

1 GUNDERSON LAW FIRM
Mark H. Gunderson, Esq.
2 Nevada State Bar No. 2134
Catherine Gunderson, Esq.
3 Nevada State Bar No. 10362
3895 Warren Way
4 Reno, Nevada 89509
Telephone: 775.829.1222
5 Facsimile: 775.829.1226

6 Randall J. Sunshine, Esq. (SBN: CA 137363)
7 Elyn S. Garofalo, Esq. (SBN: CA 158795)
LINER YANKELEVITZ
8 SUNSHINE & REGENSTREIF LLP
1100 Glendon Avenue, 14th Floor
9 Los Angeles, California 90024-3503
Telephone: (310) 500-3500
10 Facsimile: (310) 500-3501
11 (ADMITTED PRO HAC VICE)

12 Attorneys for Defendants and Counterclaimants
Dennis Montgomery, Brenda Montgomery,
13 and the Montgomery Family Trust

14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 FRIENDLY CAPITAL PARTNERS, L.P., a
18 California Limited Partnership,

Case No. 3:07-CV-250-PMP-VPC

19 Plaintiff

vs.

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

MOTION TO WITHDRAW AS LOCAL
COUNSEL

23 Defendants.
24 _____ /

25 AND RELATED CASES.
26 _____ /

1 Mark H. Gunderson, Esq. and Gunderson Law Firm, Nevada local counsel for Liner
2 Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP ("Liner") legal counsel for Dennis
3 and Brenda Montgomery and The Montgomery Family Trust ("Montgomery"), seek an order
4 from this Court permitting its withdrawal as Nevada local counsel of record for Montgomery.
5 This motion is based upon Supreme Court Rules 46, Rule 1.16 of the Nevada Rules of
6 Professional Conduct, and EDCR 7.40, the attached memorandum of points and authorities, and
7 the attached affidavit of counsel.

8 **SUPPORTING POINTS AND AUTHORITIES**

9 Nevada Supreme Court Rule 46(2) permits the attorney in an action to be changed prior to
10 judgment or final determination, "upon the order of the court or judge thereof on the application
11 of the attorney or client." Rule 1.16(b) of the Nevada Rules of Professional Conduct states, in
12 relevant part, that a lawyer may withdraw from representing a client if withdrawal can be
13 accomplished without material adverse effect on the interests of the client, the client fails to
14 substantially fulfill an obligation to the lawyer regarding the lawyer's services and has been
15 given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, or the
16 representation will result in an unreasonable financial burden on the lawyer or has been rendered
17 unreasonably difficult by the client. *See Nev. R. Prof. Conduct 1.16(b)(1), (5), & (6).* In this
18 case, an irreconcilable conflict has arisen between Montgomery and Gunderson Law Firm, that
19 precludes counsel from continuing to represent Montgomery's interests in this case, as
20 Montgomery has failed to substantially fulfill its obligations to its counsel. The refusal by
21 Montgomery to fulfill its obligations to its counsel necessarily undermines counsel's ability to
22 represent Montgomery as required by Nevada's rules governing professional conduct, will render
23 counsel's representation unreasonably difficult, and will result in an unreasonable financial
24 burden on counsel. *See Affidavit of Mark H. Gunderson, Esq., Exhibit 1.* The attorney-client
25 privilege, however, precludes counsel from disclosing the specific nature of the conflicts which
26 have arisen. *Id.*

27 **CONCLUSION**

28

1 Based on the foregoing, and after careful consideration, discussion, review, and research
2 by counsel, counsel has concluded that withdrawal is required in this matter pursuant to Rule
3 1.16 of the Nevada Rules of Professional Conduct. Therefore, counsel requests that this Court
4 enter its order accordingly. If this Motion is granted, the last known address at which
5 Montgomery may be served with notice of all further proceedings is:

6
7 Randall J. Sunshine, Esq. (SBN: CA 137363)
8 Elynn S. Garofalo, Esq. (SBN: CA 158795)
9 LINER YANKELEVITZ
10 SUNSHINE & REGENSTREIF LLP
11 1100 Glendon Avenue, 14th Floor
12 Los Angeles, California 90024-3503

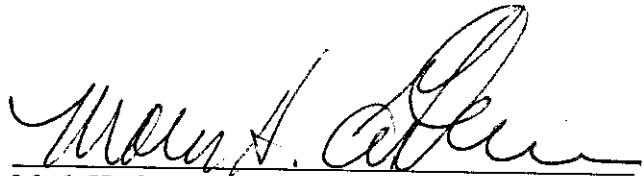
13
14 Dennis and Brenda Montgomery
15 3812 94th Avenue N.E.
16 Bellevue, WA 98004
17 United States of America

18
19 Edra Blixseth
20 42-765 Dunes View Rd.
21 Rancho Mirage, CA 92270-4311

22
23 DATED this 22nd day of April, 2009.

24
25 GUNDERSON LAW FIRM

26
27
28 By:



Mark H. Gunderson, Esq.
Nevada State Bar No. 2134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the GUNDERSON LAW FIRM, and that on the 22nd^h day of April, 2009, I caused to be served the within document described as **NOTICE OF LIEN FOR ATTORNEY'S FEES AND COSTS** on the interested parties in this action as stated below:


Stephen J. Peek, Esq.
Jerry M. Snyder, Esq.
Adam G. Lang, Esq.
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511
(775)327.3000; (775)786.6179 fax
Email: speek@halelane.com
Email: jsnyder@halelane.com
Email: alang@halelane.com

Randall J. Sunshine, Esq. (SBN: CA 137363)
Ellyn S. Garofalo, Esq. (SBN: CA 158795)
LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3503
(310) 500-3500; (310) 500-3501 fax
Email: dklar@linerlaw.com
Email: tpham@linerlaw.com
Email: rlapine@linerlaw.com

Attorneys for Friendly Capital Partnership; Attorneys for Montgomery Family Trust; Dennis Etreppid Technologies, LLC; Douglas J. Frye; Mongomery; and Brenda Montgomery Warren Trep

X **[ELECTRONIC]** By filing the document(s) electronically with the U.S. District Court and therefore the Court's computer system has electronically delivered a copy of the foregoing documents(s) to the persons listed above at their respective email address.

I declare under penalty of perjury under the laws of the State of Nevada and the United States of American that the foregoing is true and correct. Executed on April 22nd, 2009, at Reno, Nevada.


Colleen Camenisch