

1 ROBERT MACKAY (192423)
robert.mackay@nlrb.gov
2 NEIL WARHEIT (133218)
WILLIAM M. PATE (45734)
3 National Labor Relations Board
Region 21
4 888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
5 Telephone: (213) 894-5204
Facsimile: (213) 894-2778

6 Attorneys for Petitioner

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10

11 JAMES F. SMALL, Regional Director)
of Region 21 of the National Labor)
12 Relations Board, for and on behalf of)
the NATIONAL LABOR)
13 RELATIONS BOARD,

14 Petitioner,

15 and

16 SOUTHERN CALIFORNIA)
PERMANENTE MEDICAL GROUP;)
17 AND KAISER FOUNDATION)
HOSPITALS,)
18

19 Respondents.
20
21

Civil No. CV10-7395 GAF FM0x

NOTICE OF FILING OF THE
TRANSCRIPT OF ADMINISTRATIVE
PROCEEDINGS

Date: December 6, 2010
Time: 9:30 a.m.
Judge: Hon. Gary A. Feess
Courtroom: Roybal 740

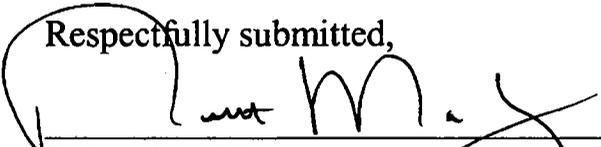
22 Pursuant to the terms of the October 19, 2010 Stipulation and Order
23 approved in this matter, the Petitioner hereby submits, as an attachment hereto, the
24 transcript and exhibits from the hearing before the administrative law judge.¹
25

26
27 ¹ In effort to prevent confusion by the parties and the Court in citing to portions of
28 the transcript and exhibits, Petitioner has not paginated the transcript or exhibit
pages consecutive to this document.

1 Note that in order to avoid overburdening the Court's docket with multiple sets of
2 identical documents, Petitioner has intentionally omitted from the attached
3 administrative transcript the exhibits identified as GCx. 4, GCx. 5, and GCx. 6.
4 These three voluminous Collective- Bargaining Agreements are already on the
5 Court's docket as Exhibits 7, 8 and 9 to Petitioner's original Petition filed on
6 October 4, 2010.²

7
8 Dated at Los Angeles, California, this 3rd day of November, 2010.

9 Respectfully submitted,

10 
11 _____
12 Robert MacKay
13 Attorney for Petitioner 

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25
26 _____
27 ² Should the Court prefer that GCx. 4-6 from the administrative hearing record also
28 be filed, Petitioner will gladly comply.

Notices

2:10-cv-07395-GAF -FMO James F. Small v. Southern California Permanente Medical Group et al
(FMOx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by MacKay, Robert on 11/3/2010 at 12:18 PM PDT and filed on 11/3/2010

Case Name: James F. Small v. Southern California Permanente Medical Group et al
Case Number: 2:10-cv-07395-GAF -FMO
Filer: James F. Small
Document Number: 9

Docket Text:

NOTICE of Filing Administrative Hearing Transcripts Pursuant to Stipulation and Order filed by Petitioner James F. Small. (Attachments: # (1) October 18 Administrative Hearing Transcript, # (2) October 19 Administrative Hearing Transcript, # (3) General Counsel's Hearing Exhibits 1-2, # (4) General Counsel's Hearing Exhibit 3, # (5) General Counsel's Hearing Exhibits 7-16, # (6) General Counsel's Hearing Exhibit 17 Part I, # (7) General Counsel's Hearing Exhibit 17 Part II, # (8) General Counsel's Hearing Exhibit 18, # (9) Parties' Joint Exhibit 1, # (10) Respondents' Hearing Exhibits 1-5, # (11) Respondents' Hearing Exhibits 6-7)(MacKay, Robert)

2:10-cv-07395-GAF -FMO Notice has been electronically mailed to:

Michael R Lindsay mlindsay@nixonpeabody.com

Neil A Warheit neil.warheit@nlrb.gov

Robert N MacKay robert.mackay@nlrb.gov

2:10-cv-07395-GAF -FMO Notice has been delivered by First Class U. S. Mail or by fax to :

William M Pate , Jr
National Labor Relations Board Region 21
888 South Figueroa Street 9th Floor
Los Angeles, CA 90017-5449

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Notice of Filing of Transcript.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=11/3/2010] [FileNumber=10601311-0]
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Document description: October 18 Administrative Hearing Transcript

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
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Document description: October 19 Administrative Hearing Transcript

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
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Document description: General Counsel's Hearing Exhibits 1-2

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
Subsequent Filings\Transcript Filed\General Counsel Exhibits (GCx. 1-2).pdf

Electronic document Stamp:

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Document description: General Counsel's Hearing Exhibit 3

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
Subsequent Filings\Transcript Filed\General Counsel Exhibits (GCx. 3).pdf

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Document description: General Counsel's Hearing Exhibits 7-16

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
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Document description: General Counsel's Hearing Exhibit 17 Part I

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
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Document description: General Counsel's Hearing Exhibit 17 Part II

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned
Subsequent Filings\Transcript Filed\General Counsels Exhibits (GCx. 17 Part II).pdf

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Document description: General Counsel's Hearing Exhibit 18

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Transcript Filed\General Counsels Exhibits (GCx. 18).pdf

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Document description: Parties' Joint Exhibit 1

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Transcript Filed\Parties' Joint Exhibit 1.pdf

Electronic document Stamp:

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Document description: Respondents' Hearing Exhibits 1-5

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Transcript Filed\Respondent Exhibits 1-5.pdf

Electronic document Stamp:

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Document description: Respondents' Hearing Exhibits 6-7

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Transcript Filed\Respondent Exhibits 6-7.pdf

Electronic document Stamp:

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8 UNITED STATES DISTRICT COURT
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16 SOUTHERN CALIFORNIA)
PERMANENTE MEDICAL GROUP;)
17 AND KAISER FOUNDATION)
HOSPITALS,)
18

19 Respondents.
20
21

Civil No. CV10-7395 GAF FM0x

22 SUPPLEMENTAL FILING IN
23 SUPPORT OF PETITIONER'S
24 PETITION FOR TEMPORARY
25 INJUNCTION UNDER SECTION 10(j)
26 OF THE NATIONAL LABOR
27 RELATIONS ACT

28 Date: December 6, 2010
Time: 9:30 a.m.
Judge: Hon. Gary A. Feess
Courtroom: Roybal 740

22 I. INTRODUCTION
23

24 Pursuant to the terms of the October 19, 2010 Stipulation and Order
25 approved in this matter, the Petitioner hereby submits this Supplemental Filing in
26 support of its Petition for Injunctive Relief under Section 10(j) of the National
27 Labor Relations Act (herein the Act), as amended, 29 U.S.C. Sec. 160 (j) (herein
28 Section 10(j)).

1 As the Court is aware, the Petitioner's initial filings included a Points &
2 Authorities ("P&A") in support of the Petition. The *Statement of Facts* section
3 contained therein cited to evidence that had been obtained during the course of the
4 administrative investigation of the underlying unfair labor practice charge, which
5 facts the Petitioner argues showed that it had a strong likelihood of success in
6 establishing that Respondents committed the unfair labor practices alleged.

7 On October 18 and 19, 2010, the administrative hearing (trial) was held in
8 Los Angeles, California, before an administrative law judge of the National Labor
9 Relations Board ("Board"). At the hearing, Respondents and Petitioner each had
10 the opportunity to present witnesses and other evidence in support of their
11 respective cases. The determinations by the Board as to whether or not
12 Respondents committed the alleged unfair labor practices will be based on the
13 record evidence from the hearing.¹

14 Thus, Petitioner hereby submits this Supplemental Filing, the purpose of
15 which is twofold. The first is to provide to the Court citations to the record that
16 support the *Statement of Facts* section set forth in Petitioner's P&A. As these
17 same relevant facts were introduced at the hearing, Petitioner remains of the
18 position that it has a strong likelihood of success in establishing that Respondents
19 committed the alleged unfair labor practices. The second purpose is to highlight
20 for the Court the additional evidence of irreparable harm that was presented at the
21 hearing.²

23 ¹ Pursuant to the October 19th Stipulation and Order, Petitioner has filed with the
24 Court, the transcripts and exhibits developed during the administrative hearing.
25 This Supplemental Filing will cite to the relevant pages of the transcript and the
26 exhibits from the administrative hearing.

27 ² The Board in due course will be making its determinations regarding whether
28 Respondents committed the alleged unfair labor practices. It will not, however, be
making determinations as to whether the Union will suffer "irreparable harm" in
the interim. Therefore, with respect to evidence presented on the issue of

II. STATEMENT OF FACTS

1 Respondents run several medical centers and clinics in Southern California.³
2
3 Prior to February 3, certain employees at those facilities were represented by the
4 SEIU-United Healthcare Workers-West (herein SEIU-UHW) in 3 separate
5 bargaining units: a unit consisting of nursing employees (herein AFN Unit); a unit
6 consisting of mental-health workers (herein Psych-Social Unit); and a unit
7 consisting of healthcare professionals (herein Healthcare Professionals Unit).
8 (GCx. 1(g), GCx. 1(i), GCx. 2, GCx. 3; Tr. 28-31).⁴

9 The SEIU-UHW negotiated separate, but similar, collective-bargaining
10 agreements with Respondents (herein contract or CBA) on behalf of each of the 3
11 units that incorporated a Local Agreement, a Master Agreement, and a National
12 Agreement. The Local, Master, and National Agreements complement each other
13 and apply as a single integrated agreement. (GCx. 2, GCx. 3, GCx. 12; Tr. 28-31).
14

15 irreparable harm, the Court should continue to look to the evidence previously
16 cited and presented by the Petitioner. Note however, that pursuant to the October
17 19th Stipulation and Order, Respondents had the opportunity during the
18 administrative hearing to cross-examine Union agents Ralph Cornejo, Gabriel
19 Kristal, and John Borsos, about, among other matters, the issue of irreparable
20 harm. The witnesses' answers to Respondents' questions on this issue continue to
21 support Petitioner's arguments, as discussed further below.

22 ³ Respondent Southern California Permanente Medical Group and Respondent
23 Kaiser Foundation Hospitals are jointly the employers of the Healthcare
24 Professionals and the Psych-Social units of employees while Respondent Kaiser
25 Foundation Hospitals is the sole employer of the AFN unit. Because Petitioner
26 alleges that both Respondents jointly engaged in the same unlawful conduct as to
27 all 3 units of employees, Petitioner refers to the 2 entities collectively as
28 Respondents.

⁴ All citations to the transcript from the administrative hearing will be referred to as
"Tr." followed by the appropriate page number. "GCx" will refer to exhibits
offered by the Counsel for the Acting General Counsel, who is otherwise identified
as Petitioner in this proceeding. "Rx." will refer to exhibits offered by
Respondents Southern California Permanente Medical Group and Kaiser
Foundation Hospitals, otherwise identified as Respondents in this proceeding.

1 The National Agreement arose from collective bargaining between
2 Respondents and a coalition of labor unions (including SEIU-UHW) who represent
3 employees at Respondents' facilities across the nation.⁵ (GCx. 2, GCx. 3, GCx.
4 12; Tr. 28-31).

5 The three CBAs negotiated by the SEIU-UHW established a series of yearly
6 across-the-board wage increases, one of which mandated a 2-percent wage increase
7 for all 3 units, that was due in April. (Tr. 32-36; GCx. 7; and *Petition* Exhibits,
8 Exh. 7, pp. 259-261, 274-275; Exh. 8, pp. 456-458, 471-472; Exh. 9, pp. 668-670,
9 683-684).⁶

10 These CBAs also established the terms of regular shop-steward⁷ training and
11 a right to tuition reimbursement for the cost of courses taken for continuing
12 education or to maintain licensure. (Tr. 37-39; Rx. 3; *Petition* Exhibits, Exh. 7, pp.
13 132, 178-179, 242, 244; Exh. 8, pp. 367, 439, 441; and Exh. 9 pp. 547, 651, 653).

14 On February 3,⁸ following a mail ballot election held by Petitioner, the
15 National Union of Healthcare Workers (herein NUHW or the Union) was certified

17 ⁵ Respondents and the coalition of labor unions formed the Labor Management
18 Partnership (herein LMP) in order to facilitate collective bargaining. (GCx.2,
19 GCx. 3).

20 ⁶ During the course of the administrative hearing, the Healthcare Professional
21 unit's CBA was entered onto the record as GCx. 4, the American Federation of
22 Nurses unit's as GCx. 5, and the Psych-Social Chapter unit's as GCx. 6. In order
23 to avoid overburdening the Court's docket with multiple sets of identical
24 documents, Petitioner has not re-filed these three voluminous CBAs along with its
25 filing of the transcripts and exhibits from the hearing, as these three documents are
26 already on the docket as part of Petitioner's exhibits to its Petition. Accordingly,
27 when citing to the 3 CBAs, Petitioner will cite to Exhibits 7-9 of the Petition in lieu
28 of citing to GCx. 4-6. Should the Court prefer that GCx. 4-6 from the hearing
record also be filed, Petitioner will gladly comply.

⁷ Shop stewards are rank-and-file employees who volunteer their time on behalf of
their union to help monitor their CBA, assist in processing employee grievances,
and act as a messenger for their union, among other duties.

⁸ All dates that follow are in 2010.

1 by the Petitioner as the new collective-bargaining representative in each of the 3
2 units. (GCx. 1(g), GCx. 1(i)).⁹ Following the NUHW's certifications,
3 Respondents met with the NUHW several times beginning in February to discuss
4 bargaining ground rules and to prepare for negotiations for new collective-
5 bargaining agreements between Respondents and the NUHW. (Tr. 40-54).

6 At the first of these meetings, the Union asked Respondents to apply the
7 terms of the SEIU-UHW contracts through October, and specifically requested
8 continuation of the tuition-reimbursement and steward training programs. (Tr. 40-
9 43).

10 At the second meeting, Respondents informed the Union that they would not
11 grant the 2-percent April wage increase, and that they were discontinuing the
12 tuition-reimbursement and shop-steward training programs. In subsequent
13 meetings and communications during February and March, the Union continued to
14 request that Respondents maintain all terms and conditions of the SEIU-UHW
15 contracts. Respondents refused, contending that the National Agreement no longer
16 applies to the unit employees because the Union is not a member of the coalition.
17 Based on this position, Respondents canceled the 2-percent April wage increase
18 and discontinued the tuition-reimbursement and steward training programs.¹⁰ (Tr.
19

20
21 ⁹ NUHW is not a member of the coalition of labor unions. (Tr. 40).

22 ¹⁰ As the record demonstrates, when Respondents first informed the Union that the
23 wage increases and benefits at issue in this case no longer applied to the employees
24 in the 3 units, that decision had already been made. Respondents further concede
25 that the operative or effective date of the decision was February 3, 2010, the date
26 of the Union's certification. The Union was not given advance notice or an
27 opportunity to bargain over this decision before it was made, nor did the Union
28 ever acquiesce or agree to it. Furthermore, both simultaneous with, and
subsequent to the announcement of the decision, Respondents took the position
that the elimination of the wage increases and benefits at issue was not a
bargainable decision.



1 43-50, 53-55, 152-157, 165-169, 177-183, 205-206; Rx. 2, Rx. 6, Rx. 7; GCx. 8,
2 GCx. 9, GCx. 10, GCx. 11, GCx. 13, GCx. 14, GCx. 15, GCx. 17, GCx. 18).

3
4 A. Additional Evidence of Irreparable Harm

5 Respondents' refusal to uphold the employees' terms and conditions of
6 employment severely harmed the Union's ability to engage in effective collective
7 bargaining for first contracts for the 3 units of employees. Respondents' conduct
8 forced the Union to shift its attention away from preparing for collective
9 bargaining, and instead to focus on dealing with the impact Respondents' actions
10 had on its members. The employees in the 3 units were devastated by
11 Respondents' actions, particularly over Respondents' refusal to grant their
12 expected annual wage increase. In response, the Union was forced to engage in
13 damage control, holding special meetings for its members in order to strategize and
14 explain Respondents' positions. All in all, this caused a hiatus in collective
15 bargaining of two-and-a-half months. (Tr. 55-56).

16 When the negotiations resumed, Respondents' refusal to grant the wage
17 increase continued to be a source of contention. At one point during collective-
18 bargaining negotiations for the nursing unit, one of Respondents' representatives
19 stated that he was not going to talk about the increase any further, while the Union
20 made clear that Respondents needed to immediately reinstate the increase. (Tr.
21 133-135). To date, over 9 months after the Union's certifications, no contract has
22 been reached in any of the 3 bargaining units. (Tr. 183).

23 In addition to its impact on the collective-bargaining process, Respondents'
24 conduct has caused a significant loss in employee support for the newly elected
25 Union. On a daily basis, dozens of frustrated employees inundate NUHW
26 representatives with questions and complaints regarding their missing wage
27 increase and other benefits. Specifically, unit employees have asked NUHW
28 representatives whether they would get their wage increase if they returned to

1 representation by the SEIU-UHW, why Respondents were punishing them for
2 choosing the Union as their representative, and why Respondents were helping the
3 SEIU-UHW by denying them their wage increase. (Tr. 100-107).

4 Furthermore, elected unit-employee shop stewards have complained to
5 Union representatives that Respondents' actions have cost them personal
6 credibility among their fellow unit employees and made them look like bad
7 employee leaders. (Tr. 107-108). Additionally, attendance at regular shop-steward
8 meetings and trainings has decreased by over 50 percent. (Tr. 112). The shop
9 stewards cite the fact that Respondents have ceased granting them time off and
10 ceased paying them for these meetings and trainings, ever since the Union's
11 certification, as reason for the decreased attendance at these meetings and
12 trainings. These shop stewards also cite their general dissatisfaction with the
13 Union, resulting from Respondents' refusal to continue the wage increases and
14 other benefits, as reasons for their increasing lack of interest in the meetings and
15 trainings. (Tr. 113-114).

16 Consequently, the evidence presented both during Petitioner's unfair labor
17 practice investigation, and during the course of the administrative proceeding
18 makes clear that as a result of Respondents' unlawful actions: The Union has lost
19 significant support among Respondents' employees in the 3 units; the Union has
20 lost both bargaining power and legitimacy in the eyes of its members; and because
21 the ultimate Board order cannot remedy the Union's loss of support and the loss of
22 bargaining power that has occurred and continues to occur due to Respondent's
23 conduct, the Board's remedial processes have suffered.

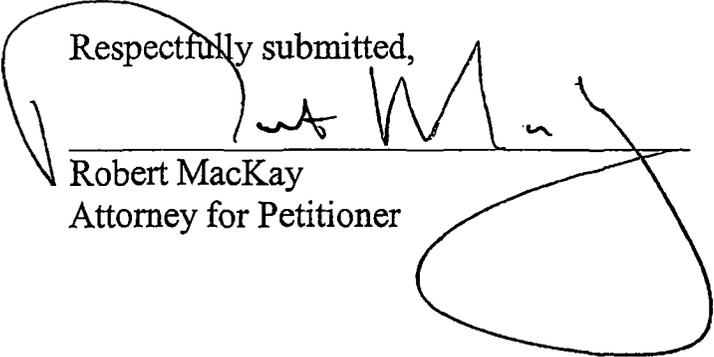
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III. CONCLUSION

Interim relief is just and proper to prevent further frustration of the policies and remedial purposes of the Act. In both its initial and supplemental filings, the Petitioner has shown that he has a strong likelihood of prevailing in the administrative proceeding before the Board and establishing that Respondents have committed violations of Section 8(a)(1) and (5) of the Act. Unless enjoined by this Court, Respondents' commission of these unfair labor practices will continue to undermine the collective-bargaining process and the Board's remedial powers. Accordingly, Petitioner respectfully requests that this Court grant the requested relief.

Dated at Los Angeles, California, this 3rd day of November, 2010.

Respectfully submitted,



Robert MacKay
Attorney for Petitioner

Responses, Replies and Other Motion Related Documents

2:10-cv-07395-GAF -FMO James F. Small v. Southern California Permanente Medical Group et al

(FMOx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by MacKay, Robert on 11/3/2010 at 12:26 PM PDT and filed on 11/3/2010

Case Name: James F. Small v. Southern California Permanente Medical Group et al

Case Number: 2:10-cv-07395-GAF -FMO

Filer: James F. Small

Document Number: 10

Docket Text:

MEMORANDUM in Support of MOTION for Order for Petition for Injunction Under section 10(j) of the National Labor Relations Act[2] *Supplemental Filing in Support of Petition as Authorized by the Stipulation and Order* filed by Petitioner James F. Small. (MacKay, Robert)

2:10-cv-07395-GAF -FMO Notice has been electronically mailed to:

Michael R Lindsay mlindsay@nixonpeabody.com

Neil A Warheit neil.warheit@nlrb.gov

Robert N MacKay robert.mackay@nlrb.gov

2:10-cv-07395-GAF -FMO Notice has been delivered by First Class U. S. Mail or by fax to :

William M Pate , Jr
National Labor Relations Board Region 21
888 South Figueroa Street 9th Floor
Los Angeles, CA 90017-5449

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Supplemental Filing.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=11/3/2010] [FileNumber=10601401-0] [a9dc81a9ef34c6bcd1de06426462bd2def51639a5cc9668c1a6bc5bdffb68f787c22c7db973a74882d4cc7951d66a3d7b37520dfa9651c87457caa126578730f]]