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10 Attorneys for Defendants and Counterclaimants  
11 SEOK KI KIM and STV ASIA, LTD.

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13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 FRANK NEMIROFSKY,  
17  
18 Plaintiff,  
19  
20 v.  
21 SEOK KI KIM; STV ASIA, LTD., a British  
22 Virgin Islands corporation; and DOES 1  
23 through 20, inclusive,  
24 Defendants.

25 SEOK KI KIM and STV ASIA, LTD., a  
26 British Virgin Islands corporation,  
27  
28 Counterclaimants,  
29  
30 v.  
31 FRANK NEMIROFSKY,  
32  
33 Counterdefendant.

Case No.: C 07 2769 JL

**DECLARATION OF SETH I. APPEL  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S *EX PARTE*  
MOTION TO EXTEND THE TEMPORARY  
PROTECTIVE ORDER**

1 I, Seth I. Appel, declare as follows:

2 1. I am an attorney at Harvey Siskind LLP, counsel for Seok Kim Kim and STV Asia, Ltd.  
3 (“Defendants”), defendants and counterclaimants in this action. I have personal knowledge of the  
4 matters stated herein, and, if called as a witness, I could and would testify competently thereto.

5 2. On May 30, 2007, Defendants filed an *Ex Parte* Application for Order Vacating or  
6 Modifying Temporary Protective Orders. Attached hereto as Exhibit A is an email message I received  
7 from Jonathan Cohen, counsel for plaintiff and counterdefendant Frank Nemirofsky (“Plaintiff”), on  
8 June 2, 2007.

9 3. On June 5, 2007, the Court informed me that Defendants’ *Ex Parte* Application for Order  
10 Vacating or Modifying Temporary Protective Orders had been set for hearing on July 25, 2007. That  
11 day I called Mr. Cohen to inform him of the hearing date, but he did not answer his telephone. Mr.  
12 Cohen responded to my voicemail by email the next day and suggested that we talk the following  
13 morning. I agreed. On June 7, Mr. Cohen and I had a telephone conference, and I told him that the  
14 hearing had been set for July 25, 2007.

15 4. After our June 7 telephone conference, I had no further communications with Plaintiff’s  
16 counsel until I received a voicemail from Mr. Cohen on June 22. Mr. Cohen stated that he planned to  
17 file an *ex parte* application to extend the temporary protective orders that day. Mr. Cohen noted that he  
18 would be unavailable for the rest of the day and suggested that I contact another attorney at his firm,  
19 Robyn Callahan, if I “need to reach somebody.” Peter Harvey and I promptly called Ms. Callahan to  
20 request that she send us a copy of Plaintiff’s *ex parte* application immediately. Ms. Callahan did not  
21 pick up her telephone and did not return the call. Mr. Callahan efiled Plaintiff’s redacted *ex parte*  
22 motion and related documents that night between 8:47 p.m. and 9:05 p.m. She emailed me and Mr.  
23 Harvey unredacted “courtesy copies” of these papers at 10:15 p.m. At this point Defendants and their  
24 counsel saw Plaintiff’s *ex parte* motion and related documents for the first time.

25 5. Plaintiff attached to his declaration in support of his *ex parte* motion a letter dated  
26 October 9, 2006. Plaintiff had previously filed *ex parte* applications for right to attach orders, based on

1 the same facts and claims, in the California Superior Court. Plaintiff did not submit this October 9 letter  
2 along with those *ex parte* applications (nor did he otherwise call this letter to my attention prior to his  
3 June 22 filing). Instead, he submitted an email he wrote to Kim on April 14, 2007, offering suggestions  
4 concerning the PRN litigation. Attached hereto as Exhibit B is Plaintiff's declaration in support of his *ex*  
5 *parte* applications, filed in the San Francisco Superior Court on May 16, 2007, along with exhibits  
6 thereto.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
8 true and correct and that this declaration was executed this 25th day of June, 2007, in San Francisco,  
9 California.

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11 \_\_\_\_\_ /s/  
12 Seth I. Appel  
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