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FACSIMILE TRANSMITTAL SHEET

TO: Guillermo Cabrera

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FACSIMILE NUMBER: (619) 400-4810

**CONFIRMATION
TELEPHONE:** (619) 400-4880

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DATE: March 27, 2009

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1 Edward M. Cramp (SBN 212490)
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 2 **DUANE MORRIS LLP**
 101 West Broadway, Suite 900
 3 San Diego, CA 92101
 Telephone: 619.744.2200
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 5 Attorneys for Plaintiff
 DIGITAL CORNERSTONE, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN DIEGO
 10 HALL OF JUSTICE

12 DIGITAL CORNERSTONE, INC., a Delaware
 corporation,
 13 Plaintiff,
 14 v.
 15 KEVIN CARMONY and DOES 1 through 10,
 16 inclusive,
 17 Defendants.

Case No. 37-2008-00093670-CU-IP-CTL
**PLAINTIFF'S REQUEST FOR
 PRODUCTION OF DOCUMENTS SET
 ONE**
 Dept: C-73
 Judge: Steven R. Denton
 Complaint Filed: November 13, 2008

- 19 1. Propounding Party: Plaintiff, DIGITAL CORNERSTONE, INC.
- 20 2. Responding Party: Defendant, KEVIN CARMONY
- 21 3. Set Number: One (1)

22 Pursuant to Section 2031.010, *et seq.*, of the Code of Civil Procedure, plaintiff Digital
 23 Cornerstone, Inc., hereby propounds the following Request for Production of Documents on
 24 defendant, Kevin Carmony. Each of these Requests shall be answered fully, separately, in writing
 25 and under oath.

26 The documents relating to or falling within the categories described below, which are in the
 27 possession, custody, or control of plaintiff or any of its agents, investigators, attorneys are to be
 28 produced for inspection and copying at the offices of Duane Morris, LLP, 101 West Broadway, Suite

1 900, San Diego, California, within thirty (30) days after service of this request. All documents
2 described herein shall be produced as they are kept in the usual course of business, or shall be
3 organized and labeled to correspond to the categories of the corresponding Request.

4 5 INSTRUCTIONS & DEFINITIONS

6 1. The term "DOCUMENT" or "DOCUMENTS" means and includes, without
7 limitation as to form or format and specifically including electronic data, handwritings, typings,
8 printings, computer disks, photostats, photographs means of recording on any tangible thing, any
9 form of communication or representation, such as letters, words, pictures, sounds, symbols or
10 combinations thereof and any data compilation from which information can be obtained through a
11 detection device and transferred to usable form; and shall include, without limitation, all written or
12 graphic materials such as letters, memoranda, reports, studies, drafts, notes, minutes, diary entries,
13 including calendar entries indicating dates of and participants in any meeting, notes or records of
14 telephone conversations, conferences or other oral communications, telegraphs or telexes,
15 appointment records, time records, ledgers, journals, financial or accounting records, trial balances,
16 work papers, schedules, recordings, charts, drafts, sketchings, transcriptions, tape recordings,
17 videotapes, discs, printouts or other electric data processing materials, "writings" as defined in
18 California Evidence Code section 250, and pleadings from any lawsuit other than this one.

19 2. The term "DOCUMENT" or "DOCUMENTS" includes (i) each copy of a
20 DOCUMENT which is not identical in all respects with, or which contained any notation not
21 appearing on a DOCUMENT which is required to be identified or produced for inspection or
22 copying pursuant to this request, and (ii) any draft of said DOCUMENT.

23 3. The term "PLAINTIFF" means plaintiff Digital Cornerstone and all other past or
24 present persons, entities, agents and attorneys acting or purporting to act on behalf of PLAINTIFF,
25 including but not limited to, any other PERSON or entities related in any way to PLAINTIFF.

26 4. The terms "YOU," "YOUR" "YOURS" shall mean, without limitation, the person
27 identified as the person required to respond to the Interrogatory, his or her employers, employees,
28 managers, partners, joint venturers, agents, representatives, and attorneys, and all other PERSONS

1 who, with respect to the subject matter of each individual document request herein propounded upon
2 YOU or were acting on YOUR behalf or under YOUR direction or control.

3 5. The term "DEFENDANT" or "CARMONY" means defendant, Kevin Carmony, or
4 other persons acting on behalf of DEFENDANT.

5 6. The term COMPLAINT shall mean the COMPLAINT filed by PLAINTIFF in the
6 Superior Court of the State of California, County of San Diego, Case No. 37-2008-00093670-CU-IP-
7 CTL.

8 7. The term "COMMUNICATION" or "COMMUNICATIONS" shall mean any oral,
9 written, or electronic communication, whether tangible or intangible, regardless of form, whether
10 made in person, transmitted through wires, telephone lines, cable lines, the mail, private letter
11 carriers, Federal Express, air delivery systems, messenger, television or radio frequencies, including
12 any use of Spectrum, microwaves or other broadcast means.

13 8. The term "CONCERNING" shall be defined and understood as relating, supporting,
14 evidencing, memorializing, referring, refuting, constituting, containing, discussing, describing,
15 embodying, reflecting, identifying, mentioning, stating, or otherwise pertaining to in any way, in
16 whole or in part, the subject matter referred to in the Request.

17 9. The term "REFLECT" shall mean to be pertinent, appertain, apply, bear on (or upon),
18 concern, pertain, or refer.

19 10. The terms "REFER" or "RELATE TO" or "RELATED TO" as used herein shall
20 mean, in addition to the customary and usual meaning of those words, evidencing, constituting,
21 mentioning, embodying, identifying, discussing, supporting, contradicting, memorializing,
22 describing, summarizing, referring to, pertaining to, or purporting to constitute the subject matter
23 referred to in the request.

24 11. The term "DISCUSS" or any variance thereof, when applied to the contents of any
25 DOCUMENTS, shall be understood to apply if the DOCUMENT mentions, describes, refers to,
26 relates to, or in any other way deals with subject matter described in the request in which the term
27 "DISCUSS" or any variant thereof appears.

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1 12. The term "PERSON" and "PERSONS" means any natural person, partnership,
2 limited partnership, business, trust, firm, corporation or any other kind of business or legal entity, its
3 agents, employees, and any other related entity.

4 13. The singular shall be deemed to include the plural and vice versa, to make the request
5 inclusive rather than exclusive. The feminine shall be deemed to include the masculine and vice
6 versa to make the request inclusive rather than exclusive. The terms "and" and "or" shall be
7 construed both conjunctively and disjunctively to make inclusive rather than exclusive. The past
8 tense shall be construed to include the present tense and vice versa, to make the request inclusive
9 rather than exclusive.

10 14. This request for production of documents extends to all documents in YOUR
11 possession or control, including the possession or control of all attorneys or others acting or
12 purporting to act on YOUR behalf. If a document is responsive to a document request and is in
13 YOUR control, but is not in YOUR possession or custody, YOU are requested to identify by name,
14 address and telephone number, the person with possession or custody, and the likely location of such
15 document.

16 15. If any document responding to all or any part of any request for the identification or
17 production of documents is not currently available, include a statement to that effect and furnish
18 whatever documents are available. Include in your statement when such documents will be
19 available, and if documents are unavailable because they were destroyed, include in your statement
20 when the documents were most recently in your possession or subject to your control and what
21 disposition was made of them, and identify by name, job title and the last known business and home
22 addresses of each person who directed that the documents be destroyed, the person(s) who actually
23 destroyed the documents, and state the reasons the documents were destroyed.

24 16. If any DOCUMENT is withheld or not produced in full because the request therefore
25 is objected to on any grounds of any claim of privilege, work product or any other grounds, YOU are
26 directed to specify with particularity:

27 a. Legal reasons for withholding;

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- b. Portion of request, i.e., request number or numbers, to which withheld DOCUMENT is responsive;
- c. Parties to the DOCUMENT, e.g., addressers and addressees;
- d. Date of DOCUMENT;
- e. Subject matter of the DOCUMENT;
- f. Length of pages of the DOCUMENT;
- g. Location of the DOCUMENT; and
- h. Custodian of the DOCUMENT.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE to the domain name "freespire.com."

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS that the REFER, REFLECT, or RELATE to the registration of the "freespire.com" domain name.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE to PLAINTIFF.

REQUEST FOR PRODUCTION NO. 4:

All CORRESPONDENCE between YOU and PLAINTIFF.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE to any Internet postings made by YOU, INCLUDING any advertisements, forum posts or comments, Internet blogs, and comments or postings on any website, that DISCUSS, REFLECT, REFER, or RELATE to PLAINTIFF.

1 **REQUEST FOR PRODUCTION NO. 6:**

2 All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE to any Internet postings
3 made by YOU, INCLUDING any advertisements, forum posts or comments, Internet blogs, and
4 comments or postings on any website, that DISCUSS, REFLECT, REFER, or RELATE to Michael
5 Robertson.

6 **REQUEST FOR PRODUCTION NO. 7:**

7 All screen shots of all websites hosted on any URL containing the domain name
8 "freespire.com."

9 **REQUEST FOR PRODUCTION NO. 8:**

10 Source code for any website hosted on any URL containing the domain name
11 "freespire.com."

12 **REQUEST FOR PRODUCTION NO. 9:**

13 All DOCUMENTS that evidence, DISCUSS, REFER, REFLECT or RELATE any revenue
14 generated in connection with the use or registration of the "freespire.com" domain name, including
15 any revenue generated from any advertisements, banners or pay per click.

16 **REQUEST FOR PRODUCTION NO. 10:**

17 All CORRESPONDENCE CONCERNING the allegations in the COMPLAINT.

18 **REQUEST FOR PRODUCTION NO. 11:**

19 All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE all use of the domain
20 name "freespire.com."

21 **REQUEST FOR PRODUCTION NO. 12:**

22 All DOCUMENTS that DISCUSS, REFER, REFLECT or RELATE any use of the
23 FREESPIRE mark.

24 **REQUEST FOR PRODUCTION NO. 13:**

25 All deposition transcripts and exhibits that DISCUSS, REFER, REFLECT or RELATE to the
26 domain name "freespire.com."

27

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1 **REQUEST FOR PRODUCTION NO. 14:**

2 All deposition transcripts and exhibits that DISCUSS, REFER, REFLECT or RELATE to the
3 FREESPIRE trademark.

4 **REQUEST FOR PRODUCTION NO. 15:**

5 All DOCUMENTS that YOU intend to use to support YOUR claims or defenses, including
6 any affirmative defenses.

7 Dated: March 27, 2008

DUANE MORRIS LLP

8
9 By: 

Edward M. Cramp
Michelle Hon
Attorneys for Plaintiff
DIGITAL CORNERSTONE, INC.

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1 Edward M. Cramp (SBN 212490)
 Michelle Hon (SBN 234492)
 2 **DUANE MORRIS LLP**
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 3 San Diego, CA 92101
 Telephone: 619.744.2200
 4 Facsimile: 619.744.2201

5 Attorneys for Plaintiff
 DIGITAL CORNERSTONE, INC.
 6
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION
 10 HALL OF JUSTICE
 11

12 DIGITAL CORNERSTONE, INC., a Delaware
 corporation,
 13

Plaintiff,
 14

v.
 15

16 KEVIN CARMONY and DOES 1 through 10,
 inclusive,
 17

Defendants.
 18

Case No. 37-2008-00093670-CU-IP-CTL

PROOF OF SERVICE

Dept.: C-73
 Judge: Hon. Steven R. Denton

Complaint Filed: October 8, 2008

19 I am a resident of the state of California, I am over the age of 18 years, and I am not a party
 20 to this lawsuit. My business address is 101 West Broadway, Suite 900, San Diego, California
 21 92101. On the date listed below, I served the following document(s):

22 **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS SET ONE**

23 on the interested parties by placing a true copy thereof enclosed in a sealed envelope addressed as
 24 follows:

25 Guillermo Cabrera
 THE CABRERA FIRM, A.P.C.
 26 501 West Broadway, Suite 800
 San Diego, CA 92101
 27 Telephone: (619) 400-4880
 Facsimile: (619) 400-4810
 28

Attorneys for Defendant Kevin Carmony

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- (BY PERSONAL SERVICE):** By causing Cal Express to personally deliver the document(s) listed above to the persons at the addresses set forth below.
- (BY FACSIMILE):** I caused the foregoing documents to be transmitted via facsimile to the above addressee(s) at the facsimile number(s) indicated, and that the transmission was reported as complete and without error prior to 5:00 p.m. Service via facsimile is made pursuant to the written confirmation between the parties of acceptance of service via facsimile.
- (BY MAIL):** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after deposit for mailing in affidavit.
- (BY OVERNIGHT SERVICE):** As follows: by depositing copies of the above document(s) in an envelope or package designated by said service with delivery fees paid and placing same in a box or other facility regularly maintained by FEDERAL EXPRESS.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed March 27, 2009, at San Diego, California.


 Alice Dufresne