

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

REC-11-2003  
U.S. DISTRICT COURT  
By \_\_\_\_\_

\_\_\_\_\_  
FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
END70 CORPORATION and  
  
DAMIEN ZAMORA,  
  
Defendants.  
\_\_\_\_\_

Civil Action No. 3:03CV0950N

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing its complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC ACT"), 15 U.S.C. §§ 53(b) and 57b, charging the defendants *end70* Corporation and Damien Zamora with deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

Plaintiff, through its counsel, and defendants *end70* Corporation and Damien Zamora have agreed to entry of this Final Judgment and Order by this Court in order to resolve all matters in dispute in this action. The Commission and the defendants have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the defendants admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and *end70* Corporation and Damien Zamora, stipulate to entry of this Final Judgment and Order,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case, and all parties thereto;
2. The complaint states a claim upon which relief may be granted against the defendants under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule;
3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c), and the Telemarketing Sales Rule;
4. The activities of the defendants are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

## DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall apply:

A. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

B. **“Business Opportunity”** means any written or oral business arrangement, however denominated, whether or not covered by the Commission’s Franchise Rule, 16 C.F.R. Part 436, which consists of the payment of any consideration for: (a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (b) more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

C. **“Assisting others”** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

D. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

E. **“Telemarketing”** means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided* that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited. *Provided further*, that for the purposes of Section I(C), the definition of telemarketing shall be consistent with 16 C.F.R. § 310.2.

## **ORDER**

### **I. INJUNCTION AGAINST MISREPRESENTATIONS**

**A. IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any Business Opportunity, defendants *end70* Corporation

and Damien Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

1. The total cost of purchasing a Business Opportunity; and
2. That purchasers of a Business Opportunity are likely to earn substantial income.

**B. IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any Business Opportunity, defendants *end70* Corporation and Damien Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, before any consumer purchases a Business Opportunity, all information material to the consumer's decision to purchase the Business Opportunity, including but not limited to failing to disclose that purchasers must pay substantial additional charges to make their Business Opportunity fully functional.

**C. IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any product or service, defendants *end70* Corporation and Damien

Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendants' products or services.

**D. IT IS FURTHER ORDERED** that defendants *end70* Corporation and Damien Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to misrepresenting, directly or by implication, the total costs to purchase, receive, or use, goods or services that are the subject of the sales offer.

**E. IT IS FURTHER ORDERED** that defendants *end70* Corporation and Damien Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from distributing, disseminating, broadcasting, or permitting

others to distribute, disseminate, or broadcast, in whole or in part, any infomercial for Internet Treasure Chest which was broadcast prior to the effective date of this Order.

## **II. MONETARY JUDGMENT**

### **IT IS FURTHER ORDERED** that:

A. Judgment in the amount of THIRTY-SIX MILLION DOLLARS (\$36,000,000.00) is entered against defendants *end70* Corporation and Damien Zamora; provided, however, that upon or pending the timely performance of the payment obligations of Section II(B) and II(C) of this Final Judgment and Order by defendants, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Section III of this Final Judgment and Order.

B. Defendants *end70* Corporation and Damien Zamora shall be jointly and severally liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).

C. Within ten (10) days of the date of entry of this Final Judgment and Order, defendants *end70* Corporation and Damien Zamora shall pay FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to the Commission in the form of a wire transfer or certified or cashier's check made payable to the Commission, or such agent as the Commission may direct.

D. Time is of the essence for the payment specified above. In the event that defendants *end70* Corporation and Damien Zamora do not fulfill, or only partially fulfill, the payment obligations set forth in this Paragraph, defendants shall be immediately liable for payment of THIRTY-SIX MILLION DOLLARS (\$36,000,000.00), which is the entire amount of the

judgment, plus interest, less any payments already made. Notwithstanding any other provision of this Final Judgment and Order, defendants agree that, if they fail to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment and Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

**E.** All funds paid pursuant to this Final Judgment and Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants *end70* Corporation and Damien Zamora shall have no right to challenge the Commission's choice of remedies under this Section.

**F.** Defendants *end70* Corporation and Damien Zamora shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

### **III. FINANCIAL STATEMENTS**

**A. IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness,



accuracy, and completeness of the financial statements and information provided to the Commission by defendants *end70* Corporation and Damien Zamora on or about October 3, 2003, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Judgment and Order.

**B. IT IS FURTHER ORDERED** that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of the defendants. If the Court finds that the defendants failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendants, in favor of the Commission, in the amount of THIRTY-SIX MILLION DOLLARS (\$36,000,000.00), as set forth in Section II of this Final Judgment and Order. Provided, however, that in all other respects this Final Judgment and Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Final Judgment and Order. Solely for the purposes of reopening or enforcing this Paragraph, defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

#### IV. COMPLIANCE REPORTING BY DEFENDANTS

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

A. For a period of five (5) years from the date of entry of this Final Judgment and Order:

1. Defendant Damien Zamora shall notify the Commission of the following:
  - a. Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
  - b. Any changes in defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of defendant's duties and responsibilities in connection with the business; and
  - c. Any changes in defendant's name or use of any aliases or fictitious names.
2. Defendant *end70* Corporation and Damien Zamora shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Final Judgment and Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment and Order; the filing of a bankruptcy petition; or a

change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendants learn less than thirty (30) days prior to the date such action is to take place, defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

**B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendants *end70* Corporation and Damien Zamora shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subsection A above; and
2. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendants pursuant to Section VII.

**C.** For the purposes of this Final Judgment and Order, defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director  
Southwest Region  
Federal Trade Commission  
Suite 2150, 1999 Bryan Street  
Dallas, Texas 75201  
Re: *FTC v. end70 Corporation, et. al.*, Civil Action No. 3:03cv0950N.

**D.** For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendants *end70* Corporation and Damien Zamora.

**V. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order,

A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendants *end70* Corporation and Damien Zamora shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition at a location within 50 miles of defendants' place of business; and/or provide entry during normal business hours to any business location in such defendants' possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: defendants' employees, or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

**Provided** that nothing in this Final Judgment and Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Judgment and Order. The person interviewed may have counsel present.

## **VI. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendants *end70* Corporation and Damien Zamora and each of their successors, assigns, directors, officers, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, in connection with any business where any defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the advertising, promotion, offering for sale, or sale of any Business Opportunity, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

## **VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order,

A. Defendant *end70* Corporation shall deliver a copy of this Order to all of its principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant *end70* Corporation shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

B. Damien Zamora shall deliver a copy of this Order to the principals, officers, directors, managers and employees or other persons engaged in activity covered by this Order, immediately upon employing or retaining any such person for any business where Damien Zamora is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in activity covered by this Order. Damien Zamora shall secure

from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

**VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that defendants, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

**IX. ATTORNEYS' FEES**

**IT IS FURTHER ORDERED** that each party to this Final Judgment and Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

**X. LIFT OF ASSET FREEZE**

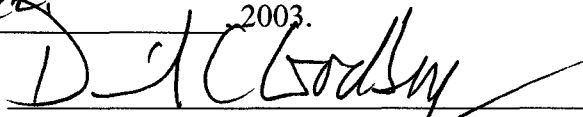
**IT IS FURTHER ORDERED** that the freeze of defendants' assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.

**XI. RETENTION OF JURISDICTION**

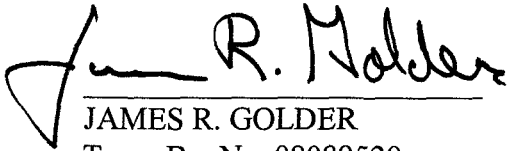
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

**IT IS SO ORDERED.**

Dated this 11 day of Dec, 2003.

  
**DAVID C. GODBEY**  
**UNITED STATES DISTRICT JUDGE**

**SO STIPULATED:**



JAMES R. GOLDER

Texas Bar No. 08089520

DEBORAH W. DAWSON

New York Bar No. 1658889

FEDERAL TRADE COMMISSION

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

(214) 979-9376 (Golder)

(214) 979-9395 (Dawson)

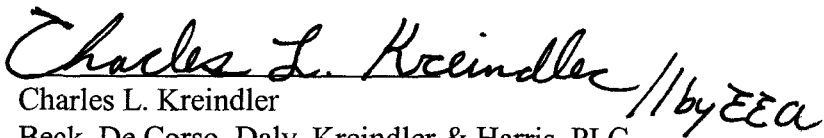
(214) 953-3079 (Facsimile)

**ATTORNEYS FOR PLAINTIFF  
FEDERAL TRADE COMMISSION**

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Damien Zamora

**Defendant**



Charles L. Kreindler

Beck, De Corso, Daly, Kreindler & Harris, PLC

601 West Fifth Street, 12th Floor

Los Angeles, CA 90071-1198

**Attorney for Defendant Damien Zamora**

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end70 Corporation

**Defendant**

  
James C. Bastian, Jr.

Marshack Shulman Hodges & Bastian LLP

26632 Towne Center Drive, Suite 300

Foothill Ranch, California 92610

**Attorney for Defendant end70 Corporation**

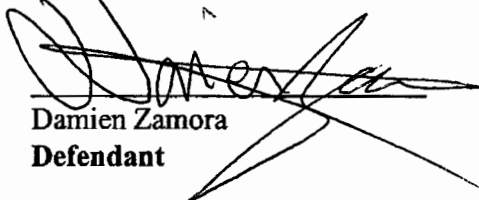


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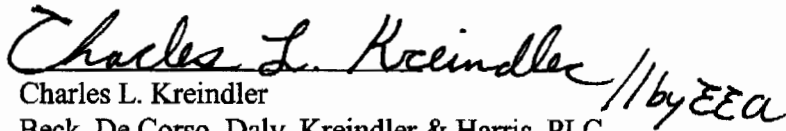


**JAMES R. GOLDER**  
Texas Bar No. 08089520  
**DEBORAH W. DAWSON**  
New York Bar No. 1658889  
**FEDERAL TRADE COMMISSION**  
1999 Bryan Street, Suite 2150  
Dallas, Texas 75201  
(214) 979-9376 (Golder)  
(214) 979-9395 (Dawson)  
(214) 953-3079 (Facsimile)

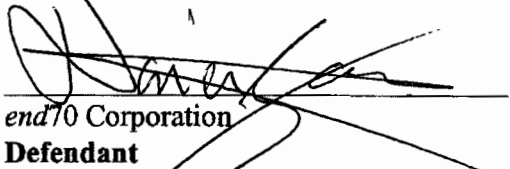
**ATTORNEYS FOR PLAINTIFF  
FEDERAL TRADE COMMISSION**



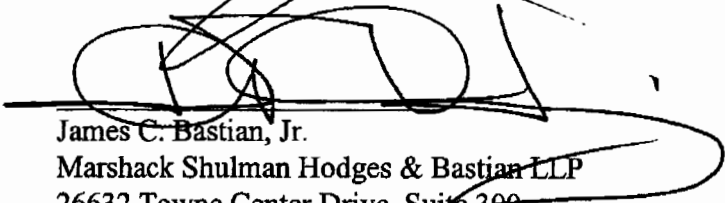
**Damien Zamora**  
**Defendant**

 // by EEA

**Charles L. Kreindler**  
Beck, De Corso, Daly, Kreindler & Harris, PLC  
601 West Fifth Street, 12th Floor  
Los Angeles, CA 90071-1198  
**Attorney for Defendant Damien Zamora**



**end70 Corporation**  
**Defendant**



**James C. Bastian, Jr.**  
**Marshack Shulman Hodges & Bastian LLP**  
26632 Towne Center Drive, Suite 300  
Foothill Ranch, California 92610  
**Attorney for Defendant end70 Corporation**

