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Diamond Imports, Inc. and
Yair Yachdav

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KAPU GEMS and KAPU GEMS LTD.,

Plaintiffs,

vs.

DIAMOND IMPORTS, INC. and YAIR
YACHDAV,

Defendants.

CASE NO. 3:15-cv-03531-MMC

**DIAMOND IMPORTS, INC.'S FIRST
AMENDED COUNTERCLAIM FOR
DAMAGES**

[DEMAND FOR JURY TRIAL]

DIAMOND IMPORTS, INC.,

Counterclaimants,

vs.

KAPU GEMS, KAPU GEMS LTD.,
KALPESH VAGHANI

Counterdefendants.

1 Counterclaimant Diamond Imports, Inc. (“Diamond Imports”) allege as follows:

2 **INTRODUCTION**

3 This amended cross-claim arises out of the Cross-Defendant’s misappropriation of trade
4 secrets, interference of business relationships, and unfair business practices.

5 **THE PARTIES**

6 1. Counterclaimant Diamond Imports, Inc. is a California corporation authorized to
7 do business in the State of California. Diamond Imports is a wholesaler and retailer of
8 diamonds, precious gemstones and jewelry with its principal place of business in San Francisco,
9 California.

10 2. Counterdefendant Kapu Gems is, and previously was a business not authorized
11 or licensed to do business in the State of California. On November 25, 2015 and during this
12 lawsuit, Counterdefendants Kapu Gems filed a Statement and Designation by Foreign
13 Corporation. Counterclaimant is informed and believe, and thereupon alleges, that
14 Counterdefendants Kapu Gems is a foreign corporation in the Republic of India with its
15 principal place of business in Mumbai, Republic of India.

16 **JURISDICTION AND VENUE**

17 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. Section
18 1332(a)(1) because the amount in controversy exceeds \$75,000 and this action is between
19 citizens of different states.

20 4. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
21 Section 1391(b)(2) because the events giving rise to the claim occurred in this District.

22 **FACTUAL ALLEGATIONS**

23 5. On June 7, 2012, Diamond Imports, Inc. doing business as Diamond Imports
24 and/or Kapu Gems USA entered into a written agreement with Kapu Gems India to open an
25 office in San Francisco for the marketing and sale of diamonds. Specifically, the agreement
26 provides that the two entities are opening the office *for* Kapu Gems India in the USA. This
27 office was for the benefit of Kapu Gems India, as well as Diamond Imports. **Exhibit 1.**

28 6. The June 7, 2012 “Legal Agreement between Kapu Ind. & Kapu USA” sets forth

1 the management and control of Kapu Gems USA. The agreement established that Yachdav
2 would handle *all sales of diamonds in the United States*. The relationship was mutually
3 beneficial as it gave Kapu Gems India a foothold in the domestic wholesale diamond market. It
4 increased Diamond Imports' inventory for sales and marketing which in turn increased its sales
5 volume, cash flow, and net profits.

6 7. Kapu Gems India, by and through one of its principals, Kalpesh Vaghani,
7 instructed Diamond Imports to answer its San Francisco office telephone as Kapu Gems USA.
8 Further, Kapu Gems India, Vaghani, and David Darshan, a Kapu Gems India sales
9 representative instructed Diamond Imports to list the location for the sale of its India diamonds
10 as San Francisco when Kapu Gems India diamonds were incorrectly listed on Rappaport.
11 Rapaport is an international diamond exchange website for dealers, wholesalers, and business-
12 to-business buyers.

13 8. Kapu Gems desired to have an American based entity to establish itself in the
14 American market. Kapu Gems sought to form a putative joint venture with Diamond Imports
15 due to Yachdav's 30 year history of marketing and selling diamonds in the United States. Yair
16 Yachdav, the president of Diamond Imports has substantial knowledge of the diamond and
17 gemstone industry, multiple contacts, customers, and a trustworthy reputation. Yachdav's
18 participation in the new venture would foster confidence in the new entity due to his good
19 offices and patronage in the domestic market. Over the years, Diamond Imports steadily built a
20 substantial book of business, patronage, and goodwill in the diamond and precious gemstone
21 industry.

22 9. Prior to forming the 2012 venture, Diamond Imports had an existing business
23 relationship with Kapu Gems. The nature of that relationship was of a buyer and seller. The
24 2012 venture altered the relationship as Diamond Imports and Kapu Gems were no longer
25 competitors or buyers and sellers but were now joint venturers. The purpose of this new venture
26 was for Kapu Gems' benefit as it introduce Kapu Gems into the US domestic market.

27 10. Unbeknownst to Diamond Imports, Kapu Gems' true intent in forming the
28 putative joint venture was a pretext to gain entry into the American wholesale diamond market

1 by soliciting and usurping Diamond Imports' existing customers under the guise of the joint
2 venture. Before forming the joint venture, Kapu Gems had a *de minimus* presence in the
3 American wholesale diamond market.

4 11. In furtherance of the putative joint venture, in May 2013, Diamond Imports
5 registered a fictitious business name, Kapu Gems USA with the City and County of San
6 Francisco, Office of the Treasurer & Tax Collector. **Exhibit 2.**

7 12. In or about 2013, Kapu Gems induced Diamond Imports to share its confidential
8 customer and price list with Kapu Gems as Kapu Gems claimed that it needed the customer and
9 price list to ensure that Diamond Imports could deliver sales as an experienced diamond dealer.

10 13. Additionally, in the furtherance of the putative joint venture, Kalpesh Vaghani
11 insisted that Yachdav introduce Kapu Gems to Blue Nile, Brilliant Earth, and Ritani.

12 14. As part of the pretext for entering into the joint venture, Vaghani further induced
13 Yachdav into giving Diamond Imports' confidential customer and price lists to Kapu Gems by
14 promising that it or its employees would never contact the customers without Diamond Imports'
15 knowledge and consent.

16 15. In or about 2014 and continuing to the present time, Kapu Gems commenced to
17 misappropriate the trade secrets of Diamond Imports, without the knowledge or consent of
18 Diamond Imports.

19 **Diamond Imports' Existing and Ongoing Business Relationship with Blue Nile**

20 16. In reliance of the promises made by Vaghani, Yachdav introduced Vaghani to
21 Blue Nile.

22 17. Blue Nile is one of the largest online retailers of specialty fine jewelry. Diamond
23 Imports had a long standing business relationship with Blue Nile reaching back to 2003.
24 Diamond Imports had a well-established business relationship with Blue Nile. Kapu Gems
25 knew of the relationship which is why Vaghani requested the introduction.

26 18. Diamond Imports sold diamonds to Blue Nile on behalf of the joint venture. In
27 2012 and 2013, Diamond Imports had ongoing negotiations and sales of diamonds with Blue
28 Nile. The sales and ongoing relationship with Blue Nile abruptly ended in June 2014 when the

1 business relationship between Diamond Imports and Kapu Gems began to deteriorate.

2 **Diamond Imports' Business Relationship with Brilliant Earth, Ritani, Rapaport**
3 **and Other Retail Jewelry Stores**

4 19. Diamond Imports also had an ongoing business relationship with Brilliant Earth,
5 an online retail purveyor of luxury jewelry. Diamond Imports introduced Kapu Gems to
6 Brilliant Earth. Kapu Gems knew of Diamond Imports' business relationship with Brilliant
7 Earth. Diamond Imports continually had sales of diamonds to Brilliant Earth *prior* to the
8 venture.

9 20. Diamond Imports also had an existing business relationship with Ritani, an
10 online retailer of luxury jewelry. Kapu Gems knew of Diamond Imports' business relationship
11 with Ritani. Kapu Gems knew that Diamond Imports sold diamonds to Ritani prior to the
12 venture.

13 21. In April 2013, due to the ongoing Ritani relationship, Diamond Imports listed the
14 joint venture's diamonds on the Ritani website. This gave Diamond Imports worldwide
15 exposure on the internet retail market. Kapu Gems knew of the ongoing relationship as
16 Diamond Imports informed Kapu Gems in emails of the new listings with Ritani. On April 6,
17 2013, Diamond Imports listed 1,116 diamonds on the Ritani website. By April 2013, Diamond
18 Imports dba Kapu Gems USA sold diamonds to the public through the Ritani website.

19 22. In 2014, Diamond Imports discovered that Kapu Gems circumvented Kapu
20 Gems USA, broke its promises Diamond Imports that no solicitation or sales to Diamond
21 Imports customers would take place without Diamond Imports' consent, nor would Kapu Gems
22 (India) directly solicited Blue Nile, Brilliant Earth, and Ritani without Diamond Imports'
23 knowledge. Several other Diamond Imports customers told Yachdav that Kapu Gems had
24 contacted them by offering them diamonds at slightly lower prices than what Diamond Imports
25 could offer.

26 23. In 2014, Diamond Imports learned that Kapu Gems wrongfully misappropriated
27 its customer and price list and solicited its customers, without Diamond Imports' consent or
28 knowledge.

1 24. In 2012, before Diamond Imports formed the putative joint venture with Kapu
2 Gems, Diamond Imports had several hundreds of customers. By 2014, and based upon the
3 misappropriation of Diamond Imports customers, the number of customers dropped
4 precipitously from 1,052 to 254. In two years, Diamond Imports lost over 75% of its customers.

5 25. Diamond Imports suffered damages to be proven at trial. The damages include
6 lost revenue and lost profits of \$963,000. These losses cause a diminution of the value of the
7 Diamond Imports' business.

8 **FIRST CAUSE OF ACTION**

9 **Misappropriation of Trade Secrets**

10 **(Against All Counterdefendants)**

11 26. Counterclaimant incorporates paragraphs 1 through 25 of this Counterclaim as
12 though fully set forth herein.

13 27. Diamond Imports' customer and pricing list which comprised of Diamond
14 Imports' 30+ years of experience and relationship in the diamond industry constituted trade
15 secrets within the definition of Civil Code Section 3426, et seq. The customer and price list is a
16 compilation and process that was solely created by Diamond Imports' years of hardwork. The
17 confidential information is the primary source of Diamond Imports' customers and sales. The
18 customer pricing list derives independent economic value from not being known to the public.
19 Diamond Imports' competitors can obtain economic value from its disclosure or use. The
20 confidential customer and price list enabled Diamond Imports to target the customers that
21 would purchase Diamond Imports' diamonds and at a price that the specific customer is willing
22 to pay for the unique diamond.

23 28. Diamond Imports made reasonable efforts to maintain the customer and price
24 list's secrecy by keeping the confidential information on its computer at its office located at 888
25 Brannan Street. The office is equipped with high security with 24-hour surveillance on a closed
26 circuit television (CCTV). Diamond Imports never shared the confidential customer and price
27 list with anyone outside of Diamond Imports. Diamond Imports' employees were the only
28 individuals who had access to the list.

29. Kapu Gems acquired the confidential customer pricing list with knowledge or reason to know that the trade secret was acquired by improper means. In 2012 and continuing to the present time, Kapu Gems misappropriated the trade secrets described above by convincing Diamond Imports that it was required for their venture. Kapu Gems further induced Diamond Imports into transferring the confidential customer and price list to Kapu Gems by ensuring that Kapu Gems or its employee would never contact the customer without Diamond Imports' knowledge and consent.

30. In 2014, Diamond Imports discovered that Kapu Gems had been directly contacting Diamond Imports' customers and offering to sell diamonds to them at a slightly lower price than Diamond Imports without Diamond Imports' knowledge or consent. Kapu Gems knew that the use of the confidential customer and price list was derived through improper means.

31. As a proximate result of Kapu Gems' misappropriation of Diamond Imports' trade secrets, Diamond Imports has suffered actual damages. As a further proximate result of the misappropriation, Kapu Gems was unjustly enriched by taking Diamond Imports' customers which Diamond Imports sacrificed 30+ years of hard work to create.

32. Counterdefendants' alleged acts described above were willful, wanton, malicious, and oppressive, and justify the awarding of exemplary and punitive damages. Diamond Imports is therefore entitled to punitive damages and reasonable attorney's fees.

WHEREFORE, Counterclaimant prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

Interference with Business Relationship

(Against all Counterdefendants)

33. Counterclaimant incorporates paragraphs 1 through 25 of this Counterclaim as though fully set forth herein.

34. Diamond Imports has existing and prospective business relationships with customers that consistently purchased diamonds from Diamond Imports and Yachdav over a period of years. Some of these existing and ongoing business relationships spanned many years.

1 Repeat customers purchased diamonds from Yachdav on a monthly basis. One of the
2 components of these existing relationships is that some of the customers of Diamond Imports
3 purchased diamonds on a credit and memorandum basis. The nature of these credit sales
4 (diamonds on credit and memorandum) ensured that the customer would return to Diamond
5 Imports for more diamonds on this revolving credit basis. These relationships resulted in the
6 probability of future economic benefits to Diamond Imports as monthly sales document the
7 repeat business. Existing customers would regularly return to purchase more diamonds. Indeed,
8 Diamond Imports sales were growing at an approximately 25% per year rate until Kapu Gems
9 and Vaghani interfered with these business relationships.

10 35. Kapu Gems knew of the above described relationship existing between Diamond
11 Imports and these customers, including but not limited to: 1) Diamond Imports' venture with
12 Kapu Gems from 2012 to April 2015, 2) Kalpesh Vaghani's close working relationship with
13 Yachdav, and 3) Kapu Gems receipt of the Diamond Imports customer and price lists..

14 36. In 2014, Diamond Imports discovered that Kapu Gems circumvented Diamond
15 Imports and solicited Blue Nile, Brilliant Earth, Ritani, and other customers without its
16 knowledge or consent. Diamond Imports discovered that Kapu Gems sold diamonds directly to
17 Diamond Imports customers. Several other Diamond Imports customers informed Yachdav that
18 Kapu Gems offered diamonds to them at a slightly lower price than what Diamond Imports
19 could offer.

20 37. In 2014, Diamonds Imports discovered that its sales dropped dramatically.
21 Diamond Imports had no reasonable basis upon which to know that Kapu Gems was usurping
22 its customers by using Diamond Imports' customer and price list which Kapu Gems wrongfully
23 misappropriated through its false promises as alleged hereinafter and putative joint venture.

24 38. As a proximate cause, Diamond Imports lost almost 800 customers when Kapu
25 Gems interfered with Diamond Imports' existing business relationships.

26 39. Diamond Imports suffered damages to be proven at trial. The damages include
27 lost revenue and lost profits of \$963,000. These losses cause a diminution of the value of the
28 Diamond Imports' business.

1 that if Yachdav provided its customers to Kapu Gems, Kapu Gems would not contact, solicit or
2 interfere with Diamond Imports' current business relationships. Vaghani made false promises
3 during the in-person meetings. Kapu Gems summarized the Vaghani discussions with Yachdav
4 of the joint venture in a June 7, 2012 written agreement executed by Vaghani and Yachdav. The
5 written agreement expressly stated that "Yair Yachdav from San Francisco will handle *all sales*
6 and inventory control in USA..." Later, in reliance upon Kapu Gems' false promises, Diamond
7 Imports provided its confidential customer and price lists to Kapu Gems. In direct contradiction
8 of its representation, Kapu Gems solicited Diamond Imports customers and poached them away
9 from their existing business relationship with Diamond Imports.

10 48. On October 9, 2013, Yachdav of Diamond Imports reaffirmed the written
11 agreement and executed a similar agreement which further stated that "all diamonds will be
12 send from India to San Francisco insure by brinks." **Exhibit 3.**

13 49. Kapu Gem's unfair business practices include, but is not limited to: 1) inducing
14 Diamond Imports to form a putative joint venture so to piggyback on Yachdav's knowledge,
15 trustworthy reputation and his goodwill, 2) forming a putative joint venture with Diamond
16 Imports to gain entry into the US diamond market and breaching its promise with Diamond
17 Imports, 3) obtaining the Diamond Imports customer and price list under the guise of the
18 putative joint venture, and 4) promising not to contact, solicit, and sell diamonds to the
19 Diamond Imports customers.

20 50. Upon information and believe, Diamond Imports thereon alleges that Kapu
21 Gems performed the acts described above for the purpose of taking Diamond Imports
22 customers. Diamond Imports further alleges that Kapu Gems performed those wrongful acts as
23 a means to poach Diamond Imports customers who have had an ongoing business with
24 Diamond Imports.

25 51. As a direct and proximate result of Kapu Gems' conduct, Kapu Gems was
26 unjustly enriched at the expense of Diamond Imports suffering severe profit losses in an amount
27 to be determined at trial. Diamond Imports is further entitled to treble damages to a sum to be
28 determined at trial in accord with California Business & Profession Code Sections 17082.

1 **FOR ALL CAUSES OF ACTION**

2 12. For costs of suit; and

3 13. For such further and other relief as the Court deems appropriate.

4 Date: August 24, 2016

FOREMAN & BRASSO

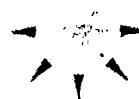
5
6 /s/ Ronald D. Foreman

Ronald D. Foreman, Esq.

7 Attorneys for Defendants and Counterclaimants

8 Diamond Imports, Inc. and Yair Yachdav

Exhibit 1



KAPU GEMS
Finest Craftsmen of large sized diamonds

Date: 07th June 2012

Sub:- Legal agreement between Kapu Ind. & Kapu USA

This is the legal agreement between Kapu gems India and Kapu Gems USA & they are agree to open diamond office for Kapu Gems India in USA .

Yair Yachdav from San Francisco will handle all sales and inventory control in USA as an office location in San Francisco California.

The office will be open full time Monday to Friday 9-am to 6pm except Jewish holiday.

KAPU GEM USA will sale loose diamonds all over USA and the person who will handle that will be Yair Yachdav

Some of the inventory will be in San Francisco and most of the inventory will be in India.

Yair Yachdav agree to make his best in order to make the us customer service.

Yair Yachdav

Kalpesh Vaghani



EXHIBIT 1
Ashley Scavin, CSR No 12019
Date 6/6/16
Witness: VAGHANI

Exhibit 2

BUSINESS REGISTRATION CERTIFICATE

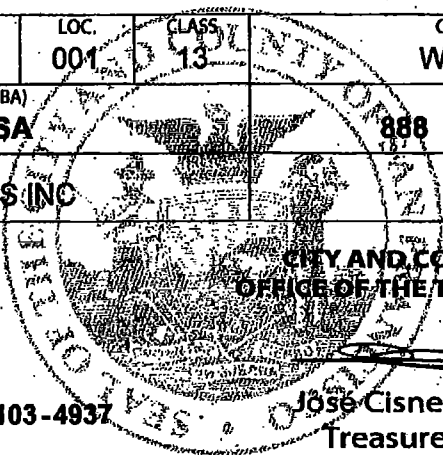
RENEW BY DATE 05-31-2014	EXPIRATION DATE 06-30-2014
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CERTIFICATE 333400	LOC. 001	CLASS 13	CLASSIFICATION DESCRIPTION WHOLESALE SALES
BUSINESS NAME (DBA) KAPU GEMS USA		BUSINESS LOCATION 888 BRANNAN ST 1100	
OWNERSHIP DIAMOND IMPORTS INC		TAXPAYER SIGNATURE	

FY 2013-14

DIAMOND IMPORTS INC
888 BRANNAN ST #1100

SAN FRANCISCO CA 94103-4937



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE TREASURER & TAX COLLECTOR

Jose Cisneros
Jose Cisneros
Treasurer

David Augustine
David Augustine
Tax Collector

POST CLEARLY VISIBLE AT THIS BUSINESS LOCATION

Read reverse side. To update addresses or to close a business, notify the Tax Collector online at <https://etaxstatement.sfgov.org/AccountUpdate/>

BUSINESS REGISTRATION CERTIFICATE

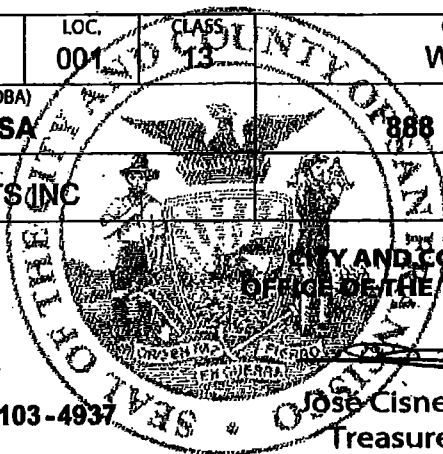
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FY 2013-14

DIAMOND IMPORTS INC
888 BRANNAN ST #1100

SAN FRANCISCO CA 94103-4937



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE TREASURER & TAX COLLECTOR

Jose Cisneros
Jose Cisneros
Treasurer

David Augustine
David Augustine
Tax Collector

POST CLEARLY VISIBLE AT THIS BUSINESS LOCATION

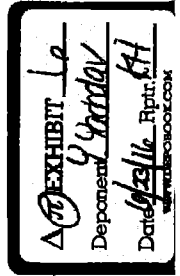
Read reverse side. To update addresses or to close a business, notify the Tax Collector online at <https://etaxstatement.sfgov.org/AccountUpdate/>

Exhibit 3

VALUES STRONGER THAN DIAMOND



KAPU GEMS
Genuine Craftsmanship of Registered Diamonds



Date:- 09th Oct 2013

Sub:- Legal agreement between Kapu Ind. & Kapu USA

This is the legal agreement between Kapu gems India and Kapu Gems USA & they are agree to open diamond office for Kapu Gems India in USA .

Yair Yachdav from San Francisco will handle all sales and inventory control in USA as an office location in San Francisco California.

The office will be open full time Monday to Friday 9-am to 6pm except Jewish holiday.

KAPU GEM USA will sale loose diamonds all over USA and the person who will handle that will be Yair Yachdav

All diamonds will be send from India to San Francisco insure by brinks.

Some of the inventory will be in San Francisco and most of the inventory will be in India.

Yair Yachdav agree to make his best in order to make the us customer service.

Yair Yachdav

Kalpesh Vaghant.



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Email: account@kapugems.com • www.kapugems.com

CONFIDENTIAL

KAPU 001086

From: Yair Yachdav <yairy@012.net.il>
Sent: Wednesday, October 09, 2013 7:46 PM
To: adam kapugems
Subject: Fwd: Agreement
Attachments: SCANNED DOC.pdf

her you go
yair

----- Original Message -----

Subject: Agreement
Date: Wed, 09 Oct 2013 16:29:38 -0700
From: Diamonds On Web <custserv@diamondsonweb.com>
To: Yair <yairy@012.net.il>

CONFIDENTIAL

KAPU 001085

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8 Attorneys for Defendants and Counterclaimants
9 Diamond Imports, Inc. and
10 Yair Yachdav

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 KAPU GEMS and KAPU GEMS LTD.,

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17 YACHDAV,

18 Defendants.

19

DIAMOND IMPORTS, INC.,

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21 vs.

22 KAPU GEMS, KAPU GEMS LTD., KALPESH
23 VAGHANI

24 Counterdefendants.
25
26
27
28

CASE NO. 3:15-cv-03531-MMC

PROOF OF SERVICE

PROOF OF SERVICE

I am a resident of the United States, over 18 years of age, and not a party to the within entitled action; I am employed at and my business address is 930 Montgomery Street, Suite 600, San Francisco, California. On this date I served the following document(s):

- **DIAMOND IMPORTS, INC.'S FIRST AMENDED COUNTERCLAIM FOR DAMAGES**

by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid in the United States mail at San Francisco addressed as shown below.

by causing a true copy to be electronically e-mailed to the email address shown below.

XXX by E-mail/NEF: Service was accomplished through the Notice of Electronic Filing for parties and counsel who are registered ECF Users.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California on August 24, 2016.

/s/ Polly Wong
Polly Wong

SERVICE LIST

<p><u>Attorney for Plaintiff Kapu Gems and Kapu Gems, Ltd.</u> Abe Lampart, Esq. Christine Ann Pham, Esq. LAW OFFICES OF ABE LAMPART, P.C. 456 Montgomery Street, Suite 1300 San Francisco, CA 94104 Tel: (415) 274-0999 Fax: (415) 274-2563 Email: abe@lampartlaw.com christine@lampartlaw.com</p>	<p><u>Attorney for Plaintiff Kapu Gems and Kapu Gems, Ltd.</u> Anthony Paduano, Esq. Willard Knox, Esq. PADUANO & WEINTRAUB LLP 1251 Avenue of the Americas, Ninth Floor New York, New York 10020 Tel: (212) 785-9100 Fax: (212) 785-9099 Email: wk@pwlawyers.com ap@pwlawyers.com</p>
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