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FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST  
2003 APR -2 P 1:54

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 14

STATE OF KANSAS, *ex rel.* )  
PHILL KLINE, Attorney General, )  
PAUL J. MORRISON, District Attorney, Tenth )  
Judicial District, and )  
NOLA FOULSTON, District Attorney, )  
Eighteenth Judicial District, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GENUINE PARTS COMPANY, )  
d/b/a NAPA, )  
Defendant. )

Case No. 03C-553

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2nd day of April, 2003, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiffs, State of Kansas, *ex rel.* Phill Kline, Attorney General, Paul J. Morrison, District Attorney, Tenth Judicial District, and Nola Foulston, District Attorney, Eighteenth Judicial District, appear by and through counsel, Shelley H. King, Assistant Attorney General, David L. Harder, Assistant District Attorney, and John J. Kisner, Assistant District Attorney. Defendant, Genuine Parts Company, d/b/a NAPA, appears by and through counsel, Leonard M. Robinson. There are no other appearances.

WHEREUPON, the parties advise the Court they have stipulated and agree to the following matters:

1. Phill Kline is the Attorney General of the State of Kansas.
2. Paul J. Morrison is the District Attorney for the Tenth Judicial District, Johnson County, Kansas.
3. Nola Foulston is the District Attorney for the Eighteenth Judicial District, Sedgwick County, Kansas.
4. Authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, and Weights and Measures Standards and Enforcement, K.S.A. 83-201, *et seq.*
5. Defendant Genuine Parts Company is a foreign corporation organized under the laws of the State of Georgia with a principal office located at 2999 Circle 75 Parkway SE, Atlanta, Georgia, 30339-3050. Defendant operates numerous retail stores in Kansas.
6. Defendant is a supplier within the definition of K.S.A. 50-624(j) and has engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).
7. Defendant is responsible for the acts of its agents and employees under the legal theory of *respondeat superior*.
8. Defendant admits that this Court has personal and subject matter jurisdiction over all matters and parties hereto.
9. The Plaintiffs allege Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:
  - (a) Shawnee County Facility (308 NE Mimosa Lane, Topeka)

- (i) on October 20, 1998, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed four (4) errors in signage and/or scanning out of fifty (50) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (ii) on February 10, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed twelve (12) errors in signage and/or scanning out of fifty (50) items checked, six (6) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626; and
- (iii) on June 3, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed two (2) errors in signage and/or scanning out of fifty (50) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (iv) On August 21, 1998 at or about 3:27 p.m., one part # BK 755-1013 was sold to a customer in a taxed sale at \$7.49 when the display price was \$6.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (v) On September 26, 1998 at or about 10:32 a.m. one part # BK 755-1013 was sold to a customer in a taxed sale at \$7.49 when the display price was \$6.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (vi) On December 27, 1998 at or about 10:33 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (vii) On December 24, 1998 at or about 12:50 p.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

- (viii) On December 1, 1998 at or about 11:44 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (ix) On November 14, 1998 at or about 10:40 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (x) On September 26, 1998 at or about 1:26 p.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xi) On September 11, 1998 at or about 10:37 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xii) On September 3, 1998 at or about 1:33 p.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xiii) On July 24, 1998 at or about 10:40 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xiv) On June 28, 1998 at or about 11:36 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xv) On June 17, 1998 at or about 11:06 a.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xvi) On May 13, 1998 at or about 5:57 p.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was

\$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

(xvii) On January 19, 1999 at or about 7:29 a.m. one part # SER 485 was sold to a customer in a taxed sale at \$9.49 when the display price was \$8.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

(xviii) On February 10, 1998 at or about 5:58 p.m. one part # TW T-222 was sold to a customer in a taxed sale at \$5.49 when the display price was \$3.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

(b) Johnson County Facility (517 E. Santa Fe, Olathe)

(i) on March 3, 1998, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed sixteen (16) errors in signage and/or scanning out of fifty (50) items checked, seven (7) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(ii) on February 3, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed two (2) errors in signage and/or scanning out of fifty (50) items checked, one (1) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(iii) on May 6, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed two (2) errors in signage and/or scanning out of fifty (50) items checked, both of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(iv) on June 30, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed two (2)

errors in signage and/or scanning out of fifty (50) items checked, both of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

- (v) on July 27, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed two (2) errors in signage and/or scanning out of fifty (50) items checked, both of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626; and
- (vi) on May 2, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed three (3) errors in signage and/or scanning out of fifty (50) items checked, two (2) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (vii) On November 19, 1997 at or about 4:52 p.m. one part # FIL 6133 was sold to a customer in a taxed sale at \$7.99 when the display price was \$7.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (viii) On November 29, 1997 at or about 11:55 a.m. one part #FIL 6133 was sold to a customer in a taxed sale at \$7.99 when the display price was \$7.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (ix) On April 12, 1999 at or about 11:09 a.m. one part # BK 700-1507 was sold to a customer in a taxed sale at \$7.49 when the display price was \$6.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (x) On April 11, 1999 at or about 2:44 .m. one part # BK 700-1507 was sold to a customer in a taxed sale at \$7.49 when the display price was \$6.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xi) On January 21, 1999 at or about 11:09 a.m. one part # BK 700-1507 was sold to a customer in a taxed sale at \$7.49 when the display price

was \$6.49, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

(c) Sedgwick County Facility (1224 W. Pawnee, Wichita)

- (i) on September 16, 1998, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed eight (8) errors in signage and/or scanning out of fifty (50) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (ii) on November 5, 1998, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed four (4) errors in signage and/or scanning out of fifty (50) items checked, two (2) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (iii) on July 14, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed eight (8) errors in signage and/or scanning out of fifty (50) items checked, six (6) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626; and
- (iv) on August 4, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed seven (7) errors in signage and/or scanning out of fifty (50) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (v) On May 1, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store. Said investigation showed seven (7) errors in signage and/or scanning out of fifty (50) items checked,

two (2) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

- (vi) On May 2, 1998 at or about 1:30 p.m. one part # NHT 31327 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (vii) On September 12, 1998 at or about 2:22 p.m. one part # NHT 31327 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (viii) On June 28, 1998 at or about 3:14 p.m. one part # BK 765-1497 was sold to a customer in a taxed sale at \$8.99 when the display price was \$7.69, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (ix) On May 2, 1998 at or about 12:13 p.m. one part # TW T-186 was sold to a customer in a taxed sale at \$5.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (x) On May 16, 1998 at or about 12:09 p.m. one part # TW T-186 was sold to a customer in a taxed sale at \$6.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xi) On July 5, 1998 at or about 4:02 p.m. one part # TW T-186 was sold to a customer in a taxed sale at \$6.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xii) On July 20, 1998 at or about 12:08 p.m. one part # TW T-186 was sold to a customer in a taxed sale at \$6.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xiii) On July 20, 1998 at or about 12:22 p.m. one part # TW T-186 was sold to a customer in a taxed sale at \$6.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.



- (xiv) On May 28, 1998 at or about 9:32 a.m. one part #BK 755-1073 was sold to a customer in a taxed sale at \$5.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xv) On May 29, 1998 at or about 1:35 p.m. one part #BK 755-1073 was sold to a customer in a taxed sale at \$5.49 when the display price was \$4.99, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xvi) On October 12, 1998 at or about 11:56 a.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xvii) On March 25, 1999 at or about 5:22 p.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xviii) On March 30, 1999 at or about 2:22 p.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xix) On April 11, 1999 at or about 11:38 a.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xx) On April 20, 1999 at or about 10:04 a.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.
- (xxi) On June 5, 1999 at or about 3:04 p.m. one part #BK 765-1422 was sold to a customer in a taxed sale at \$3.49 when the display price was \$3.29, a deceptive act in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

10. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and without any admission on the part of the Defendant.

11. Defendant agrees to be bound by this Consent Judgment at all times after the date of entry without regard to whether Defendant acts individually and/or through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated or controlled by Defendant. This does not apply to independently owned NAPA auto parts stores.

12. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to all of its appropriate senior management personnel within thirty (30) days of signing the Consent Judgment.

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, or entering into any contract or agreement, for the purpose of, or with the result of, avoiding compliance with the terms of this Consent Judgment. Defendant agrees that failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

14. Pursuant to K.S.A. 50-623, *et seq.*, and K.S.A. 83-501(g), Defendant agrees to pay \$10,000.00, in civil penalties, investigative fees and expenses. Said amount shall be apportioned as follows:

(a) Civil Penalties

“Kansas Department of Agriculture”  
\$5,000.00

(b) Investigative Fees and Expenses

“Office of the Kansas Attorney General”

\$1750.00

“Johnson County District Attorney’s Investigative Fund”

\$1750.00

“Sedgwick County District Attorney’s Investigative Fund”

\$1500.00

Payment shall be made by cashier’s checks and shall be delivered at the time of signing this Consent Judgment. Defendant agrees that failure to promptly make such payment shall constitute a violation of this Order.

15. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

16. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

17. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

18. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Plaintiffs of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas, through the Attorney General or the District Attorneys, to take any action in response to any

information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and in addition, pursuant to K.S.A. 83-219(d), the violations referenced in paragraph nine (9) above are deemed deceptive acts and practices, as defined by K.S.A. 50-626, under the Kansas Consumer Protection Act, and any monies owed hereunder by Defendant immediately become a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant in favor of Plaintiffs in the amount of \$10,000.00.


**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

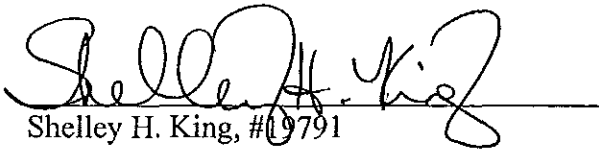
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/s/  
Honorable \_\_\_\_\_  
/s/

PREPARED AND APPROVED BY:



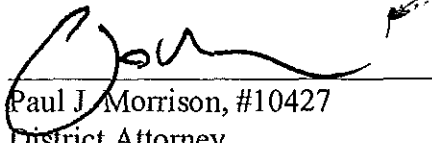
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Phill Kline, # 13249  
Attorney General



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120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
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(785) 296-3751  
Attorney for Plaintiff State of Kansas, *ex rel.*  
Phill Kline, Attorney General



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Paul J. Morrison, #10427

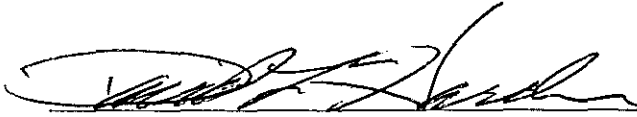
District Attorney

Johnson County Courthouse

100 N. Kansas Ave.

Olathe, Kansas 66061

(913) 715-3031



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David L. Harder, #18344

Assistant District Attorney

Johnson County Courthouse

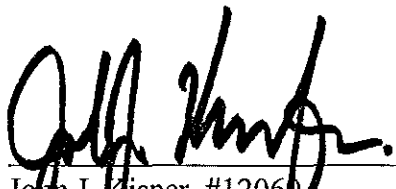
100 N. Kansas Ave.

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Attorney for Plaintiff State of Kansas, *ex rel.*

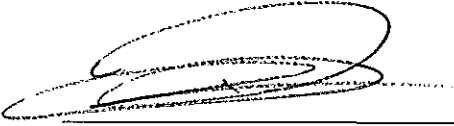
Paul J. Morrison, District Attorney



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(316) 383-7921  
Attorney for Plaintiff State of Kansas, *ex rel.*  
Nola Foulston, District Attorney

APPROVED BY:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

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Leonard M. Robinson  
Attorney for Defendant