.] On February 6, 2008, Friendly Capital Partnership filed a
26 response to the supplemental brief of the Montgomery Parties regarding jurisdictional issues.
27 [Docket # 68.] On February 13, 2008, the Court issued its Order granting in part and denying in
28 part the Trepp Defendants’ motion to dismiss the First Amended Counterclaims. [Docket # 69.]

1 The Montgomery Parties filed their Second Amended Counterclaim on March 28, 2008.
2 [Docket # 72.] On April 21, 2008, the Trepp Counterdefendants filed a reply to the Counterclaim
3 and a motion to strike the claim for breach of fiduciary duty alleged therein. [Docket #s 73 and
4 74.] On May 14, 2008, the Montgomery Parties filed a non-opposition to the motion to strike.
5 [Docket #75.]

6 **III. ARGUMENT**

7 **A. eTreppid Has Failed to Facilitate the Montgomery Parties' Completion Of The**
8 **Inspection of Its Books and Records Ordered By The Court In The eTreppid**
9 **Action**

10 Fed. R. Civ. P. 16(b)(4) permits the court to modify a scheduling order “for good cause and
11 with the judge’s consent.” Because eTreppid has failed to facilitate the Montgomery Parties’ full
12 and complete inspection of its books and records, good cause exists to continue the discovery cut-
13 off date, dispositive motion cut-off date, and the joint pretrial order deadline.

14 By its claims in this action, FCP seeks to collect on a promissory note made by defendant
15 and counterclaimant the Montgomery Family Trust (the “Trust”). In their Second Amended
16 Counterclaim, the Montgomery Parties allege, among other things, that the note was procured by
17 fraud. In substance, the Montgomery Parties allege as follows:

18 Trepp falsely represented to Dennis Montgomery (“Montgomery”) that eTreppid required
19 additional working capital beyond the \$1.3 million that Trepp and FCP were required to cause to
20 be contributed to eTreppid under eTreppid’s Operating Agreement. Trepp further represented that
21 in order for the Trust to maintain a 50% ownership interest in eTreppid, the Trust would have to
22 fund 50% of the capital that Trepp claimed was needed by eTreppid and that if the Trust could not
23 contribute that cash to eTreppid but wanted to maintain its 50% interest, Trepp would cause FCP
24 to contribute to eTreppid the Trust’s share of the capital purportedly required by eTreppid. Trepp
25 represented that FCP’s contribution of such funds to eTreppid on the Trust’s behalf would be
26 treated as a loan by FCP to the Trust. The Montgomery Parties allege that they signed the note at
27 issue in reliance on these representations. [Second Amended Counterclaim, ¶¶ 14, 15 (Docket
28 72).]

1 Thereafter, Trepp represented to Montgomery that eTreppid needed a further infusion of
2 capital and that the Trust, once again, had to contribute 50% percent of the amount purportedly
3 needed by eTreppid in order to maintain its 50% ownership interest. Trepp represented to
4 Montgomery that in order to maintain the Trust's 50% ownership interest in eTreppid, he would
5 cause FCP to contribute to eTreppid the Trust's share of the capital purportedly needed and that
6 these funds would be added to the amount of FCP's outstanding loan to the Trust. In reliance on
7 Trepp's representations, the Trust agreed to a modification of the note which, among other things,
8 increased the amount that the Trust could and did borrow under the note. [Id. at ¶¶ 16-18.]

9 FCP had an obligation to Montgomery and the Trust to cause any funds deemed to have
10 been borrowed by the Trust from FCP under the note to be actually contributed by FCP to
11 eTreppid. In fact, FCP never contributed to eTreppid the funds that FCP purported to loan to the
12 Trust under the note. Further, Trepp diverted eTreppid funds for his exclusive personal benefit.
13 [Id. ¶¶ 23-26.]

14 To establish their defenses to FCP's note, the Montgomery Parties need to inspect
15 eTreppid's books and records. In the eTreppid Action, the Court ordered that the Montgomery
16 Parties be¶ allowed to conduct this inspection, but eTreppid has not been fully cooperative.
17 [Declaration of Deborah Klar ("Klar Decl.") ¶¶ 4-5.] At present, eTreppid has flatly refused to
18 allow the inspection of its books and records to resume absent the Montgomery Parties'
19 compliance with an unrelated order of the Court in the eTreppid Action. [Klar Decl., ¶5.]
20 Discovery in this action depends on the information and documents produced by the inspection of
21 eTreppid's books and records that the Court ordered. Accordingly, the Montgomery Parties seek a
22 ninety to one hundred-twenty day continuance of the discovery cut-off date, dispositive motion
23 cut-off date, and the joint pretrial order deadline so that they can complete their inspection of
24 eTreppid's books and records and then conduct follow-up discovery.

25 **B. Intensive Activity in the eTreppid Action Has Hindered the Montgomery**
26 **Parties' Counsel From Conducting Discovery In This Case**

27 For the past three months, counsel for the Montgomery Parties and counterdefendants
28 Blixseth and Opspring have been completely occupied handling activity in the related eTreppid

1 Action. Docket entries in the case reveal the extent of such activity. For example, the docket in
2 the eTreppid action reflects the following:

- 3 • February 13: eTreppid serves summons on Opspring, LLC.
- 4 • February 15: At the direction of the Court, the Montgomery Parties file brief re
5 whether eTreppid can assert the attorney-client privilege against the Montgomery
6 Parties (Docket # 428).
- 7 • February 15: eTreppid files motion to compel discovery (Docket # 431).
- 8 • February 20: Montgomery Parties file reply brief regarding attorney-client privilege
9 issue (Docket # 439).
- 10 • February 21: Discovery Status Conference held (Docket # 448).
- 11 • February 25: Montgomery replies to eTreppid's opposition to Montgomery's motion to
12 dismiss eTreppid's Counterclaim (Docket # 446).
- 13 • February 25: eTreppid files supplemental brief re attorney-client privilege issue
14 (Docket # 443).
- 15 • February 29: Telephonic discovery hearing held regarding the hard drives seized by
16 the FBI (Docket # 458).
- 17 • March 6: Montgomery files motion for review by District Court Judge of Magistrate
18 Judge's February 21, 2008 Order regarding discovery (Docket # 460).
- 19 • March 10: eTreppid files motion to compel production of source code from
20 Montgomery Parties (Docket # 461).
- 21 • March 10: Montgomery Parties file motion to stay of Magistrate's order regarding
22 discovery (Docket # 466).
- 23 • March 10: Montgomery Parties file motion for protective order precluding production
24 of software and technology enabling information (Docket # 467).
- 25 • March 11: Dennis Montgomery files declaration in accordance with Court's Order of
26 February 21, 2008 (Docket # 471).
- 27 • March 12: Status Report of Montgomery Parties (Docket # 474).
- 28 • March 14: eTreppid files opposition to Montgomery Parties motion to stay Magistrate
Judge's February 21, 2008 Order (Docket # 477).
- March 17: Discovery Status Conference (Docket # 481).
- March 18: Montgomery Parties file emergency motion for review of Magistrate
Judge's February 21, 2008 Order (Docket # 478).
- March 18: eTreppid files opposition to Montgomery Parties' emergency motion for
order staying items in Magistrate Judge's February 21, 2008 Order (Docket # 479).
- March 19: eTreppid files motion for sanctions against Montgomery Parties regarding
discovery issues (Docket # 482).

- 1 • March 21: Montgomery Parties file objections to proposed vendor protocols (Docket #
- 2 499).
- 3 • March 21: Montgomery Parties' files opposition to eTreppid's motion to compel
- 4 production of source code (Docket # 498).
- 5 • March 24: eTreppid files opposition to Montgomery Parties' motion for protective
- 6 order precluding production of actual software and technology-enabling information
- 7 (Docket # 500).
- 8 • March 24: Edra Blixseth and Opspring LLC file motion to dismiss counterclaims of
- 9 eTreppid under Fed.R.Civ.P., Rule 12(b)(6) (Docket # 504).
- 10 • March 31: Motion of Michael Flynn to conform amount of fees and costs to March 24,
- 11 2008 Order (Docket # 520).
- 12 • April 2: Discovery hearing held regarding eTreppid's document production requests
- 13 and the Montgomery parties' motion for protective order (Docket # 525).
- 14 • April 7: Montgomery Parties file motion for protective order (Docket # 527).
- 15 • April 7: Montgomery Parties file opposition to eTreppid's motion for sanctions re
- 16 discovery (Docket # 528).
- 17 • April 11: eTreppid files opposition to motion to dismiss eTreppid's counterclaims
- 18 under Fed.R.Civ.P. 12(b)(6) (Docket #532).
- 19 • April 16: Montgomery Parties file motion to compel further responses to
- 20 interrogatories by eTreppid (Docket # 535).
- 21 • April 16: Montgomery Parties file motion to compel production of all documents
- 22 withheld by eTreppid under attorney-client privilege based on waiver (Docket # 536).
- 23 • April 17: eTreppid files objection to report and recommendation of Magistrate (Docket
- 24 # 539).
- 25 • April 18: Montgomery Parties file response to Michael Flynn's motion to conform
- 26 amount of attorney fees to March 24, 2008 Order (Docket # 542).
- 27 • April 18: Michael Flynn ("Flynn") files motion to establish procedures pursuant to
- 28 Rule 3.3 of the Nevada Rules of Professional Conduct to reveal his attorney client
- privilege communications with the Montgomery Parties (Docket # 540).
- April 21: eTreppid files reply to Montgomery Parties' opposition to eTreppid's motion
- for sanctions (Docket # 544)
- April 24, Flynn files motion for sanctions against Montgomery Parties and their
- successor counsel (Docket # 545).
- April 25: Blixseth and Opspring file reply to eTreppid's opposition to motion to
- dismiss counterclaims pursuant to Fed.R.Civ.P. Rule 12(b)(6) (Docket # 559).
- April 25: eTreppid files opposition to Montgomery Parties' motion for protective order
- and the holding of an evidentiary hearing (Docket # 560).

- 1 • April 29: Montgomery Parties file motion for orders sealing & striking filings by
2 Michael Flynn (Docket # 562).
- 3 • April 30: Flynn files opposition to Montgomery Parties' motion to strike and seal Flynn
4 motions (Docket # 564).
- 5 • May 5: Montgomery Parties file response to eTreppid's objection to Magistrate's
6 Report and Recommendation Regarding eTreppid's Motion for Sanctions (Docket #
7 579).
- 8 • May 8: Montgomery Parties file opposition to Michael Flynn's Motion to Establish
9 Rule 3.3 Procedures Pursuant to Nevada Rules of Professional Conduct (Docket # 588)
- 10 • May 9: Montgomery Parties file emergency motion for order permitting Montgomery
11 Parties to file memorandum of points and authorities in excess of 30 pages in
12 opposition to motion for sanctions (Docket # 590).
- 13 • May 12: Flynn files opposition to Montgomery Parties motion for leave to file
14 memorandum of points and authorities in excess of 30 pages (Docket #591).
- 15 • May 12: Montgomery Parties file opposition to Michael Flynn's Motion for Sanctions
16 (Docket #597)
- 17 • May 14: Request for status conference by the Montgomery Parties (Docket # 604).
- 18 • May 15: Flynn files reply to Montgomery Parties' opposition to Flynn's Motion to
19 Establish Procedures under Rule 3.3 Motion (Docket # 605).

20 This intensive activity has fully occupied the resources of the Montgomery Parties' counsel
21 over the past three months and warrants a short continuance of the discovery cut-off date in this
22 related case.

23 IV. CONCLUSION

24 For the foregoing reasons, the Montgomery Parties respectfully request that the Court grant
25 a ninety to one hundred-twenty day continuance of the pending discovery cut-off date; dispositive
26 motions cut-off date; and the date for filing a joint pretrial order.
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1 Dated: May 16, 2008

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

2
3
4 By: _____ /S/

5 Deborah A. Klar
6 Attorneys for Defendants and
7 Counterclaimants
8 DENNIS MONTGOMERY, BRENDA
9 MONTGOMERY and the
10 MONTGOMERY FAMILY TRUST
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DECLARATION OF SKLAR TOY

I, Sklar Toy, declare and state as follows:

1. I am a legal secretary employed by the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, counsel of record for Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust (“the Montgomery Parties) in the action known as *Friendly Capital Partners, L.P. v. Dennis Montgomery, et al. and Related Cases*, Case No. 3:07-CV-00250-PMP-VPC (the “FCP Action”). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. As the result of a miscommunication, I caused the Notice of Motion and Motion for Continuance and supporting Declaration of Deborah A. Klar to be filed on May 16, 2008 as Docket Number 76 without first seeking the review and/or express approval of Deborah A. Klar.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of May 2008, at Los Angeles, California.



Sklar Toy

AMENDED DECLARATION OF DEBORAH KLAR

I, Deborah Klar, declare and state as follows:

1. I am an attorney at law duly licensed to practice before this Court. I am a partner of the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, counsel of record for Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust (“the Montgomery Parties”) in the action known as *Friendly Capital Partners, L.P. v. Dennis Montgomery, et al. and Related Cases*, Case No. 3:07-CV-00250-PMP-VPC (the “FCP Action”). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath. The original declaration filed by my office in support of the Motion for Continuance was not reviewed by me before it was filed. As a result, apparently, of a miscommunication, the person who was responsible for the e-filing, filed the memorandum of points and authorities and my declaration prematurely, before they had been proofed and approved by me. *See* Declaration of Sklar Toy filed concurrently herewith. The filing of this Amended Declaration is necessary because my original declaration, which I did not review or sign, has sentences missing and is not accurate. The purpose of this declaration is to immediately correct the misstatements in that declaration.

2. There have been extensive challenges to the pleadings in the FCP Action but, as yet, no discovery has been conducted.

3. Under this Court’s Scheduling Order, May 16, 2008 is the date by which discovery must be completed in the FCP Action; June 16, 2008 is the deadline for the filing of dispositive motions; and July 16, 2008 or thirty days after the decision on any pending dispositive motions is the date for filing a joint pretrial order. The Montgomery Parties seek an extension of these dates for ninety to one hundred-twenty days for two principal reasons.

4. I anticipated that the nature and scope of discovery that would be necessary to defend and prosecute the claims asserted in this action would be determined after the Court ordered inspection of the books and records of eTreppid Technologies, LLC (“eTreppid”) had been completed. The Court in a related action known as *Dennis Montgomery, et al. v. eTreppid Technologies, LLC*, et al. Case No. 3:06-CV-PMP-VPC (Consolidated with Case No. 3:06-CV-

1 00145-PMP-VPC) (the “eTreppid Action.”) ordered such inspection on January 23, 2008.

2 However, eTreppid has refused to permit the Montgomery Parties to complete that inspection and
3 has failed to respond to the Montgomery Parties request to inspect and copy specific documents.

4 5. On March 19, 2008, Deloitte & Touche commenced their inspection of the
5 eTreppid’s books and records pursuant to the Court’s Order in the eTreppid Action at eTreppid’s
6 offices in Reno, Nevada . It was reported to me that it became apparent to Deloitte & Touche
7 during the course of the inspection that numerous books and records of eTreppid were not made
8 available for inspection and review. Further, it appeared that the boxes containing those
9 documents had not been reviewed for purposes of discovering documents that were responsive to
10 document requests propounded by the Montgomery Parties in the eTreppid Action.

11 6. Annexed hereto as Exhibit “A” is a true and correct copy of the letter dated May 1,
12 2008 which my colleague at the Liner firm, Tuneen Chisolm, sent to counsel for eTreppid
13 identifying the eTreppid books and records that had been requested, but not produced pursuant to
14 the request of Deloitte & Touche.

15 7. Despite repeated efforts, the Montgomery Parties have been unable to resume the
16 inspection of eTreppid’s books and records in accordance with the Court’s Order. On May 15,
17 2008, eTreppid’s counsel advised my firm by letter that eTreppid refused to allow the completion
18 of the Montgomery Parties’ inspection of eTreppid’s books and records absent the Montgomery
19 Parties’ compliance with an unrelated, May 7, 2008 Order of the Court in the eTreppid Action. By
20 Order dated May 16, 2008, the Court stayed its May 7, 2008 Order pending the Court’s ruling on
21 certain issues raised by the Montgomery Parties in the eTreppid Action. The Montgomery Parties
22 anticipate that they will have to file a motion for sanctions and that that motion will have to be
23 decided before they are able to resume the inspection of the books and records of eTreppid.
24 Accordingly, the Montgomery Parties are requesting an extension of ninety to one hundred and
25 twenty days of the subject dates.

26 8. A further reason the Montgomery Parties are seeking a continuance of the subject
27 dates is because the attorney assisting me in the FCP Action, Peter Bransten, has been completely
28 occupied by intensive activity in the eTreppid Action over the course of the past three months.

1 Since the beginning of February 2008, there have been approximately 189 docket entries in the
2 eTreppid Action.

3 9. Pursuant to my request, Mr. Bransten called eTreppid's counsel, Jerry Snyder, on
4 May 15, 2008 to inquire whether eTreppid was amenable to stipulating to an extension of the
5 discovery cut-off in the FCP Action. It is my understanding that Mr. Snyder was not amenable to
6 this proposal, stating that eTreppid did not have to conduct any discovery in the matter.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Executed on this 16th day of May 2008, at Los Angeles, California.

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/s/
Deborah A. Klar

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC P 5(b), I certify that I am an employee of the LAW OFFICES OF LINER
3 YANKELEVITZ SUNSHINE & REGENSTREIF LLP, and that on the 16th day of May 2008, I
4 caused to be served the within document described as NOTICE OF ERRATA AND AMENDED
5 MOTION RE MONTGOMERY PARTIES' MOTION FOR A NINETY TO ONE HUNDRED-
6 TWENTY DAY CONTINUANCE OF THE DISCOVERY CUT-OFF DATE, DISPOSITIVE
7 MOTIONS CUT-OFF DATE; AND THE DATE FOR FILING A JOINT PRETRIAL ORDER;
8 DECLARATION OF SKLAR TOY RE REASON FOR NOTICE OF ERRATA; AMENDED
9 DECLARATION OF DEBORAH A. KLAR IN SUPPORT THEREOF on the interested parties in
10 this action as stated below:

11 J. Stephen Peek, Esq.
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29 [ELECTRONIC] By filing the document(s) electronically with the U.S. District Court
30 and therefore the court's computer system has electronically delivered a copy of the
31 foregoing document(s) to the persons listed above at their respective email address.

32 [Federal] I declare that I am employed in the offices of a member of the State Bar of
33 this Court at whose direction the service was made. I declare under penalty of perjury
34 under the laws of the United States of America that the above is true and correct.

35 I declare under penalty of perjury under the laws of the State of California and the United
36 States of America that the foregoing is true and correct.

37 Executed on May 16, 2008, at Los Angeles, California

38 _____
James R. Boyd
(Type or print name)

James R. Boyd
(Signature)