UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS TYLER DIVISION

HEWLETT-PACKARD COMPANY,	§	
Plaintiff,	§	
	§	Civil Action No. 6:05cv456 (MHS)
V.	§	
	§	JURY DEMANDED
BYD:SIGN, INC.; BYD:SINE, CO. LTD.,	§	
a/k/a BYD:SIGN, CO. LTD., a/k/a BYD:SIGN	§	
COMPANY JAPAN, LTD, a/k/a BYD:SIGN	§	
WORLDWIDE; EYEFI DIGITAL TV, INC.;	§	
IDAPT SYSTEMS, LLC; KATSUMI	§	
ELECTRONICS CORPORATION;	§	
J. BRIAN DENNISON; KARL KAMB, JR;	§	
KATSUMI IIZUKA; MARC McEACHERN;	§	
WILLIAM TAFFEL; DAVID THORSON;	§	
POOJITHA PREENA,	§	
Defendants.	§	

<u>DEFENDANT MARC McEACHERN'S ANSWER, AFFIRMATIVE DEFENSES, AND</u> <u>COUNTERCLAIM</u>

Defendant, Marc McEachern, by and through the undersigned counsel, answers the Complaint of Plaintiff Hewlett-Packard Company ("Plaintiff" or HP) as follows:

I. <u>INTRODUCTION</u>

Defendant, Marc McEachern, admits that civil action number 6:05-cv-456 purports to be an action for usurpation of corporate opportunities; breach of fiduciary duties; constructive fraud; trade secret misappropriation; common law misappropriation; tortious interference with existing and prospective business relationships; breach of contract; negligent misrepresentation and fraud; unfair competition under the Lanham Act and the common law; civil conspiracy; and violations of the Racketeer Influenced and Corrupt Organizations Act brought in this District Court. Defendant Marc McEachern denies any allegation or implication that any of his activities in this or any other jurisdiction gives rise to any such claims.

II. **THE PARTIES**

- 1. Defendant Marc McEachern, upon information and belief, admits the allegations set forth in paragraph 1 of the Complaint.
- 2. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 2 and therefore denies same.
- 3. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 3 and therefore denies same.
- 4. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 4 and therefore denies same.
- 5. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 5 and therefore denies same.
- 6. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 6 and therefore denies same.
- 7. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 7 and therefore denies same.

- 8. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 8 and therefore denies same.
- 9. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 9 and therefore denies same.
- 10. Defendant McEachern admits that his last place of residence in the U.S. was in California and he admits that he is currently residing in Japan. Defendant McEachern denies that he engages in business in the state of Texas. Defendant McEachern admits that he does not maintain a regular place of business in this state or designated agent for service of process in the state of Texas.
- 11. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 11 and therefore denies same.
- 12. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 12 and therefore denies same.
- 13. Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 13 and therefore denies same.

III. JURISDICTION AND VENUE

14. Defendant Marc McEachern avers that paragraph 14 of the Complaint states a conclusion of law to which no response is required. To the extent a response is required,

Defendant McEachern admits that HP alleges that jurisdiction in this judicial district is proper pursuant to 28 U.S.C. §§ 1331 and 1367.

- 15. Defendant Marc McEachern avers that paragraph 15 of the Complaint states a conclusion of law to which no response is required. To the extent a response is required, Defendant Marc McEachern is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 15 and therefore denies same.
- 16. Defendant Marc McEachern avers that paragraph 16 states conclusions of law to which no response is required. To the extent a response is required, Defendant Marc McEachern admits that he has traveled to Texas on business on one occasion. Defendant Marc McEachern denies any actions resulting in liability under any of the claims set forth in the Complaint. Except as so averred, admitted and denied, Defendant Marc McEachern denies the allegations set forth in paragraph 16 of the Complaint.

IV. BACKGROUND FACTS

A. HP is One of the World's Leading Technology Companies.

- 17. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Complaint and therefore denies same.
- 18. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Complaint and therefore denies same.
- B. Kamb, Taffel, McEachern, Thorson and Dennison Once Worked Together as Employees of HP and/or Its Predecessor.

19. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint and therefore denies same.

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- 20. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint and therefore denies same.
- 21. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint and therefore denies same.
- 22. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of the Complaint and therefore denies same.
- 23. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Complaint and therefore denies same.
- 24. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the Complaint and therefore denies same.
- 25. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the Complaint and therefore denies same.

- 26. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the Complaint and therefore denies same.
- 27. Defendant McEachern admits that he was employed in HP's facilities in Tokyo, Japan, and that he was not a former Compaq employee. Defendant McEachern admits that he began working for HP Japan in January of 1993. Defendant McEachern denies that HP assigned him to its operations in Tokyo as he began his career there. McEachern admits that he became director of HP Labs in Japan. McEachern admits that his responsibility was investigation and research. McEachern denies that his responsibility was development of electronic mobility and consumer electronic products in Japan and East Asia. Except as so averred, admitted and denied, Defendant McEachern denies the allegations set forth in paragraph 27 of the Complaint.
- 28. Defendant Marc McEachern admits that HP Japan furnished him a copy of an employment agreement when he first began his employment. Defendant McEachern does not know if the agreement attached to the Complaint was ever signed.
- 29. Defendant McEachern admits that he began working with Kamb and Taffel in HP's facilities in Tokyo following the HP/Compaq merger in 2002. However, McEachern reported to a separate group than Kamb and Taffel and worked at a different location than them. Defendant McEachern admits that he was responsible for research. Defendant McEachern denies he had responsibility for product design or development.
- 30. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of the Complaint and therefore denies same.

31. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of the Complaint and therefore denies same.

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- 32. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of the Complaint and therefore denies same.
- 33. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the Complaint and therefore denies same.
- 34. Defendant Marc McEachern denies the allegations set forth in paragraph 34 of the Complaint.
- 35. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 35 of the Complaint and therefore denies same.

C. Kamb, Taffel, McEachern and Thorson Agreed to Abide by HP's Standards of Business Conduct.

- 36. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 of the Complaint and therefore denies same.
- 37. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 37 of the Complaint and therefore denies same.

- 38. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 38 of the Complaint and therefore denies same.
- 39. Defendant Marc McEachern avers that the document titled, "HP Standards of Business Conduct," attached as Exhibit H to the Complaint, speaks for itself. Defendant Marc McEachern further avers that the allegations set forth in paragraph 39 of the Complaint constitute legal assertions or conclusions of law to which no response is required. Except as so averred, Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the Complaint and therefore denies same.
- 40. Defendant Marc McEachern avers that the document titled, "HP Standards of Business Conduct," attached as Exhibit H to the Complaint, speaks for itself. Defendant Marc McEachern further avers that the allegations set forth in paragraph 40 of the Complaint constitute legal assertions or conclusions of law to which no response is required. Except as so averred, Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 40 of the Complaint and therefore denies same.
- 41. Defendant Marc McEachern avers that the document titled, "HP Standards of Business Conduct," attached as Exhibit H to the Complaint, speaks for itself. Defendant Marc McEachern further avers that the allegations set forth in paragraph 41 of the Complaint constitute legal assertions or conclusions of law to which no response is required. Except as so averred, Defendant Marc McEachern is without information or knowledge sufficient to form a

belief as to the truth of the allegations set forth in paragraph 41 of the Complaint and therefore denies same.

D. In Late 2002 and Early 2003, Defendants Began Secretly Planning Their Enterprise.

- 42. Defendant Marc McEachern admits that the technology for producing flat panel televisions and monitors has existed for many years. Except as so admitted, Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 42 of the Complaint and therefore denies same.
- 43. Defendant Marc McEachern does not understand the allegations set forth in paragraph 43 and cannot respond to same.
- 44. Defendant Marc McEachern denies the allegation in paragraph 44 of Complaint that he formulated a scheme to establish his own consumer electronics enterprise, that the enterprise would be separate and apart from HP, and that the enterprise would design, develop, manufacture and sell flat panel televisions, monitors and other devices obtained in Japan and East Asia. Defendant McEachern admits that his responsibility at HP was to investigate and research new technologies. Defendant McEachern denies that his responsibility was to find and develop new products on behalf of HP. Except as so averred, admitted or denied, Defendant McEachern denies all allegations of paragraph 44 of the Complaint.
- 45. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the Complaint and therefore denies same.
- 46. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of the Complaint and therefore denies same.

- 47. Defendant Marc McEachern denies that he began discussions about forming a new company and further denies any other allegations directed against him in paragraph 47 of the Complaint.
- 48. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 48 of the Complaint and therefore denies same.
- 49. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations regarding other Defendants' efforts to erase items from their computer files and therefore denies same. To the extent that the allegations of paragraph 49 are directed toward him, Defendant McEachern denies same.
- 50. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 50 of the Complaint and therefore denies same.
- 51. Defendant Marc McEachern denies the allegations that he finalized any plans for the formation of byd:sign Enterprise and further denies any other allegations directed against him in paragraph 51 in Plaintiff's Complaint.
- 52. Defendant Marc McEachern admits that in May of 2003, he was still employed by HP Japan. Defendant Marc McEachern admits that he was present at a presentation. Defendant Marc McEachern denies the remainder of the allegations contained in paragraph 52 of the Complaint.
- E. In the Summer and Fall of 2003, Defendants Put Their Scheme Into Action While Continuing to Raid HP.

- 53. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the Complaint and therefore denies same.
- 54. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of the Complaint and therefore denies same.
- 55. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the Complaint and therefore denies same.
- 56. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 56 of the Complaint and therefore denies same.
- 57. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of the Complaint and therefore denies same.
- 58. Defendant Marc McEachern admits attending a meeting that included Carly Fiorina. Defendant McEachern denies Plaintiff's characterization of the meeting. Defendant McEachern denies attending a meeting with Carly Fiorina around Flat Panel TVs. Defendant McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation that he was listed as a technical advisor and therefore denies same.
- 59. Defendant Marc McEachern denies that he was in a position to influence decision-making regarding HP's efforts to enter the flat panel television Market. The remainder of the allegations set forth in paragraph 59 are directed toward a Defendant other

than Marc McEachern. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 59 of the Complaint and therefore denies same.

- 60. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 60 of the Complaint and therefore denies same.
- 61. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 61 of the Complaint and therefore denies same.

F. Defendants Continued Secretly Operating Their Competing Enterprise While Kamb, McEachern, Taffel and Others Remained Employed by HP.

- 62. To the extent that the Plaintiff attempts to characterize McEachern as a member of a "team" that was engaging in wrongful activities, Defendant Marc McEachern denies same. With respect to the remainder of the allegations set forth in paragraph 62, Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies same.
- 63. Defendant Marc McEachern denies that he funneled HP's confidential and proprietary information to byd:sign and its affiliates. Defendant admits that he helped develop a design patent, and subsequently submitted a design patent application to the Japanese patent office on behalf of HP. The design patent was rejected by the patent office. Defendant McEachern denies that he used the design to pitch and develop byd:sign's prototype televisions. The design patent was not developed or paid for by HP. Defendant denies all other allegations contained within paragraph 63 of the Complaint.

- 64. Defendant McEachern admits attending 1-2 meetings for the Consumer Entertainment Group. Defendant denies the remainder of the allegations of paragraph 64 of the Complaint.
- 65. Defendant McEachern denies the allegations contained in paragraph 65 of the Complaint.

G. In January 2004, HP Publicly Announced Its Intent to Enter Into the Flat Panel Television Market.

- 66. Defendant Marc McEachern admits that Hewlett Packard publicly announced HP's intent to enter the flat panel television market. Defendant McEachern denies the remainder of the allegations contained in paragraph 66 of the Complaint.
- 67. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation that the January 2004 announcement by HP received widespread attention and therefore denies same. Defendant Marc McEachern denies the remainder of the allegations set forth in paragraph 67 of the Complaint.
- 68. Defendant Marc McEachern denies the allegations contained in paragraph 68 of the Complaint.
- 69. Defendant Marc McEachern denies the allegations contained in paragraph 69 of the Complaint.

H. <u>Defendants' Deception Continued Through 2004 and Into 2005.</u>

- 70. Defendant Marc McEachern denies the allegations contained in paragraph 70 of the Complaint.
- 71. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 71 of the Complaint and therefore denies same.

- 72. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 72 of the Complaint and therefore denies same.
- 73. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 73 of the Complaint and therefore denies same.
- 74. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 74 of the Complaint and therefore denies same.
- 75. Defendant Marc McEachern denies the allegations contained in paragraph 75 of the Complaint.
- 76. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 76 of the Complaint and therefore denies same.
- 77. Defendant Marc McEachern denies the allegations contained in paragraph 77 of the Complaint.
- 78. To the extent that paragraph 78 of the Complaint alleges Defendant Marc McEachern entered negotiations with one of HP's long-time rivals to manufacture and sell printers, said allegation is denied. To the extent that the allegations of paragraph 78 are directed toward a defendant other than McEachern, Defendant McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies same.

- 79. Defendant Marc McEachern denies the allegations contained in paragraph 79 of the Complaint.
- 80. Defendant Marc McEachern denies that he concealed any activities from HP. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 80 of the Complaint regarding Kamb's contact with the security team and therefore denies same.

I. Kamb's Personal Deceit Led to the Discovery of Defendants' Professional Deception.

- 81. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 81 of the Complaint and therefore denies same.
- 82. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 82 of the Complaint and therefore denies same.
- 83. To the extent that HP is directing its allegations against Defendant McEachern, Defendant McEachern denies same. To the extent that the allegations are directed toward other Defendants, Defendant McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 83 of the Complaint and therefore denies same.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION-USURPTION OF CORPORATE OPPORTUNITY

84. Defendant Mark McEachern realleges the preceding paragraphs as if fully set forth herein.

- 85. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 85 of the Complaint and therefore denies same.
- 86. Defendant Marc McEachern denies the allegations set forth in paragraph 86 of the Complaint. To the extent the allegations set forth in paragraph 86 constitute legal assertions or conclusions of law, no response is required.
- 87. Defendant Marc McEachern denies that HP sustained any misappropriated business opportunities. To the extent the allegations set forth in paragraph 87 constitute legal assertions or conclusions of law, no response is required.
- 88. Defendant Marc McEachern denies that HP sustained any misappropriated business opportunities. To the extent the allegations set forth in paragraph 88 constitute legal assertions or conclusions of law, no response is required.
- 89. Defendant Marc McEachern denies the allegations set forth in paragraph 89 of the Complaint. To the extent the allegations set forth in paragraph 89 constitute legal assertions or conclusions of law, no response is required.
- 90. Defendant Marc McEachern denies the allegations set forth in paragraph 90 of the Complaint. To the extent the allegations set forth in 90 constitute legal assertions or conclusions of law, no response is required.

SECOND CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

91. Defendant Marc McEachern realleges the preceding paragraphs as if fully set forth herein.

- 92. Defendant McEachern admits that he way an employee of HP Japan. The remainder of the allegations in paragraph 92 of the Complaint constitute legal assertions or conclusions of law and therefore require no response.
- 93. Defendant Marc McEachern denies the allegations set forth in paragraph 93 of the Complaint. To the extent the allegations set forth in 93 constitute legal assertions or conclusions of law, no response is required.
- 94. Defendant Marc McEachern denies the allegations set forth in paragraph 94 of the Complaint. To the extent the allegations set forth in 94 constitute legal assertions or conclusions of law, no response is required.

THIRD CAUSE OF ACTION – CONSTRUCTIVE FRAUD

- 95. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 96. Defendant Marc McEachern admits that he was an employee of HP Japan. The remainder of the allegations in paragraph 96 of the Complaint constitute legal assertions or conclusions of law and therefore require no response.
- 97. Defendant Marc McEachern denies the allegations set forth in paragraph 97 of the Complaint. To the extent the allegations set forth in paragraph 97 constitute legal assertions or conclusions of law, no response is required.
- 98. Defendant Marc McEachern denies the allegations set forth in paragraph 98 of the Complaint. To the extent the allegations set forth in paragraph 98 constitute legal assertions or conclusions of law, no response is required.
- 99. Defendant Marc McEachern denies the allegations set forth in paragraph 99 of the Complaint. To the extent the allegations set forth in paragraph 99 constitute legal assertions or conclusions of law, no response is required.

FOURTH CAUSE OF ACTION - TRADE SECRET MISAPPROPRIATION

- 100. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 101. Defendant Marc McEachern denies the allegations set forth in paragraph 101 of the Complaint. To the extent the allegations set forth in paragraph 101 constitute legal assertions or conclusions of law, no response is required.
- 102. Defendant Marc McEachern denies the allegations set forth in paragraph 102 of the Complaint. To the extent the allegations set forth in paragraph 102 constitute legal assertions or conclusions of law, no response is required.
- 103. Defendant Marc McEachern denies the allegations set forth in paragraph 103 of the Complaint. To the extent the allegations set forth in paragraph 103 constitute legal assertions or conclusions of law, no response is required.

FIFTH CAUSE OF ACTION – COMMON LAW MISAPPROPRIATION

- 104. McEachern realleges the preceding paragraphs as fully set forth herein.
- 105. Defendant Marc McEachern denies the allegations set forth in paragraph 105 of the Complaint. To the extent the allegations set forth in paragraph 105 constitute legal assertions or conclusions of law, no response is required
- 106. Defendant Marc McEachern denies the allegations set forth in paragraph 106 of the Complaint. To the extent the allegations set forth in paragraph 106 constitute legal assertions or conclusions of law, no response is required.
- 107. Defendant Marc McEachern denies the allegations set forth in paragraph 107 of the Complaint. To the extent the allegations set forth in paragraph 107 constitute legal assertions or conclusions of law, no response is required.

108. Defendant Marc McEachern denies the allegations set forth in paragraph 108 of the Complaint. To the extent the allegations set forth in paragraph 108 constitute legal assertions or conclusions of law, no response is required.

SIXTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH EXISTING BUSINESS RELATIONSHIPS

- 109. McEachern realleges the preceding paragraphs as fully set forth herein.
- 110. Defendant Marc McEachern denies the allegations set forth in paragraph 110 of the Complaint. To the extent the allegations set forth in paragraph 110 constitute legal assertions or conclusions of law, no response is required.
- 111. Defendant Marc McEachern denies the allegations set forth in paragraph 111 of the Complaint. To the extent the allegations set forth in paragraph 111 constitute legal assertions or conclusions of law, no response is required.
- 112. Defendant Marc McEachern denies the allegations set forth in paragraph 112 of the Complaint. To the extent the allegations set forth in paragraph 112 constitute legal assertions or conclusions of law, no response is required.

<u>SEVENTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH</u> <u>PROSEPECTIVE BUSINESS RELATIONSHIPS</u>

- 113. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 114. Defendant Marc McEachern is without information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 114 of the Complaint and therefore denies same.
- 115. Defendant Marc McEachern denies the allegations set forth in paragraph 115 of the Complaint. To the extent the allegations set fort in paragraph 115 constitute legal assertions or conclusions of law, no response is required.

- 116. Defendant Marc McEachern denies the allegations set forth in paragraph 116 of the Complaint. To the extent the allegations set forth in paragraph 116 constitute legal assertions or conclusions of law, no response is required.
- 117. Defendant Marc McEachern denies the allegations set forth in paragraph 117 of the Complaint. To the extent the allegations set forth in paragraph 117 constitute legal assertions or conclusions of law, no response is required.
- 118. Defendant Marc McEachern denies the allegations set forth in paragraph 118 of the Complaint. To the extent the allegations set forth in paragraph 118 constitute legal assertions or conclusions of law, no response is required.

EIGHTH CAUSE OF ACTION – BREACH OF CONTRACT

- 119. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 120. Defendant Marc McEachern denies the allegations set forth in paragraph 120 of the Complaint. To the extent the allegations set forth in paragraph 120 constitute legal assertions or conclusions of law, no response is required.
- 121. Defendant Marc McEachern denies the allegations set forth in paragraph 121 of the Complaint. To the extent the allegations set forth in paragraph 121 constitute legal assertions or conclusions of law, no response is required.
- 122. Defendant Marc McEachern denies the allegations set forth in paragraph 122 of the Complaint. To the extent the allegations set forth in paragraph 122 constitute legal assertions or conclusions of law, no response is required.
- 123. Defendant Marc McEachern denies the allegations set forth in paragraph 123 of the Complaint. To the extent the allegations set forth in paragraph 123 constitute legal assertions or conclusions of law, no response is required.

NINTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

- 124. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 125. Defendant Marc McEachern denies the allegations set forth in paragraph 125 of the Complaint. To the extent the allegations set forth in paragraph 125 constitute legal assertions or conclusions of law, no response is required.
- 126. Defendant Marc McEachern denies the allegations set forth in paragraph 126 of the Complaint. To the extent the allegations set forth in paragraph 126 constitute legal assertions or conclusions of law, no response is required.
- 127. Defendant Marc McEachern denies the allegations set forth in paragraph 127 of the Complaint. To the extent the allegations set forth in paragraph 127 constitute legal assertions or conclusions of law, no response is required.
- 128. Defendant Marc McEachern denies the allegations set forth in paragraph 128 of the Complaint. To the extent the allegations set forth in paragraph 128 constitute legal assertions or conclusions of law, no response is required.
- 129. Defendant Marc McEachern denies the allegations set forth in paragraph 129 of the Complaint. To the extent the allegations set forth in paragraph 129 constitute legal assertions or conclusions of law, no response is required.

TENTH CAUSE OF ACTION – COMMON LAW FRAUD

- 131. McEachern realleges the preceding paragraph as if fully set forth herein.
- 132. Defendant Marc McEachern denies the allegations set forth in paragraph 132 of the Complaint. To the extent the allegations set forth in paragraph 132 constitute legal assertions or conclusions of law, no response is required.

- 133. Defendant Marc McEachern denies the allegations set forth in paragraph 133 of the Complaint. To the extent the allegations set forth in paragraph 133 constitute legal assertions or conclusions of law, no response is required.
- 134. Defendant Marc McEachern denies the allegations set forth in paragraph 134 of the Complaint. To the extent the allegations set forth in paragraph 134 constitute legal assertions or conclusions of law, no response is required.
- 135. Defendant Marc McEachern denies the allegations set forth in paragraph 135 of the Complaint. To the extent the allegations set forth in paragraph 135 constitute legal assertions or conclusions of law, no response is required.
- 136. Defendant Marc McEachern denies the allegations set forth in paragraph 136 of the Complaint. To the extent the allegations set forth in paragraph 136 constitute legal assertions or conclusions of law, no response is required.

ELEVENTH CAUSE OF ACTION – COMMON LAW UNFAIR COMPETITION

- 137. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 138. Defendant Marc McEachern denies the allegations set forth in paragraph 138 of the Complaint. To the extent the allegations set forth in paragraph 138 constitute legal assertions or conclusions of law, no response is required.
- 139. Defendant Marc McEachern denies the allegations set forth in paragraph 139 of the Complaint. To the extent the allegations set forth in paragraph 139 constitute legal assertions or conclusions of law, no response is required.

TWELFTH CAUSE OF ACTION – LANHAM ACT UNFAIR COMPETITION

140. McEachern realleges the preceding paragraphs as if fully set forth herein.

- 141. Defendant Marc McEachern denies the allegations set forth in paragraph 141 of the Complaint. To the extent the allegations set forth in paragraph 141 constitute legal assertions or conclusions of law, no response is required.
- 142. Defendant Marc McEachern denies the allegations set forth in paragraph 142 of the Complaint. To the extent the allegations set forth in paragraph 142 constitute legal assertions or conclusions of law, no response is required.
- 143. Defendant Marc McEachern denies the allegations set forth in paragraph 143 of the Complaint. To the extent the allegations set forth in paragraph 143 constitute legal assertions or conclusions of law, no response is required.
- 144. Defendant Marc McEachern denies the allegations set forth in paragraph 144 of the Complaint. To the extent the allegations set forth in paragraph 144 constitute legal assertions or conclusions of law, no response is required.

THIRTEENTH CAUSE OF ACTION – CIVIL CONSPIRACY

- 145. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 146. Defendant Marc McEachern denies the allegations set forth in paragraph 146 of the Complaint. To the extent the allegations set forth in paragraph 146 constitute legal assertions or conclusions of law, no response is required.
- 147. Defendant Marc McEachern denies the allegations set forth in paragraph 147 of the Complaint. To the extent the allegations set forth in paragraph 147 constitute legal assertions or conclusions of law, no response is required.
- 148. Defendant Marc McEachern denies the allegations set forth in paragraph 148 of the Complaint. To the extent the allegations set forth in paragraph 148 constitute legal assertions or conclusions of law, no response is required.

- 149. Defendant Marc McEachern denies the allegations set forth in paragraph 149 of the Complaint. To the extent the allegations set forth in paragraph 149 constitute legal assertions or conclusions of law, no response is required.
- 150. Defendant Marc McEachern denies the allegations set forth in paragraph 150 of the Complaint. To the extent the allegations set forth in paragraph 150 constitute legal assertions or conclusions of law, no response is required.
- 151. Defendant Marc McEachern denies the allegations set forth in paragraph 151 of the Complaint. To the extent the allegations set forth in paragraph 151 constitute legal assertions or conclusions of law, no response is required.

FOURTEENTH CAUSE OF ACTION – VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT

- 152. McEachern realleges the preceding paragraphs as if fully set forth herein.
- 153. Defendant Marc McEachern denies the allegations set forth in paragraph 153 of the Complaint. To the extent the allegations set forth in paragraph 153 constitute legal assertions or conclusions of law, no response is required.
- 154. Defendant Marc McEachern denies the allegations set forth in paragraph 154 of the Complaint. To the extent the allegations set forth in paragraph 154 constitute legal assertions or conclusions of law, no response is required.
- 155. Defendant Marc McEachern denies the allegations set forth in paragraph 151 of the Complaint. To the extent the allegations set forth in paragraph 151 constitute legal assertions or conclusions of law, no response is required.
- 156. Defendant Marc McEachern denies the allegations set forth in paragraph 156 of the Complaint. To the extent the allegations set forth in paragraph 156 constitute legal assertions or conclusions of law, no response is required.

- 157. Defendant admits that Plaintiff has demanded a trial by jury of all issues.
- 158. Defendant requests that this Court order Plaintiff to provide a RICO case statement within thirty days in conformity with the practice in this District.

SEPARATE DEFENSES

First Affirmative Defense

159. The Complaint fails to state a claim for which relief can be granted.

Second Affirmative Defense

160. Venue in this judicial district is improper.

Third Affirmative Defense

161. The claims and relief requested in the Complaint are barred by the doctrines of equitable estoppel, waiver, laches, unclean hands, and the statute of frauds.

Fourth Affirmative

162. The Complaint fails to set forth the allegations based in fraud with sufficient particularity as required by Fed.R.Civ.P. 9(b).

Fifth Affirmative Defense

163. Plaintiff's claims are barred in whole or in part by failure of consideration and/or lack of mutuality of obligation.

Sixth Affirmative Defense

- 164. Plaintiff is entitled to no relief because it has not identified and cannot identify any breach of any valid and enforceable agreement by Defendant Marc McEachern.
- 165. Defendant Marc McEachern reserves the right to assert additional affirmative defenses and counterclaims, as discovery continues.

Wherefore, Marc McEachern prays that this court will dismiss Plaintiff's action and enter Judgment that Plaintiff take nothing on its claims against Marc McEachern and award McEachern his attorneys' fees and costs of defending this action and such other and further relief as he may be entitled.

MARC McEACHERN'S COUNTERCLAIM AGAINST HEWLETT-PACKARD COMPANY (filed subject to Marc McEachern's Affirmative Defenses)

Defendant, Marc McEachern, files this counterclaim against Hewlett-Packard Company (hereinafter referred to as HP) and would respectfully show the Court the following:

Parties

- Marc McEachern is a citizen of the United States currently residing 110 Garden
 Meguro Mita 2-10 9 Meguro, Tokyo, Japan.
- 2. Upon information and belief, Hewlett-Packard Company ("HP") is a Delaware corporation with its principal place of business in Palo Alto, California. As HP is the Plaintiff in the above-captioned action, HP may be served with a copy of this counterclaim by serving this document in accordance with Rule 5 of the Federal Rules of Civil Procedure.

Facts

3. Marc McEachern began working at HP Laboratories Japan as a researcher in 1993. Over the course of time McEachern was promoted to project manager. McEachern left HP Laboratories Japan in 1999 for a position at GE Capital after learning that the HP Laboratories might close. Shortly thereafter, HP Laboratories invited him to return to work at HP, and McEachern returned in January, 2000. McEachern was responsible for transforming HP Laboratories Japan into a mobile telecommunications laboratory, establishing a recognized program building platform technologies, and working with tier-one companies in Japan and Korea in mobile telecommunications.

- 4. During the latter part of 2004, McEachern began the process of starting a new HP laboratory in Korea. Carly Fiorina, Fred Kitson, and HP Korea held a press release announcing the opening of the HP Korea laboratory and named McEachern as the first director.
- 5. Carly Fiorina subsequently began downsizing the company. By the end of her tenure, HP completed downsizing of HP's Ink Jet Printer Group (IPG). Fiorina was replaced by Mark Hurd, who instituted cost reductions in the remainder of the company. In late 2004, McEachern learned that HP Laboratories would likely be downsized as would the Office of Strategy and Technology (OST). In spite of the prospect of further downsizing, McEachern continued to work to establish an HP Korea laboratory. Ultimately, however, Dick Lampman rejected the plan for the new laboratory.
- 6. In May of 2005, McEachern's supervisor, Fred Kitson, left HP and was replaced by Susie Wee. Susie Wee discussed the prospect of downsizing HP Laboratories with McEachern. It was decided that the role of the HP Laboratories Japan would change to a technical laboratory which would be integrated into the U.S. laboratories. It was further decided that HP Laboratories Japan would no longer require a director. McEachern and Wee mutually agreed HP would pursue a workforce reduction for McEachern.
- 7. Susie Wee subsequently spoke with Dick Lampman about McEachern leaving HP. Dick Lampman supported the workforce reduction even though the official Work Force Reduction program would not start until the end of August 2005. Susie Wee asked McEachern in mid July of 2005 to send her an e-mail requesting placement on the Work Force Reduction list. Susie Wee subsequently informed McEachern that she had forwarded his e-mail to Dick Lampman and to Sharon Connor, the head of HP Laboratories Human Resources.

- 8. Before leaving HP, McEachern returned to HP headquarters in Palo Alto for a final visit. There, McEachern attended a meeting with Dick Lampman, who wished McEachern well in his next employment. On August 29, 2005, McEachern learned from Susie Wee that Dick Lampman had submitted the official list of names for Work Force Reduction and confirmed that McEachern's name was on the list. McEachern informed Hanako Yabashi at HP Japan that he had been officially been placed on the WFR list. Ms. Yabashi said that HP Japan would begin processing Work Force Reductions in September of 2005. Ms. Yabashi came to McEachern's office at the end of August 2005 and showed McEachern his severance package due under his employment with HP Japan, which amounted to approximately \$400,000.00.
- 9. In September of 2005, McEachern was asked by the head of finance to his office for strategic discussions related to HP Japan's country plan. When McEachern arrived at the office, he was taken to a separate room and interrogated for five hours about activities related to Karl Kamb and byd:sign. The interrogators then drove McEachern to his home to pick up his laptop computer. Although McEachern informed the interrogators that he needed access to the e-mails on the computer relating to his workforce reduction leave, the interrogators took the laptop and informed McEachern that he was on administrative leave.
- 10. HP Japan Legal called McEachern on or about September 21, 2005 and informed him that he had been terminated. McEachern learned from HP Japan Human Resources that the termination was directed by HP Corporate, USA.

First Cause of Action Tortious Interference with Business Relations

11. McEachern re-alleges paragraphs 1-10 of the counterclaim as if set forth fully herein.

12. McEachern agreed to HP Japan's proposal that his employment be terminated in exchange for a severance package of approximately \$400,000.00. Plaintiff HP wrongfully interfered with McEachern's business relationship with HP Japan by falsely accusing McEachern of fraud, which ultimately led to his dismissal on non-compensable grounds. McEachern had an agreement with HP Japan concerning his severance package. Hewlett Packard Company willfully and intentionally interfered with this agreement, and HP's actions proximately caused McEachern's loss of his severance package.

Jury Demand

13. Defendant/Counterclaimant Marc McEachern hereby demands trial by jury of all issues so triable.

WHEREFORE, Counterclaimant request the Court to find Judgment for him against Hewlett-Packard for actual damages, consequential damages, exemplary damages, multiple damages, pre-and post-judgment interest, costs, and reasonable attorneys' fees, and for such other and further relief to which Counterclaimant may show himself justly entitled, in law or in equity.

Respectfully submitted,

By: /s/ Robert Christopher Bunt
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 31st day of January, 2006, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Robert Christopher Bunt
Robert Christopher Bunt