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MICHAEL K. JEANES  
Clerk of the Superior Court

By MARCELLA LARTZ, Deputy  
Date 07/27/2005 Time 01:15 PM  
Description Qty Amount  
----- CASE# CV2005-011949 -----  
CIVIL NEW COMPLAINT 001 245.00  
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TOTAL AMOUNT 245.00  
Receipt# 00007202495

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,

Plaintiffs,

vs.

Jeff Logsdon and Kirsten Logsdon, husband and wife; James O'Shaughnessy and Sara O'Shaughnessy, husband and wife; MainNerve, Inc., a Delaware corporation,

Defendants.

No. CV2005-011949

COMPLAINT

(Declaratory Judgment; Application for Appointment of Receiver)

For their complaint, Plaintiffs allege as follows:

**JURISDICTION AND VENUE**

1. This action is brought and jurisdiction of this Court is invoked, pursuant to Article VI, §14, of the Arizona Constitution and ARS §12-123.

2. Venue is proper pursuant to ARS §12-401 because all of the acts and events described herein which gave rise to this action occurred within Maricopa County.

**THE PARTIES**

3. Plaintiff Rodney Joffe ("Joffe") is a resident of Maricopa County, Arizona. Joffe and Plaintiff Victor Oppleman ("Oppleman") do business in Maricopa County, Arizona and entered into the transactions hereinafter alleged in Maricopa County, Arizona.

4. Defendants Jeff Logsdon ("Logsdon") and Kirsten Logsdon are husband and wife. Logsdon acted as hereafter alleged for and on behalf of his marital community.

5. Defendants James O'Shaughnessy ("O'Shaughnessy") and Sara O'Shaughnessy are husband and wife. O'Shaughnessy acted as hereafter alleged for and on behalf of his marital community.

6. Defendant MainNerve, Inc. ("MainNerve") is a Delaware corporation with its principal place of business in Maricopa County, Arizona.

7. The Defendants, and each of them, are residents of the State of Arizona and/or are doing business in the State of Arizona and/or caused events to occur in the State of Arizona as herein alleged out of which the following causes of action arose.

#### **BACKGROUND ALLEGATIONS**

8. In or about April 2001, Oppleman, O'Shaughnessy and Logsdon formed MainNerve to provide computer related, technical services to customers such as setting up and maintaining computer network systems (the "Professional Services"). They each owned one-third of the stock, and each was a board member.

9. Initially, Oppleman's principal role in the company as President was to manage the operations of the company; O'Shaughnessy's principal role in the company as Vice President was to manage marketing and act as Chief Financial Officer; and Logsdon's principal role in the company as Vice President was to manage sales. Each was equally compensated through their respective consulting companies.

10. In 2002, O'Shaughnessy's participation in the operation of MainNerve decreased, but he continued to draw compensation (through his consulting company) equal to that of his co-

shareholders, Logsdon and Opppleman.

11. This inequity was finally resolved in May 2002, when O'Shaughnessy agreed to resign as a board member; agreed that he would no longer provide consulting services (through his company) to MainNerve; and agreed that he would cease receiving a consulting fee (through his company). However, O'Shaughnessy remained as a one-third shareholder.

12. Faced with the prospect of now being responsible for 50% of the operation of MainNerve, but only owning a minority (33⅓%) of the stock in the company and entitled to only 1/3 of the value he created in the company, Opppleman sought some assurance from Logsdon that, if Opppleman continued to work for and lend his expertise to the continued operation of the company, Logsdon would never join with O'Shaughnessy or any other shareholder to jeopardize his ownership of and rights and interests in MainNerve.

13. Accordingly, or about November 5, 2003, in order to ensure the continuity of the company's direction and management, and to avoid disputes between them that could disrupt the successful management and control of the Company, pursuant to Delaware law, MainNerve, Opppleman and Logsdon entered into a Voting Agreement (the "Voting Agreement"), which provides, among other things, that Opppleman and Logsdon each would vote all of their shares of stock in the company:

- (a) to ensure that the size of the board consisted of 4 directors;
- (b) to ensure that Opppleman and Logsdon are elected to the board;
- (c) to ensure that the remaining 2 directors are recommended and selected by Opppleman and Logsdon.

14. The Voting Agreement also requires that both Opppleman and Logsdon approve,

among other things, the issuance of any equity securities by MainNerve.

15. Pursuant to the Voting Agreement, Oppleman and Logsdon recommended and elected two additional directors: Joffe and Eric Miles ("Miles"), and in lieu of payment each received common stock in MainNerve for their services.

16. In early 2003, Oppleman, as a result of his activities prior to the creation of MainNerve, as well as his activities outside the scope of his involvement with MainNerve, conceived an idea whereby hardware and software could be created for a "policy enforcement" technology whereby any data traffic that enters a computer from the internet could be analyzed, controlled and re-directed by this technology which he dubbed "packet interrogation" (the "Technology").

17. Oppleman wanted to pursue designing the Technology, but since it constituted an entirely different business than MainNerve's core business of providing Professional Services, and because Oppleman was only a minority shareholder in MainNerve, he decided to form a new company to pursue designing the Technology.

18. Towards that end, Oppleman formed Packet Interrogation, Inc., a Delaware corporation ("PI"), gave Logsdon a 35% stock interest and retained a 65% stock interest for himself.

19. Oppleman and Logsdon agreed that PI would use some of MainNerve's employees to help develop the code for the Technology, with the understanding that such employees would only work on the Technology after normal business hours, and only pursuant to separate independent contractor agreements.

20. Oppleman and Logsdon disclosed this transaction to the remaining board members of MainNerve, who did not object to Oppleman and Logsdon pursuing this new business, provided

that they did so on their own time and not during regular business hours; and provided that they would not take away any customers of MainNerve or otherwise have a conflict with MainNerve's core business of providing Professional Services.

21. In order to keep the business of PI and MainNerve separate, among other things, Oppleman purchased separate computers for PI.

22. In early 2004, Joffe approached Oppleman regarding a business service opportunity that Joffe had developed as part of his own corporate activities. Joffe proposed that he and Oppleman could provide network owners with a way to protect their networks from spam and malicious data; and suggested that many of the "building blocks" which had been designed by PI could be used to implement this idea.

23. Because MainNerve already had customers for which it was providing Professional Services, Joffe suggested that MainNerve obtain a non-exclusive license from PI which would authorize MainNerve to use the "building blocks" designed by PI, and then build upon those components to allow MainNerve to be a non-exclusive authorized service provider for this new concept.

24. It was anticipated that MainNerve would take the Technology designed by PI, and would build upon it to create the hardware and software which could be installed at a customer's site; and MainNerve would then provide a managed service dubbed "adaptive darknet" (hereafter "Darknet"), which MainNerve would set up, manage and periodically install updates.

25. Oppleman and Logsdon caused a license agreement to be prepared, which, when signed, would confirm the legal rights and obligations of the parties with regard to the Technology, but the agreement was never executed. MainNerve nonetheless proceeded to sell

Darknet to its Professional Services customers, using the "building blocks" obtained from PI.

26. During 2004, the relationship between Oppleman and Logsdon deteriorated, in large part because of Logsdon's continuing refusal to cause a license agreement with PI to be executed, even though it would assure MainNerve's right to continue using the Technology in its business.

27. Between October 2004 and March 2005, Miles attempted to negotiate a separation agreement involving Oppleman, Logsdon, MainNerve, and PI, in order to resolve the deadlock in running the company. An acceptable agreement failed to be reached.

28. As a result of the impasse, on or about March 1, 2005, Oppleman gave written notice that he was resigning as an officer of MainNerve effective two weeks after the notice; however, he advised that he would remain as a board member.

29. Oppleman, Joffe, and Miles, representing a majority of the board of directors, reached the conclusion that it was in MainNerve's best interests to immediately enter into the negotiated license agreement, and decided to notice a formal board of director's meeting to address the issue.

30. On March 1, 2005, all directors were noticed by Oppleman that an emergency meeting of the board would be held at noon on March 3, 2005. Joffe, Miles, and Logsdon confirmed their attendance.

31. On March 3, 2005, shortly before the board meeting which was due to be held, Oppleman, Miles and Joffe received both an e-mail and facsimile from Logsdon claiming that MainNerve owned the Technology and PI owned nothing; and that a shareholder meeting was purportedly called and held, at which time Miles and Joffe were purportedly removed as board

members, and O'Shaughnessy was purportedly elected as a board member and officer of the company. No notice of the shareholder meeting was given to Oppleman, Joffe, or Miles.

32. Logsdon and O'Shaughnessy caused Oppleman to be removed as a signatory on all of MainNerve's bank accounts, added O'Shaughnessy as a signatory; required Oppleman to turn in his keys in order to revoke his access to the office; and have exclusively taken over operations of MainNerve.

33. Most of MainNerve's employees who were employed as of March 1, 2005 have since quit, and many of MainNerve's customers have been lost or have expressed deep concern for the operations of the company. The company has continued to inform customers that Oppleman is still actively involved and guiding the technical direction and innovation for the company.

34. In order to attempt to formally sever their relationship as it relates to MainNerve and the Technology, and to obtain some finality on all surrounding issues, the parties continued to negotiate a potential settlement agreement.

35. On May 25, 2005, as part of the ongoing negotiations, Logsdon informed Oppleman that he would deliver a final draft of the settlement agreement to Oppleman during that day. Oppleman told Logsdon and O'Shaughnessy that he would be available to review the settlement agreement, but that he was going to be behind closed doors in a meeting from 3:00 p.m. to 6:00 p.m. that day and would be unavailable to receive the settlement agreement, sign it or to communicate with them.

36. At 3:05 p.m., when Logsdon and O'Shaughnessy knew that Oppleman would be behind closed doors, they sent him an e-mail giving him notice of an emergency board meeting that would take place at 5:00 p.m. that day, also at a time that Oppleman told them that he would

be out of communication.

37. When Oppleman got out of his meeting, he found on his computer an e-mail notice of the emergency board meeting and also a notice of what happened at the board meeting. Apparently at that time, Logsdon and O'Shaughnessy entered a resolution to the effect that O'Shaughnessy had purportedly made a loan to the company in the sum of \$26,000, but since it was never paid they gave him stock in lieu of that payment; and a capital call was purportedly made, presumably so that additional stock could be issued, further diluting Oppleman's interest in the company.

38. Notwithstanding demand by Oppleman as a shareholder and director of MainNerve, Logsdon refused to provide Oppleman with any information concerning MainNerve, stating: "It is not in the best interest of the company, in my opinion, to share anything else about what were doing, with whom, and how much."

39. Several days later, on July 26, 2005, Logsdon and O'Shaughnessy unlawfully caused a corporate resolution of MainNerve to be entered, which purports to remove Oppleman as a director, in direct violation of the express terms of the Voting Agreement.

#### **FIRST CLAIM FOR RELIEF-DECLARATORY JUDGMENT**

For their First Claim for Relief against Defendants, Plaintiffs allege as follows:

40. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations.

41. This Claim for Relief is filed under the Arizona Declaratory Judgment Act, Title XII, Ch. 10, Article 2 of the Arizona Revised Statutes.

42. An actual controversy of a justiciable nature exists between Plaintiffs and the Defendants as to:



- (a) Whether Logsdon illegally violated the Voting Agreement by, among other things, purporting to 1) remove Oppleman, Miles, and Joffe as board members; and 2) elect O'Shaughnessy as a board member without Oppleman's recommendation or consent; and 3) issue new stock to O'Shaughnessy;
- (b) Whether all purported actions taken by the illegally elected board of directors from and after March 3, 2005 are invalid and a nullity.

43. The controversy as herein alleged may be determined by a declaration of rights and liabilities and a judgment thereon without the necessity for other suits.

WHEREFORE, Plaintiff requests the Court to enter a declaratory judgment adjudicating the respective rights and liabilities of the parties to this action, and specifically determining that Logsdon illegally violated the Voting Agreement by, among other things, purporting to 1) remove Oppleman, Miles, and Joffe as board members; 2) elect O'Shaughnessy as a board member without Oppleman's recommendation or consent; and 3) issue new stock to O'Shaughnessy; and that all purported actions taken by the illegally elected board of directors from and after March 3, 2005 are invalid and a nullity. Plaintiffs also request that they be awarded their attorney's fees, court costs, and such other and further relief and the Court deems just and proper.

**SECOND CLAIM FOR RELIEF-APPLICATION FOR APPOINTMENT OF RECEIVER**

For their Second Claim for Relief against Defendants, Plaintiffs allege as follows:

44. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations.

45. The business of MainNerve is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the

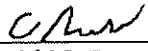
required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division.

46. Upon information and belief, MainNerve is insolvent.

WHEREFORE, Plaintiff requests the Court to appoint one or more persons to be receivers or custodians of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper, and to liquidate its affairs and distribute its assets.

DATED: July 27, 2005

RAMRAS LAW OFFICES, P.C.

By:   
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs

VERIFICATION

STATE OF Arizona )  
 )ss.  
COUNTY OF Maricopa )

Victor Oppleman, being first duly sworn upon his oath, deposes and says:

He is a plaintiff in the above entitled action, has read the foregoing Complaint, and knows the contents thereof to be true and correct to the best of his knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

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

Executed on July 26<sup>th</sup>, 2005

  
\_\_\_\_\_  
Victor Oppleman

David N. Ramras – 002826  
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Attorney for Plaintiffs

MICHAEL K. JENES, CLERK  
BY *M. Jenés* DEP  
FILED

2005 JUL 27 PM 12:31

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,

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vs.

Jeff Logsdon and Kirsten Logsdon, husband and  
wife; James O'Shaughnessy and Sara  
O'Shaughnessy, husband and wife; MainNerve,  
Inc., a Delaware corporation,

Defendants.

No.

CV 2005-011949

CERTIFICATE ON COMPULSORY  
ARBITRATION

The undersigned certifies that he knows the dollar limits and any other limitations set forth by the local rules of practice for Maricopa County Superior Court, and further certifies that this case is not subject to compulsory arbitration, as provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.

DATED: July 27, 2005

RAMRAS LAW OFFICES, P.C.

By: *DR*  
\_\_\_\_\_  
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs



MICHAEL K. JEWES, CLERK  
BY *M. Jewes* DEP  
FILED

2005 JUL 27 PM 12:31

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SUPERIOR COURT OF ARIZONA

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Defendants.

No. CV 2005-011949

APPLICATION FOR ORDER TO SHOW CAUSE

Plaintiffs Victor Oppleman ("Oppleman") and Rodney Joffe ("Joffe") move the Court pursuant to Rule 6(d) ARCP to issue an Order to Show Cause, and after hearing, an Order appointing a receiver for MainNerve, Inc. ("MainNerve"). This Application is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

**THE FACTS**

In or about April 2001, Oppleman and defendants James O'Shaughnessy ("O'Shaughnessy") and Jeff Logsdon ("Logsdon") formed MainNerve to provide computer related, technical services to customers such as setting up and maintaining computer network systems (the "Professional Services"). They each owned one-third of the stock, and each was a

board member.

Initially, Oppleman's principal role in the company as President was to manage the operations of the company; O'Shaughnessy's principal role in the company as Vice President was to manage marketing and act as Chief Financial Officer; and Logsdon's principal role in the company as Vice President was to manage sales. Each was equally compensated through their respective consulting companies.

In 2002, O'Shaughnessy's participation in the operation of MainNerve decreased, but he continued to draw compensation (through his consulting company) equal to that of his co-shareholders, Logsdon and Oppleman. This inequity was finally resolved in May 2002, when O'Shaughnessy agreed to resign as a board member; agreed that he would no longer provide consulting services (through his company) to MainNerve; and agreed that he would cease receiving a consulting fee (through his company). However, O'Shaughnessy remained as a one-third shareholder.

Faced with the prospect of now being responsible for 50% of the operation of MainNerve, but only owning a minority (33 $\frac{1}{3}$ % ) of the stock in the company and entitled to only 1/3 of the value he created in the company, Oppleman sought some assurance from Logsdon that, if Oppleman continued to work for and lend his expertise to the continued operation of the company, Logsdon would never join with O'Shaughnessy or any other shareholder to jeopardize his ownership of and rights and interests in MainNerve. Accordingly, or about November 5, 2003, in order to ensure the continuity of the company's direction and management, and to avoid disputes between them that could disrupt the successful management and control of the Company, pursuant to Delaware law, MainNerve, Oppleman and Logsdon

entered into a Voting Agreement (the "Voting Agreement"), which provides, among other things, that Oppleman and Logsdon each would vote all of their shares of stock in the company:

- (a) to ensure that the size of the board consisted of 4 directors;
- (b) to ensure that Oppleman and Logsdon are elected to the board;
- (c) to ensure that the remaining 2 directors are recommended and selected by Oppleman and Logsdon.

The Voting Agreement also requires that both Oppleman and Logsdon approve, among other things, the issuance of any equity securities by MainNerve. Pursuant to the Voting Agreement, Oppleman and Logsdon recommended and elected two additional directors: Joffe and Eric Miles ("Miles"), and in lieu of payment each received common stock in MainNerve for their services.

In early 2003, Oppleman, as a result of his activities prior to the creation of MainNerve, as well as his activities outside the scope of his involvement with MainNerve, conceived an idea whereby hardware and software could be created for a "policy enforcement" technology whereby any data traffic that enters a computer from the internet could be analyzed, controlled and re-directed by this technology which he dubbed "packet interrogation" (the "Technology"). Oppleman wanted to pursue designing the Technology, but since it constituted an entirely different business than MainNerve's core business of providing Professional Services, and because Oppleman was only a minority shareholder in MainNerve, he decided to form a new company to pursue designing the Technology.

Towards that end, Oppleman formed Packet Interrogation, Inc., a Delaware corporation ("PI"), gave Logsdon a 35% stock interest and retained a 65% stock interest for himself. Oppleman and Logsdon agreed that PI would use some of MainNerve's employees to help



develop the code for the Technology, with the understanding that such employees would only work on the Technology after normal business hours, and only pursuant to separate independent contractor agreements.

Oppleman and Logsdon disclosed this transaction to the remaining board members of MainNerve, who did not object to Oppleman and Logsdon pursuing this new business, provided that they did so on their own time and not during regular business hours; and provided that they would not take away any customers of MainNerve or otherwise have a conflict with MainNerve's core business of providing Professional Services. In order to keep the business of PI and MainNerve separate, among other things, Oppleman purchased separate computers for PI.

In early 2004, Joffe approached Oppleman regarding a business service opportunity that Joffe had developed as part of his own corporate activities. Joffe proposed that he and Oppleman could provide network owners with a way to protect their networks from spam and malicious data; and suggested that many of the "building blocks" which had been designed by PI could be used to implement this idea. Because MainNerve already had customers for which it was providing Professional Services, Joffe suggested that MainNerve obtain a non-exclusive license from PI which would authorize MainNerve to use the "building blocks" designed by PI, and then build upon those components to allow MainNerve to be a non-exclusive authorized service provider for this new concept. It was anticipated that MainNerve would take the Technology designed by PI, and would build upon it to create the hardware and software which could be installed at a customer's site; and MainNerve would then provide a managed service dubbed "adaptive darknet" (hereafter "Darknet"), which MainNerve would set up, manage and periodically install updates.

Oppleman and Logsdon caused a license agreement to be prepared, which, when signed, would confirm the legal rights and obligations of the parties with regard to the Technology, but the agreement was never executed. MainNerve nonetheless proceeded to sell Darknet to its Professional Services customers, using the "building blocks" obtained from PI.

During 2004, the relationship between Oppleman and Logsdon deteriorated, in large part because of Logsdon's continuing refusal to cause a license agreement with PI to be executed, even though it would assure MainNerve's right to continue using the Technology in its business. Between October 2004 and March 2005, Miles attempted to negotiate a separation agreement involving Oppleman, Logsdon, MainNerve, and PI, in order to resolve the deadlock in running the company. An acceptable agreement failed to be reached.

As a result of the impasse, on or about March 1, 2005, Oppleman gave written notice that he was resigning as an officer of MainNerve effective two weeks after the notice; however, he advised that he would remain as a board member. Oppleman, Joffe, and Miles, representing a majority of the board of directors, reached the conclusion that it was in MainNerve's best interests to immediately enter into the negotiated license agreement, and decided to notice a formal board of director's meeting to address the issue.

On March 1, 2005, all directors were noticed by Oppleman that an emergency meeting of the board would be held at noon on March 3, 2005. Joffe, Miles, and Logsdon confirmed their attendance. On March 3, 2005, shortly before the board meeting which was due to be held, Oppleman, Miles and Joffe received both an e-mail and facsimile from Logsdon claiming that MainNerve owned the Technology and PI owned nothing; and that a shareholder meeting was purportedly called and held, at which time Miles and Joffe were purportedly removed as board

members, and O'Shaughnessy was purportedly elected as a board member and officer of the company. No notice of the shareholder meeting was given to Oppleman, Joffe, or Miles.

Logsdon and O'Shaughnessy caused Oppleman to be removed as a signatory on all of MainNerve's bank accounts, added O'Shaughnessy as a signatory; required Oppleman to turn in his keys in order to revoke his access to the office; and have exclusively taken over operations of MainNerve.

Most of MainNerve's employees who were employed as of March 1, 2005 have since quit, and many of MainNerve's customers have been lost or have expressed deep concern for the operations of the company. The company has continued to inform customers that Oppleman is still actively involved and guiding the technical direction and innovation for the company.

In order to attempt to formally sever their relationship as it relates to MainNerve and the Technology, and to obtain some finality on all surrounding issues, the parties continued to negotiate a potential settlement agreement. On May 25, 2005, as part of the ongoing negotiations, Logsdon informed Oppleman that he would deliver a final draft of the settlement agreement to Oppleman during that day. Oppleman told Logsdon and O'Shaughnessy that he would be available to review the settlement agreement, but that he was going to be behind closed doors in a meeting from 3:00 p.m. to 6:00 p.m. that day and would be unavailable to receive the settlement agreement, sign it or to communicate with them.

At 3:05 p.m., when Logsdon and O'Shaughnessy knew that Oppleman would be behind closed doors, they sent him an e-mail giving him notice of an emergency board meeting that would take place at 5:00 p.m. that day, also at a time that Oppleman told them that he would be out of communication. When Oppleman got out of his meeting, he found on his computer an e-

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Notwithstanding demand by Oppleman as a shareholder and director of MainNerve, Logsdon refused to provide Oppleman with any information concerning MainNerve, stating: "It is not in the best interest of the company, in my opinion, to share anything else about what were doing, with whom, and how much." Several days later, on July 26, 2005, Logsdon and O'Shaughnessy unlawfully caused a corporate resolution of MainNerve to be entered, which purports to remove Oppleman as a director, in direct violation of the express terms of the Voting Agreement. Upon information and belief, MainNerve is now insolvent.

#### **LAW AND ARGUMENT**

8 Del.C. §226 provides that the Court, upon application of any shareholder, may appoint a receiver when, among other things, "[t]he business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division." Also, 8 Del.C. §291 provides that, whenever a corporation is insolvent, the Court, on the application of any stockholder, may "appoint 1 or more persons to be receivers of an for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts,

claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper.”

### CONCLUSION

Based upon the foregoing, plaintiffs request that the Court immediately enter an Order to Show Cause, and, after hearing, an Order appointing a receiver of and for MainNerve, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper, and to liquidate its affairs and distribute its assets.

DATED: July 27, 2005

RAMRAS LAW OFFICES, P.C.

By: *David N. Ramras*  
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs

AFFIDAVIT

STATE OF Arizona )  
 )ss.  
COUNTY OF Maricopa )

Victor Oppleman, being first duly sworn upon his oath, deposes and says:

He is a plaintiff in the above entitled action, has read the foregoing Application for Order to Show Cause, knows the contents thereof to be true and correct to the best of his knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

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

Executed on July 26<sup>th</sup>, 2005

  
\_\_\_\_\_  
Victor Oppleman

MICHAEL K. JEANES, CLERK

MICHAEL K. JEANES, CLERK

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CLIENT FILE NO.  
OPPLEMAN/MAINNERVE

IN THE ARIZONA SUPERIOR COURT  
STATE OF ARIZONA  
COUNTY OF MARICOPA

**FILED  
BY R. SNEDDON, DEP.**

VICTOR OPPLEMAN  
vs  
JEFF LOGSDON KIRSTEN LOGSDON

CASE NO. CV 2005-011949  
JUDGE HILLIARD  
HEARING DATE: 08/19/05 @ 9:45 am

STATE OF ARIZONA )  
COUNTY OF MARICOPA )

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and an Officer of the Court. On 07/29/05 I received the ORDER TO SHOW CAUSE; APPLICATION FOR ORDER TO SHOW CAUSE; AFFIDAVIT; SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION;

from RAMRAS LAW OFFICES, P.C.  
by ARI RAMRAS  
in each instance I personally served a copy of each document listed above upon: MAINNERVE, INC., A DELAWARE CORPORATION, BY SERVICE UPON ITS STATUTORY AGENT NATIONAL REGISTERED AGENTS, INC.

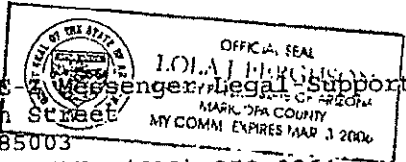
and

on 07/29/05 at 1:15 pm at 638 N FIFTH AVE  
PHOENIX, ARIZONA 85003 MARICOPA COUNTY  
in the manner shown below:  
by leaving true copy(ies) of the above documents with  
VALERIE WHITFIELD

STATED AUTHORIZED TO ACCEPT

\_\_\_\_\_  
DON A. FOLTZ, ACPS Affiant  
Subscribed and sworn to before me the Aug 3, 2005

\_\_\_\_\_  
Lola G. Ferguson Notary  
My Commission expires: 03/03/2006



Hawkins and E-~~2~~ Messenger Legal Support Providers, LLC  
10 W. Madison Street  
Phoenix, AZ 85003  
(602) 258-8081 FAX: (602) 258-8864

SERVICE OF PROCESS \$ 32.00  
MILES 1 \$ 16.00  
AFFIDAVIT/NOTARY FEE \$ 10.00  
TOTAL \$ 58.00

ORIGINAL

INV. # 891258 7355 10

David N. Ramras – 002826  
Ari Ramras - 013887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

MICHAEL K. JEANES, CLERK  
BY: *M. Jeanes* DEP  
FILED

2005 AUG 10 AM 11:20

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,  
  
Plaintiffs,  
  
vs.  
  
Jeff Logsdon; et. al.,  
  
Defendants.

No. CV2005-011949

MOTION FOR ALTERNATIVE SERVICE

(Assigned to the Honorable Ruth H. Hilliard)

Pursuant to Rule 4.1(m) ARCP, Plaintiffs move the Court to allow an alternate form of service on Defendants James and Sara O'Shaughnessy ("O'Shaughnessy"). As the Court can see from the Affidavits of Attempted Service annexed hereto, O'Shaughnessy appears to be evading service at their guard-gated residence. Accordingly, Plaintiff requests that the Court allow service by leaving copies of the Complaint, Summons, Certificate on Compulsory Arbitration, Application for Order to Show Cause, and Order to Show Cause with the gate attendant.

DATED: August 10, 2005

RAMRAS LAW OFFICES, P.C.

By: *David N. Ramras*  
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs



COPY of the foregoing delivered on  
August 10, 2005, to:

Honorable Ruth H. Hilliard



---

IN THE ARIZONA SUPERIOR COURT, STATE OF ARIZONA, COUNTY OF MARICOPA

CASE NO. CV 2005-011949  
HILLIARD

VICTOR OPPLEMAN  
VS  
JEFF LOGSDON

AFFIDAVIT OF NON-SERVICE

Hearing Date: 08/19/05 @ 9:45 am

STATE OF Colorado  
COUNTY OF Douglas

The undersigned being sworn, states: on the 2nd day of Aug, 2005  
I received:

ORDER TO SHOW CAUSE; APPLICATION FOR ORDER TO SHOW CAUSE; SUMMONS; COMPLAINT (DECLARATORY JUDGMENT; APPLICATION FOR APPOINTMENT OF RECEIVER); CERTIFICATE ON COMPULSORY ARBITRATION

from Hawkins and E-Z Messenger Legal-Support Providers, LLC  
for RAMRAS LAW OFFICES, P.C. Attorney(s) and in each  
instance I personally attempted to serve a copy of each document listed above  
on those named below in the manner and at the time and place shown, hereinafter  
set forth, to wit:

SERVICE ATTEMPTED ON:  
JEFF LOGSDON AND KIRSTEN LOGSDON, HUSBAND AND WIFE

ADDRESS ATTEMPTED AT: Gate at Castle Pines for 897 Casacorda  
Cont; Castle Rock, Colorado 80133

CITY/STATE/ZIP:

DATE ATTEMPTED: 8/15/05 TIME ATTEMPTED: 7:51 (AM) PM

RESULT OF ATTEMPT(S): On the above referenced date and time, I  
was able to gain entry to the Main Gate of Castle Pines  
even though PBA was being played. However, as is usual for  
Castle Pines, I was unable to gain direct entry into Castle Pines  
as the area is gated and guarded. I spoke with officer Wiley who called  
back the doorkeeper home number and Jeff's Logsdon cell phone number  
advising them that I was at the gate and I had documents to serve upon  
them. From that experience I know that unless they invite me in or  
are willing to come down to the gate, I am not allowed entry. However,  
the Douglas County Sheriff's office was allowed in, but they will not  
escort me. Officer Wiley of Castle Pines Emergency Services asked me to  
wait in my vehicle for 10 minutes to give Logsdon (either Jeff or  
Kirsten) a chance to call back and he would come and let me know.  
At 0757 hrs, Officer Wiley came back and stated that he had not received  
a call and they were changing posts so I was free to leave.

SUBSCRIBED AND SWORN TO BEFORE ME  
5<sup>th</sup> day of Aug, 2005  
MY COMMISSION EXPIRES:

Linda Swaba  
Affiant  
Linda Swaba  
Notary Public

**LINDA SWABA**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
My Commission Expires Sept. 16, 2008

David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

MICHAEL K. JEANES, CLERK  
BY *X Hubb* DEP  
FILED

2005 AUG -8 PM 5:09

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,  
Plaintiffs,  
vs.  
Jeff Logsdon; et. al.,  
Defendants.

No. CV2005-011949

MOTION FOR ALTERNATIVE SERVICE

(Assigned to the Honorable Ruth H. Hilliard)

Pursuant to Rule 4.1(m) ARCP, Plaintiffs move the Court to allow an alternate form of service on Defendants Jeff and Kirsten Logsdon ("Logsdon"). As the Court can see from the Affidavit of Attempted Service annexed hereto, Logsdon appears to be evading service at their guard-gated residence. Accordingly, Plaintiff requests that the Court allow service by leaving copies of the Complaint, Summons, Certificate on Compulsory Arbitration, Application for Order to Show Cause, and Order to Show Cause with the gate attendant.

DATED: August 8, 2005

RAMRAS LAW OFFICES, P.C.

By: *David N. Ramras*  
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs

COPY of the foregoing delivered on  
August 7, 2005, to:

Honorable Ruth H. Hilliard

  
\_\_\_\_\_

ARI RAMRAS, Bar No.: 018887  
 HAWKINS/E-Z MESSENGER LEGAL-SUPPORT  
 65 EAST PENNINGTON STREET  
 TUCSON, AZ 85701  
 (800) 264-8436 Ref. No.: 00891501-01 (012)  
 Attorney for: RAMRAS LAW OFFICES

ARIZONA SUPERIOR COURT MARICOPA COUNTY

Plaintiff: OPFLEHAN No.: 4V2005-01194  
 Defendant: LOGSDON Declaration Regarding Diligence

Hearing Date: 08/19/2005 Time: 09:45am Dept./Div.:

I received the within process on 08/04/2005 and that after due and diligent effort I have been unable to effect personal service on the within named party. Dates and times of attempts with reported detail are listed below. Costs pertaining to service are recoverable under CCP 1033.5.

Servee: JAMES O'SHAUGHNESSY, HUSBAND

Home: 9 FIRENZE COURT  
 NEWPORT BEACH, CA 92657

Business: SERVEE'S BUSINESS ADDRESS WAS NOT KNOWN AT TIME OF SERVICE.

08/04/2005 08:10pm Attempted service at the given address, found this to be a gated complex. There is an intercom at the gate. The subjects name appear on the gate directory. No answer received at the intercom, no access available.

08/05/2005 07:20am Tried residence, no access available. No answer over the intercom.

08/06/2005 02:54pm Followed another car onto the property, Found there is another gate to the front of the home. There is an intercom at the gate. No answer at the intercom, No other access to the front door available. No answer received at the neighbors unit.

08/07/2005 07:24pm Followed a car onto the property. Received an answer at the intercom, spoke with tenant, who confirmed this is the "O'Shaughnessy" residence, however they refused to open the front gate or come out for service. Unable to see inside the residence. No visual of the tenants inside the home.  
 Checked with the local phone directory, no phone listing found.

08/08/2005 07:05am Tried the given residence, no access available. No one was observed entering or leaving the property.

(Continued on Next Page)

ARI RAMRAS, Bar No.: 018887  
HAWKINS/E-2 MESSENGER LEGAL-SUPPORT  
65 EAST PENNINGTON STREET  
TUCSON, AZ 85701  
(800) 264-8436 Ref. No.: 00891501-01 (012)  
Attorney for: RAMRAS LAW OFFICES

ARIZONA SUPERIOR COURT MARICOPA COUNTY

Plaintiff: OPPIEMAN  
Defendant: LOGSDON

No.: 4V2005-01194  
Declaration Regarding Diligence

Hearing Date: 08/19/2005 Time: 09:45am Dept./Div.:

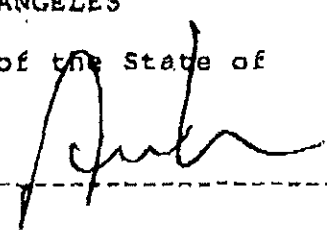
Person Serving:  
A. CHAYRA  
ALSSI (12)  
7124 Owensmouth Ave., #106  
Canoga Park, CA 91303  
Tel: (818) 763-6931

Fee for Service:  
(recoverable per C.C.P. 1033.5(B))  
Registered California process servers.  
Independent contractor, registered  
Registration No.: 3587  
County: LOS ANGELES

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

Date: 08/09/2005

Signature: \_\_\_\_\_



Ind. Coun. form, rule 982(a)(2)

DECLARATION REGARDING DILIGENCE

ARI RAMRAS, Bar No.: 018887  
HAWKINS/E-Z MESSENGER LEGAL-SUPPORT  
65 EAST PENNINGTON STREET  
TUCSON, AZ 85701  
(800) 264-8436 Ref. No.: 00891501-02 (012)  
Attorney for: RAMRAS LAW OFFICES

ARIZONA SUPERIOR COURT MARICOPA COUNTY

Plaintiff: OPPELMAN No.: 4V2005-01194  
Defendant: LOGSDON Declaration Regarding Diligence

Hearing Date: 08/19/2005 Time: 09:45am Dept./Div.:

I received the within process on 08/04/2005 and that after due and diligent effort I have been unable to effect personal service on the within named party. Dates and times of attempts with reported detail are listed below. Costs pertaining to service are recoverable under CCP 1033.5.

Servee: SARA O'SHAUGHNESSY, WIFE

Home: 9 FIRENZE COURT  
NEWPORT BEACH, CA 92657

Business: SERVEE'S BUSINESS ADDRESS WAS NOT KNOWN AT TIME OF SERVICE.

- 08/04/2005 08:10pm Attempted service at the given address, found this to be a gated complex. There is an intercom at the gate. The subjects name appear on the gate directory. No answer received at the intercom, no access available.
- 08/05/2005 07:20am Tried residence, no access available. No answer over the intercom.
- 08/06/2005 02:54pm Followed another car onto the property, Found there is another gate to the front of the home. There is an intercom at the gate. No answer at the intercom, No other access to the front door available. No answer received at the neighbors unit.
- 08/07/2005 07:24pm Followed a car onto the property. Received an answer at the intercom, spoke with tenant, who confirmed this is the "O'Shaughnessy" residence, however they refused to open the front gate or come out for service. Unable to see inside the residence. No visual of the tenants inside the home.  
Checked with the local phone directory, no phone listing found.
- 08/08/2005 07:05am Tried the given residence, no access available. No one was observed entering or leaving the property.

(Continued on Next Page)

ARI RAMRAS, Bar No.: 018887  
HAWKINS/E-Z MESSENGER LEGAL-SUPPORT  
65 EAST PENNINGTON STREET  
TUCSON, AZ 85701  
(800) 264-8436 Ref. No.: 00891501-02 (012)  
Attorney for: RAMRAS LAW OFFICES

ARIZONA SUPERIOR COURT MARICOPA COUNTY

Plaintiff: OPPELMAN  
Defendant: LOGSDON

No.: 4V2005-01194  
Declaration Regarding Diligence

Hearing Date: 08/19/2005 Time: 09:45am Dept./Div.:

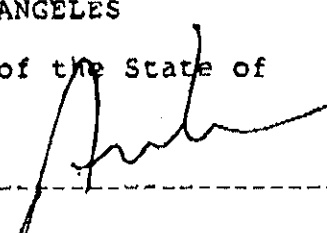
Person Serving:  
A. CHAYRA  
ALSSI (12)  
7124 Owensmouth Ave., #106  
Canoga Park, CA 91303  
Tel: (818) 763-6931

Fee for Service:  
(recoverable per C.C.P. 1033.5(B))  
Registered California process servers.  
Independent contractor, registered  
Registration No.: 3587  
County: LOS ANGELES

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

Date: 08/08/2005

Signature: \_\_\_\_\_

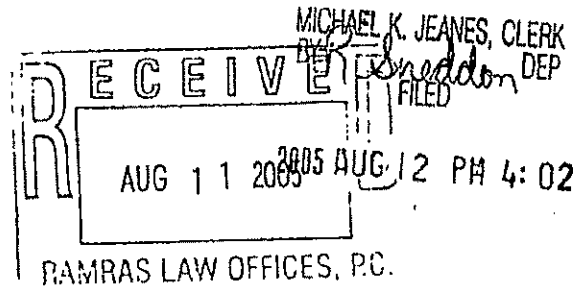


Jud. Coun. form, rule 982(a)(23)

DECLARATION REGARDING DILIGENCE



David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs



SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,

Plaintiffs,

vs.

Jeff Logsdon; et. al.,

Defendants.

No. CV2005-011949

ACCEPTANCE OF SERVICE OF PROCESS

(Assigned to the Honorable Ruth H. Hilliard)

I, David C. Tierney, Sacks Tierney PA, attorney for Jeff and Kirsten Logsdon and James and Sara O'Shaughnessy, Defendants in the above-entitled matter, hereby accept and acknowledge receipt of a copy of Plaintiffs' Complaint, Summons, Certificate on Compulsory Arbitration, Application for Order to Show Cause, and Order to Show Cause in the above-entitled matter. My acceptance of said pleadings shall constitute service of process on said Defendants, as of this date, I being duly authorized to accept service of said documents on their behalf.

DATED: August 10, 2005

SACKS TIERNEY PA

By:

*David C. Tierney*

David C. Tierney  
Attorney for Defendants

David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

FILED  
8-17-05 1:54 pm  
MICHAEL K. JEANES, Clerk  
By [Signature]  
Gilbert, Deputy

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,  
  
Plaintiffs,  
  
vs.  
  
Jeff Logsdon; et. al.,  
  
Defendants.

No. CV2005-011949  
  
ORDER

Pursuant to motion and good cause appearing, it is ordered that Plaintiffs may serve the Complaint, Summons, Certificate on Compulsory Arbitration, Application for Order to Show Cause, and Order to Show Cause on Defendants James and Sara O'Shaughnessy by leaving copies thereof with the gate attendant of their residence at 9 Firenze Court, Newport Beach, California. Pursuant to Rule 4.1(m) ARCP, the summons and the above pleadings, as well as this Order, shall also be mailed to the above address.

DATED: 8/16/05

[Signature]  
Honorable Ruth H. Hilliard

David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

**FILED**  
8-17-05 1:52pm  
MICHAEL K. JEANES, Clerk  
By [Signature]  
L. Gilbert, Deputy

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,  
  
Plaintiffs,  
  
vs.  
  
Jeff Logsdon; et. al.,  
  
Defendants.

No. CV2005-011949  
  
ORDER

Pursuant to motion and good cause appearing, it is ordered that Plaintiffs may serve the Complaint, Summons, Certificate on Compulsory Arbitration, Application for Order to Show Cause, and Order to Show Cause on Defendants Jeff and Kirsten Logsdon by leaving copies thereof with the gate attendant of their residence at 897 Anaconda Court, Castle Rock, Colorado. Pursuant to Rule 4.1(m) ARCP, the summons and the above pleadings, as well as this Order, shall also be mailed to the above address.

DATED: 8/16/05

[Signature]  
Honorable Ruth H. Hilliard

MICHAEL K. JEANES  
Clerk of the Superior Court

By LESLIE JURY, Deputy  
Date 08/18/2005 Time 09:15 AM  
Description Qty Amount  
CASE# CV2005-011949  
CIVIL SEPARATE ANS 001 191.00  
TOTAL AMOUNT 191.00  
Receipt# 00007258229

1 David C. Tierney (No. 002385)  
2 Stephen E. Traverse (No. 019616)  
3 SACKS TIERNEY P.A.  
4 4250 N. Drinkwater Blvd., 4th Floor  
5 Scottsdale, AZ 85251-3693  
6 Telephone: (480) 425-2600  
7 Attorneys for Defendants LOGSDON et al.

8 SUPERIOR COURT OF ARIZONA  
9 MARICOPA COUNTY

10 VICTOR OPPLEMAN; and RODNEY  
11 JOFFE,

No. CV2005-011949

12 Plaintiffs,

13 vs.

**ANSWER, COUNTERCLAIM (WITH  
ADDITIONAL DEFENDANTS ADDED)**

(Hon. Ruth H. Hilliard)

14 JEFF LOGSDON and KIRSTIN  
15 LOGSDON, husband and wife; JAMES  
16 O'SHAUGHNESSY and SARA  
17 O'SHAUGHNESSY, husband and wife;  
18 MAINNERVE, INC., a Delaware  
19 corporation,

20 Defendants.

21 JEFF LOGSDON and KIRSTIN  
22 LOGSDON, husband and wife; JAMES  
23 O'SHAUGHNESSY and SARA  
24 O'SHAUGHNESSY, husband and wife;  
25 MAINNERVE, INC., a Delaware  
26 corporation,

27 Defendants / Counterclaimants,

28 vs.

...

...

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 VICTOR OPPLEMAN and SASHA  
2 KUCZYNSKI OPPLEMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

11 Plaintiffs /Counterdefendants.

12 For their Answer herein, Defendants admit, deny, and allege as follows:

13 **INTRODUCTION**

14 1. There is no deadlock on the Board of Defendant MainNerve, Inc., and the  
15 affairs of the corporation are being handled well and expeditiously. Former directors and  
16 shareholders, the Plaintiffs, and on information, others are attempting to misappropriate  
17 technology belonging to MainNerve, Inc.; are seeking to impair MainNerve, Inc.'s  
18 operations in violation of their fiduciary duties; and seek to disable MainNerve, Inc. for  
19 personal profit. MainNerve, Inc. is a successful corporation with gross revenues of over  
20 \$100,000 per month for the last seven months. It is not insolvent.

21 **JURISDICTION AND VENUE**

22 2. As to Paragraph 1 of the July 27, 2005 Complaint, the Defendants see no  
23 relevance in the reference in Paragraph 1 of the Complaint to Article 14 of the Constitution  
24 of Arizona. That article contains many references to corporations but none of the sections  
25 relate to jurisdiction and venue or the power of the courts when a receivership is attempted  
26 to be imposed. Defendants agree that this matter is properly before this Superior Court  
27 under A.R.S. § 12-123(B), a general jurisdiction statute, but Defendants affirmatively  
28 allege that the powers of this Court are strictly as defined in A.R.S. §§ 10-1430 and 1432  
related to receiverships ancillary to requests for dissolution of corporations due to a claim  
of deadlock on the Board of Directors, which statutes are nowhere referred to in the  
Plaintiffs' July 27, 2005 Complaint.

1 3. Concerning Paragraph 2 of the Complaint, venue is admitted to be proper in  
2 Maricopa County, Arizona.

3 4. The allegations of Paragraph 3 are admitted but Defendants affirmatively  
4 allege that Rodney Joffe is, and has been at all relevant times, married to Robyn Joffe and  
5 that both are residents of Paradise Valley, Maricopa County. Defendants further allege that  
6 Victor Oppelman is, and has been at all relevant times, married to Sasha Kuczynski  
7 Oppleman and, on information and belief, both are residents of Cave Creek, Arizona,  
8 Maricopa County. Because both listed male Plaintiffs are married, their spouses are  
9 necessary parties to this action under Rule 19 of the Arizona Rules of Civil Procedure and,  
10 therefore, in the Counterclaim, they are added as additional Defendants on Counterclaim.

11 5. The allegations as to Defendants Logsdon and O'Shaughnessy's current  
12 marital status in Paragraphs 4 and 5 are admitted. They are residents of Colorado and  
13 California, respectively.

14 6. As to Paragraphs 6 and 7, the allegations as to the State of incorporation of  
15 MainNerve, Inc. are admitted. MainNerve, Inc. does have its principal place of business in  
16 Phoenix, Maricopa County. Defendants affirmatively allege that MainNerve, Inc. was  
17 incorporated in 2001 by O'Shaughnessy, Logsdon, and Oppelman to do work in the  
18 telecommunications and Internet areas.

19 **BACKGROUND ALLEGATIONS**

20 7. The allegations of Paragraph 8 are admitted except as to the portion that  
21 asserts the purposes of the three Defendants informing MainNerve, Inc. Those purposes  
22 stated are denied as they are too narrowly stated. The purpose was to create a company that  
23 would provide a living for the three shareholders. Mr. Logsdon and Mr. O'Shaughnessy  
24 were to get service business and to keep the company operating concerning that service  
25 business, for which Victor Oppleman was to produce some invention that the company  
26 could develop.

27 8. The allegations of Paragraph 9 are denied (as management was equally  
28 divided), and it is affirmatively alleged that, in the first 9 months of the existence of

1 MainNerve, Inc., the company's essentially only activity consisted of a very large  
2 consulting contract (obtained for the company by Jim O'Shaughnessy). The company was  
3 at the time providing consulting services exclusively in Denver, Colorado. All three  
4 directors and shareholders signed contractor agreements with MainNerve, Inc., which  
5 agreements governed whether inventions they might conceive would be property of  
6 MainNerve, Inc.

7 9. Concerning the allegations of Paragraphs 9 and 10, Defendants affirmatively  
8 allege that, after a series of disputes between O'Shaughnessy and Oppelman, Oppelman  
9 turned MainNerve, Inc. in a new direction, as a Phoenix-based services supplier.  
10 O'Shaughnessy was forced to cease serving as a contractor at the company and then to  
11 resign as a director as of May 2002, but retained his stock interest in the corporation which  
12 he had been instrumental in founding. As of June 2002, it is admitted that the stock in  
13 MainNerve, Inc. was held: 33-1/3% in O'Shaughnessy, 33-1/3% in Logsdon, and 33-1/3%  
14 in Oppelman. Oppelman had only recently moved to the Phoenix area (Cave Creek) and he  
15 insisted that the locale for the corporation's offices and records become Phoenix.

16 10. Defendants affirmatively allege, on information and belief, that Oppelman  
17 had used as his personal lawyer (during the initial period of MainNerve, Inc.'s existence)  
18 Attorney Martin Jannol of Santa Monica, California. On information and belief, Mr. Jannol  
19 represented MainNerve, Inc., a closely held corporation, and therefore had a fiduciary  
20 relationship with the three shareholders of MainNerve, Inc. During a portion of June, 2002  
21 through November 2003 approximately, Oppelman insisted that Oppelman and Logsdon  
22 take no salary or fees from MainNerve, Inc.; that Oppelman's friends (Jesse Dunagan,  
23 James Willett and Zachary Kanner) be employed and paid by MainNerve, Inc.; that  
24 Oppelman's wife and his sister be placed on MainNerve, Inc.'s payroll. Oppelman formed  
25 a new company ("Packet Interrogation, Inc.") as of February 21, 2003 in which Oppelman  
26 held a majority interest.

27 ...

28 ...

1 11. Defendants affirmatively allege that, on or about October 1, 2003, Oppelman  
2 threatened Logsdon that Oppelman would leave MainNerve, Inc. and would destroy the  
3 corporation if Logsdon did not sign a "Voting Agreement," **Exhibit A** hereto.

4 12. Although the "Voting Agreement" was executed, breaches of contract by  
5 Oppelman and breaches of fiduciary duties by Oppelman constituted a breach of the  
6 "Voting Agreement" such that Logsdon's performance thereunder was excused, rendering  
7 the Voting Agreement void as a practical matter and of no effect shortly thereafter. The  
8 "Voting Agreement" was authored by Mr. Jannol, in violation of his fiduciary duty to  
9 Logsdon and O'Shaughnessy (which fiduciary duty resulted from Mr. Jannol's  
10 representation of a closely held corporation, and thus, each of its three stockholders).

11 13. Accordingly, the allegations of Paragraphs 12 and 13 are denied.

12 14. The allegations of Paragraph 14 are denied for a lack of information on which  
13 to admit them.

14 15. The allegations of Paragraph 15 are denied though Defendants admit that  
15 Rodney Joffe (an old friend of Oppelman) and Eric Miles were voted onto the Board of  
16 Directors of MainNerve, Inc. as (approximately) November 30, 2003 and were issued some  
17 common stock therein. The Board of MainNerve, Inc. (represented by Mr. Jannol) required  
18 Joffe and Miles to sign directorship agreements with MainNerve, Inc., which agreements  
19 governed whether inventions they might conceive, would be the property of MainNerve,  
20 Inc. *See Exhibit B* for the November 30, 2003 Directorship Agreement signed by Rodney  
21 Joffe.

22 16. The allegations of Paragraph 16 are denied. Defendants affirmatively allege  
23 that, while a MainNerve, Inc. shareholder and director, Joffe suggested to Oppelman an  
24 idea whereby large Internet network users could guard against hackers and thieves by  
25 utilizing certain hardware, software, and an intelligence feed to interrogate, redirect and  
26 block Internet electronic traffic "packets" so as to enhance the security of the networks  
27 (hereafter "the Joffe idea" or "Joffe's idea").  
28



1 17. Concerning Paragraph 17, the allegations are denied. Defendants  
2 affirmatively allege that Oppelman thereafter claimed Joffe's idea as being Oppelman's  
3 idea. Although Oppelman realized that both Oppelman and Joffe had fiduciary duties  
4 toward MainNerve, Inc. regarding these corporate opportunities belonging to MainNerve,  
5 Inc., Oppelman believed that Joffe's idea had great merit and wanted to avoid its becoming  
6 property of MainNerve, Inc. because O'Shaughnessy was still a shareholder in MainNerve,  
7 Inc. Accordingly, Oppelman (using Mr. Jannol as his attorney to advise Oppelman)  
8 strategized as to how Oppelman could develop the Joffe idea while making it seem to  
9 belong to Packet Interrogation, Inc., rather than to MainNerve, Inc.

10 18. Oppelman and Joffe began using computers and equipment belonging to  
11 MainNerve, Inc. and using engineers and draftsmen who were on MainNerve, Inc.'s payroll  
12 to refine and develop the Joffe idea. Essentially, all expenses "incurred" by Packet  
13 Interrogation, Inc. regarding the development of the Joffe idea were paid by MainNerve,  
14 Inc., and such expenses came to total \$720,000 by approximately June 2005.

15 19. The allegations of Paragraph 18 are denied. It is affirmatively alleged that  
16 Packet Interrogation, Inc., had been formed by Oppelman (using Mr. Jannol) on February  
17 21, 2003 and was intended for other purposes, not for Joffe's later idea. It was an  
18 afterthought of Oppelman to try to "route" the Joffe idea (which was property of  
19 MainNerve, Inc.) into Packet Interrogation, Inc. It is true that Oppelman and Jannol  
20 arranged for Logsdon to acquire a 35% interest in the stock of Packet Interrogation, Inc.,  
21 without consideration.

22 20. The allegations of Paragraph 19 are denied. It is affirmatively alleged that  
23 Logsdon objected to the "hijacking" of MainNerve, Inc.'s property by Packet Interrogation,  
24 Inc. However, Oppelman controlled the MainNerve, Inc. engineers, because Logsdon was  
25 "on the road" doing marketing of MainNerve, Inc.'s thriving service business. Logsdon  
26 was essentially unaware how Oppelman was using MainNerve, Inc.'s engineers during  
27 their on-the-payroll time at MainNerve, Inc. to work on the Joffe idea, brazenly being  
28 claimed by Oppelman to belong to Packet Interrogation, Inc.

1           21. The allegations of Paragraph 20 are denied. No such board meeting  
2 considered the hijacking of the MainNerve, Inc. property to Packet Interrogation, Inc., and  
3 the activities of the MainNerve, Inc. engineers were effectively concealed from Logsdon  
4 (and from Miles) by Joffe and Oppelman.

5           22. The allegations of Paragraph 21 are denied because of a lack of information  
6 on which to admit them. Defendants affirmatively allege that MainNerve, Inc.'s computers  
7 and personnel and funds were improperly used by Joffe, Oppelman, and engineers of  
8 MainNerve, Inc. whom Joffe and Oppelman had conscripted.

9           23. The allegations of Paragraph 22 are denied. The events as they actually  
10 occurred and their sequence are as alleged above in this Answer.

11           24. Regarding Paragraphs 23 and 24, the allegations are denied. Defendants  
12 affirmatively allege that Joffe and Oppelman sought some way to have MainNerve, Inc.  
13 ratify the appearance of Packet Interrogation, Inc., having invented and developed the Joffe  
14 idea, and Joffe and Oppelman conceived the idea of having MainNerve, Inc. sign a license  
15 agreement (drafted by Mr. Jannol) which would ratify and recognize Packet Interrogation,  
16 Inc. as the owner and licensor of the Joffe idea, which idea was owned by MainNerve, Inc.  
17 and had been developed with resources of MainNerve, Inc. Using Mr. Jannol to represent  
18 them, Joffe and Oppelman hoped to make MainNerve, Inc. serve as a marketing arm for  
19 valuable technology which they wanted to have MainNerve, Inc. ratify as being the  
20 property of Packet Interrogation, Inc., so as to thereby exclude O'Shaughnessy from  
21 ownership or control of the Joffe idea.

22           25. Concerning Paragraph 25, the allegations are denied. Using Mr. Jannol as  
23 their lawyer, now working for Joffe, Oppelman, and Packet Interrogation, Inc., and against  
24 the interests of MainNerve, Inc., Logsdon and O'Shaughnessy, Joffe and Oppelman created  
25 a license agreement designed to terminate MainNerve, Inc.'s ownership rights in the Joffe  
26 idea, designed to advantage Packet Interrogation, Inc., and designed to economically  
27 benefit Oppelman / Joffe and to harm MainNerve, Inc. and Logsdon/ O'Shaughnessy.  
28

1           26. The license agreement, though prepared by Joffe/Oppelman/Jannol, was  
2 objected to vigorously by MainNerve, Inc., Board members Logsdon and Miles as an  
3 improper document, and one contrary to the interests of MainNerve, Inc. Concerning  
4 Paragraph 26, the allegations are denied. The “deterioration” of the relationship between  
5 Logsdon and Oppelman was due to Oppelman (and Joffe) breaches of Oppelman/Joffe  
6 fiduciary duties toward MainNerve, Inc. and Logsdon continually objected to the actions of  
7 Oppelman/Joffe. Accordingly, at that time, there developed a deadlock among the then  
8 Board members of MainNerve, Inc., as Oppelman/Joffe continued to demand the execution  
9 of the improper license agreement to advantage themselves and Packet Interrogation, Inc.

10           27. The allegations of Paragraphs 27 and 28 are admitted and the resignation of  
11 Oppelman as an officer of MainNerve, Inc. was received on March 1, 2005.

12           28. The allegations of Paragraph 29 are denied. Whatever “conclusion” each of  
13 the individual members of the four-man Board of Directors may have individually come to,  
14 there never was any Board meeting noticed or held so as to make a Board of Directors’  
15 decision for MainNerve, Inc., regarding the proposed license agreement.

16           29. The allegations of Paragraph 30 are admitted and the allegations of Paragraph  
17 31 are also admitted. The special meeting of shareholders (in advance of a noticed meeting  
18 of Board members) is expressly permitted by Title 8 of the Delaware Code, Section 211,  
19 and by §1.9 of the MainNerve, Inc.’s Bylaws. That section states that a majority of  
20 Shareholders can, without notice, meet and reform the Board and then tell a minority  
21 Shareholder thereafter. At the time of the March 3, 2005 morning shareholders meeting,  
22 Logsdon owned 48,400 shares of common shares and O’Shaughnessy owned 25,000  
23 additional shares. Thus, together, Logsdon/O’Shaughnessy owned 58.1% of the  
24 MainNerve, Inc. stock. Being a majority of Shareholders, they were entitled to hold a  
25 special meeting to reform the Board of Directors, removing Joffe and Miles. The “Voting  
26 Agreement” presented no impediment to Logsdon so acting, because Oppelman had  
27 repeatedly breached his fiduciary duties toward the corporation and thus had breached  
28

1 implied terms within the Voting Agreement, which breach excused Logsdon from any  
2 further performance under the Voting Agreement.

3 30. The allegations of Paragraph 32 are admitted. Oppleman was expressly given  
4 access to financial and corporate information until recently, as stated in paragraph 35  
5 below.

6 31. Concerning Paragraph 33, the allegations are denied.  
7 Joffe/Oppelman/Packet Interrogation, Inc. and Ultra DNS, Inc. (corporations involving  
8 Joffe), and Dino Capital, Inc. and White Hat Consulting, Inc. have hired away MainNerve,  
9 Inc. engineers and other employees, ones whom they previously had co-opted to work on  
10 Joffe's idea while the engineers were being paid at MainNerve, Inc. MainNerve, Inc.  
11 currently has 17 employees, both engineers and sales people. MainNerve, Inc. does service  
12 work for:

- 13 a. Salt River Project
- 14 b. Maricopa County Community Colleges
- 15 c. E-Funds
- 16 d. DHL Worldwide Express
- 17 e. APS
- 18 f. Pinnacle West Capital Corp.
- 19 g. The Washington Post
- 20 h. John C. Lincoln Hospital

21 and many other large companies.

22 32. Concerning Paragraph 34, the allegations are admitted as there have been  
23 "settlement" efforts since October 2004, among the parties but those settlement  
24 negotiations are privileged and are not proper to put before the Court.

25 33. The allegations of Paragraph 35 are denied but it is admitted that settlement  
26 negotiations were under way on May 25, 2005.

27 34. As regards Paragraphs 36 and 37, the allegations are denied. Defendants  
28 admit that, the Board of Directors (as it had been properly reformed on March 2, 2005) held

1 a meeting on May 25, 2005, which meeting was noticed (Oppelman refused to attend) and  
2 duly held. At that meeting, a minor readjustment of the stockholdings was acted upon. The  
3 events of that meeting did not alter the fact that Oppelman had been owner of slightly less  
4 than 40% of the MainNerve, Inc. stock before the May 25, 2005 meeting (Miles and Joffe  
5 owned a few shares) and Oppelman owned slightly less of the stock after the May 25, 2005  
6 meeting was held. Oppelman has, at all relevant times, owned less than 38.7% of the  
7 MainNerve, Inc. stock.

8 35. Concerning Paragraph 38, the allegations are denied. Oppelman (for Packet  
9 Interrogation, Inc.) had hired away from MainNerve, Inc. several of its employees (though  
10 Oppelman was a MainNerve, Inc. shareholder when he "raided" MainNerve, Inc.'s  
11 employees). Oppelman sought from Logsdon information about MainNerve, Inc.  
12 employees and strategy some time in July, 2005. At that time, since Oppelman had refused  
13 to say why he wanted the information on MainNerve, Inc. employees, and since Oppelman  
14 had already acted adversely to MainNerve, Inc.'s interests as regards the employees of  
15 MainNerve, Inc., Logsdon refused to give Oppelman sensitive information about the  
16 corporation and employees, which would assist Oppelman in further harming MainNerve,  
17 Inc. However, financial and other information on the corporation had always previously  
18 been provided to Oppelman, as stated in paragraph 30 above.

19 36. Concerning Paragraph 39, the allegations are denied. Defendants admit that,  
20 following revelations as to the Joffe and Oppelman violations of their fiduciary duties  
21 toward MainNerve, Inc. and following exposure of the damages done by Joffe and  
22 Oppelman to MainNerve, Inc., the MainNerve, Inc. shareholders meeting of July 26, 2005  
23 removed Oppelman from the MainNerve, Inc. Board of Directors.

24 37. All allegations of the General Allegations not already fully and specifically  
25 admitted above are hereby denied.

26 ...  
27 ...  
28 ...

**FIRST CLAIM FOR RELIEF**

(Declaratory Relief)

38. Concerning Paragraph 40, the Defendants hereby reallege all their responses to the incorporated paragraphs, expressly including all affirmative allegations.

39. Concerning Paragraph 41 and the first sentence of Paragraph 42, the allegations are admitted as an actual justiciable controversy exists between Plaintiffs and Defendants.

40. However, as to the subparagraphs (a) and (b) of Paragraph 42, these allegations are denied. The actual controversy is as to whether:

a. Shareholder-former director Oppelman breached his fiduciary duties toward MainNerve, Inc., the Logsdons, and the O'Shaughnessys (as explained above) and whether that series of breaches made void the "Voting Agreement" and has provided cause for the removal of Oppelman as a director and the award of damages against Oppelman.

b. The Joffe idea which Joffe/Oppelman sought to "hijack" and convert to property of Packet Interrogation, Inc. is property of MainNerve, Inc.

c. Shareholder-former director Joffe breached his fiduciary duties toward MainNerve, Inc., the Logsdons, and the O'Shaughnessys (as explained above) and whether that series of breaches made void the "Voting Agreement" and has provided cause for the removal of Joffe as a director and the award of damages against Oppelman.

41. The allegations of Paragraph 43 are denied as Rule 19 of Ariz.R.Civ.P. requires the joinder of the wives of the Plaintiffs and of Packet Interrogation, Inc. and Martin Jannol, Esq., in order for there to be a full adjudication of the rights of Defendants and Plaintiffs.

42. All allegations of the First Claim for Relief which are not already fully and specifically admitted above are hereby denied.

43. The claims of the Plaintiffs under the Voting Agreement and the Articles and Bylaws and employment/contractor agreements arise under contract or implied contract. Plaintiffs in their claims for relief assert an entitlement to attorneys' fees (apparently under

1 A.R.S. § 12-341.01) and, accordingly, Defendants are entitled to an award of their  
2 reasonable attorneys' fees under A.R.S. § 12-341.01.

3 44. As a first and separate affirmative defense to the Complaint, Defendants  
4 allege that Plaintiffs seek an equitable remedy (declaratory relief) but have failed to do  
5 equity themselves, have come before the Court with unclean hands, and are therefore not  
6 entitled to any relief.

7 45. As a second and separate affirmative defense to the Complaint, Defendants  
8 show that Oppelman seeks to enforce a contract (the Voting Agreement) but, because of his  
9 prior breach of that agreement, he is not entitled to assert rights under the agreement.

10 WHEREFORE, Defendants pray that the Court add as additional parties Mrs. Joffe,  
11 Ms. Oppleman, Packet Interrogation, Inc., Martin Jannol, and Mrs. Martin Jannol (as  
12 shown in the Counterclaim below) and then enter its Declaratory Judgment declaring the  
13 rights and duties of the parties to the Voting Agreement, the employment agreements, and  
14 the Articles and Bylaws of MainNerve, Inc., and as stated in Paragraph 40(a)(b) and (c) of  
15 this Answer. Defendants further request that they be awarded their reasonable attorneys'  
16 fees and their taxable court costs, plus such other, further, and different relief as the Court  
17 deems just in the circumstances.

18 **SECOND CLAIM FOR RELIEF**

19 (Receivership)

20 46. Concerning Paragraph 48, the Defendants hereby reallege all their responses  
21 to the incorporated paragraphs, expressly including all affirmative allegations.

22 47. As regards Paragraph 45, the allegations are denied.

23 a. The only directors currently on the Board of Directors of MainNerve,  
24 Inc. are Logsdon and O'Shaughnessy and they are not in deadlock nor are they "divided";

25 b. The affairs of MainNerve, Inc. are being efficiently and expeditiously  
26 administered day to day by a unanimous Board of Directors;

27 c. Votes of the Board of Directors of MainNerve, Inc. have been and are  
28 occurring and there is unanimity. Were Oppelman a director (which he has not been since

1 July 26, 2005), there might be dissent but there would not be stalemate nor “deadlock” as  
2 he would be in the minority.

3 d. The stockholders are not “unable to terminate” any “division” of the  
4 Board because there is no “division.” There are only two Directors, Logsdon and  
5 O’Shaughnessy; there is no “division” or “deadlock” on the Board, and the Stockholders  
6 meetings of March 2, 2005 and July 26, 2005 properly and legally resulted in the Board of  
7 Directors as being only those two members among whom there is no deadlock.

8 48. Concerning Paragraph 46 of the Complaint (alleging the insolvency of  
9 MainNerve, Inc.), the allegations are denied. MainNerve, Inc. is solvent, meeting its debts  
10 and obligations as they come due, and is owed some \$720,000 wrongfully diverted to  
11 Packet Interrogation, Inc. related to development of the Joffe idea. Further, MainNerve,  
12 Inc. just did \$208,750 in new business during July and the first 10 days of August, 2005  
13 (despite Oppelman/Joffe’s slander and interference with advantageous business  
14 relationships of MainNerve, Inc.) and is a strong and commercially viable entity.

15 49. All allegations of the Second Claim for Relief which are not already fully and  
16 specifically admitted above are hereby denied.

17 50. The claims of the Plaintiffs under the Voting Agreement and the Articles and  
18 Bylaws and employment/contractor agreements arise under contract or implied contract.  
19 Plaintiffs in their claims for relief assert an entitlement to attorneys’ fees (apparently under  
20 A.R.S. § 12-341.01) and, accordingly, Defendants are entitled to an award of their  
21 reasonable attorneys’ fees under A.R.S. § 12-341.01.

22 51. As a first and separate affirmative defense to the Complaint, Defendants  
23 allege that Plaintiffs seek an equitable remedy under a specific Arizona statute A.R.S. § 10-  
24 1432 (the corporate code), but have failed to plead or show or substantiate the required  
25 elements under §§ 1432 and 1430 to qualify for this Court’s appointment of a receiver.  
26 Such failure is a bar to the claims of Plaintiffs in this action.

27 52. As a second and separate affirmative defense to the Complaint, Defendants  
28 allege that Plaintiffs seek an equitable remedy (appointment of a receiver) but have failed



1 to do equity themselves; have come before the Court with unclean hands, and are therefore  
2 not entitled to any relief.

3 53. In the event that any receiver were to be appointed, such would damage the  
4 affairs of MainNerve, Inc., which operates a technical services business serving clients in  
5 the volatile field of Homeland Security and, accordingly, this Court would have to require  
6 a \$7.5 million bond of any receiver.

7 **COUNTERCLAIM**

8 54. Defendants / Counterclaimants hereby incorporate the allegations of the  
9 July 27, 2005 Complaint, but only as those allegations have been altered by the terms of the  
10 foregoing Answer, and especially by the affirmative statements and the affirmative  
11 statements set out above.

12 55. This Counterclaim requires that the wives of the Plaintiffs be added as  
13 additional Defendants on Counterclaim. In each instance, the individual male Plaintiffs  
14 were married to their spouses at all times relevant to the alleged events set out below.

15 56. Likewise, this Counterclaim requires that Martin Jannol, Jane Doe Jannol and  
16 Packet Interrogation, Inc. (a purported Delaware corporation, reputedly owned by  
17 Defendant-Counterclaimant Logsdon and Plaintiff-Counterdefendant Oppelman and their  
18 respective wives) be added as an additional Defendant on Counterclaim. The Jannols are  
19 residents of California, and were married to one another at all times relevant hereto. Packet  
20 Interrogation, Inc. purports to be a Delaware corporation, but, in fact, it is the alter-ego of  
21 Oppelman. Packet Interrogation, Inc. has no independent existence and no economic  
22 substance (its charter has been revoked), and to recognize it as a legal entity would be to  
23 cause a fraud upon the Court and a fraud upon those who have dealt with it.

24 57. On information and belief, Vostrom, Inc., formerly known as MainNerve  
25 Capital, Inc., is a Delaware corporation owned by Mr. and Mrs. Oppelman. Additional  
26 Defendants on counterclaim are John Does 1-10, persons (or entities) to which Oppelman /  
27 Joffe have, on information and belief, moved property of MainNerve, Inc., and co-  
28 conspirators who are assisting Oppelman / Joffe in defrauding MainNerve, Inc.

1 58. All events related to this Counterclaim occurred within Maricopa County,  
2 Arizona.

3 **FIRST CLAIM FOR RELIEF**

4 (Breach of Fiduciary Duty)

5 59. The foregoing allegations are incorporated in this Claim for Relief as if here  
6 set out in full.

7 60. The actions of Oppelman and Joffe constitute breaches of their fiduciary  
8 duties toward MainNerve, Inc., the O'Shaughnessys, and the Logsdons.

9 61. The actions of Oppelman, Vostrom, Inc., fka MainNerve Capital, Inc., and  
10 Joffe as regards their creation and development of the Joffe idea as if it were a property of  
11 Packet Interrogation, Inc. (while using MainNerve, Inc.'s resources) and concealing from  
12 the O'Shaughnessys and the Logsdons the consumption of those resources constitutes fraud  
13 upon the Defendants / Counterclaimants.

14 62. Oppelman, Vostrom, Inc., fka MainNerve Capital, Inc., Joffe, and Packet  
15 Interrogation, Inc.:

- 16 a. made representations,
- 17 b. intended such be relied upon,
- 18 c. knowing that they were false,
- 19 d. with the likelihood that damages would result,
- 20 e. and with reliance resulting on the misrepresentations,
- 21 f. and with actual damages resulting from that reliance,
- 22 g. all of which was done for personal profit and to harm MainNerve, Inc.

23 and the individual Defendants / Counterclaimants.

24 63. The resulting damage to and effects upon MainNerve, Inc. are continuing still  
25 today as Oppelman, Joffe, and Packet Interrogation, Inc. make fraudulent representations to  
26 customers, employees, and vendors of MainNerve, Inc. in an effort to disable and harm  
27 MainNerve, Inc.

28

1           64. Defendants / Counterclaimants have repeatedly advised Oppelman and Joffe  
2 that their fraud and breaches of fiduciary duty are harming MainNerve, Inc. but Oppelman  
3 and Joffe have persisted, willfully seeking to harm MainNerve, Inc. so as to silence those  
4 who would expose their bad acts.

5           65. Packet Interrogation, Inc. has been unjustly enriched by its claiming to own  
6 the technology (the Joffe idea), which is property of MainNerve, Inc.

7           66. The actions by Packet Interrogation, Inc., Vostrom, Inc., fka MainNerve  
8 Capital, Inc., Oppelman, Joffe, and John Does 1-10 have created, and are creating  
9 irreparable and immediate injury to MainNerve, Inc., and the Defendants /  
10 Counterclaimants have no speedy and adequate remedy at law.

11           67. Oppelman, Vostrom, Inc., fka MainNerve Capital, Inc., Joffe, Packet  
12 Interrogation, Inc., and John Does 1-10 have acted and conspired with each other to harm  
13 MainNerve, Inc., the O'Shaughnessys and the Logsdons such that the imposition of  
14 punitive damages is warranted under Arizona law.

15           68. The actions of Plaintiffs-Counterdefendants Oppelman, Vostrom, Inc., fka  
16 MainNerve Capital, Inc., Joffe, and their co-conspirators, Packet Interrogation, Inc. and  
17 John Does 1-10, constitute a breach of contract and Defendants / Counterclaimants are  
18 entitled to their reasonable attorneys' fees under A.R.S. § 12-341.01.

19           WHEREFORE, Defendants / Counterclaimants the O'Shaughnessys, the Logsdons,  
20 and MainNerve, Inc. pray for the following relief against Counterdefendants:

21           A. A permanent injunction requiring that Packet Interrogation, Inc., Oppelman,  
22 Vostrom, Inc., fka MainNerve Capital, Inc., and Joffe cease interfering with the business of  
23 MainNerve, Inc.

24           B. Damages in such amount as are shown at trial resulting from the breach of  
25 fiduciary duties by the Joffes and the Oppelmans and Vostrom, Inc., fka MainNerve  
26 Capital, Inc.

27  
28

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
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SCOTTSDALE, ARIZONA 85251-1693

1 C. Damages in such amount as are shown at trial resulting from the actions of  
2 Packet Interrogation, Inc., John Does 1-10, and the Jannols for their conspiratorial role in  
3 assisting Oppelman and Joffe in their breaches of fiduciary duties.

4 D. Punitive and exemplary damages against the Oppelmans and the Joffes.

5 E. Attorneys' fees and taxable costs against all Counterdefendants.

6 F. Such other, different, and further relief as the Court deems just in the  
7 circumstances.

8 **SECOND CLAIM FOR RELIEF**

9 (Fraud)

10 69. The foregoing allegations are incorporated in this Claim for Relief as if here  
11 set out in full.

12 70. The fraud committed upon MainNerve, Inc., the O'Shaughnessys and the  
13 Logsdons has resulted in damages estimated at \$8 million, and the damage is increasing.

14 WHEREFORE, Defendants / Counterclaimants the O'Shaughnessys, the Logsdons,  
15 and MainNerve, Inc. pray for the following relief against Counterdefendants:

16 A. Damages in such amount as are shown at trial resulting from the breach of  
17 fiduciary duties and fraud by the Joffes and the Oppelmans and Vostrom, Inc., fka  
18 MainNerve Capital, Inc.,

19 B. Damages in such amount as are shown at trial resulting from the actions of  
20 Packet Interrogation, Inc. and John Does 1-10 for their conspiratorial role in assisting  
21 Oppelman and Joffe in their breaches of fiduciary duties and fraud.

22 C. Punitive and exemplary damages against the Oppelmans and the Joffes.

23 D. Attorneys' fees and taxable costs against all Counterdefendants.

24 E. Such other, different, and further relief as the Court deems just in the  
25 circumstances.

26 ...

27 ...

28 ...

**THIRD CLAIM FOR RELIEF**

(Slander and Libel)

71. The foregoing allegations are incorporated in this Claim for Relief as if here set out in full.

72. Oppelman, Joffe, and Packet Interrogation, Inc. have made false statements about Defendants / Counterclaimants to vendors, employees, and customers of MainNerve, Inc.

73. The statements made were known to be false when made, intentionally made to harm the business of MainNerve, Inc., and caused damages to MainNerve, Inc.

WHEREFORE, Defendants / Counterclaimants the O'Shaughnessys, the Logsdons, and MainNerve, Inc. pray for the following relief against Counterdefendants:

A. Damages in such amount as are shown at trial against the Joffes and the Oppelmans.

B. Damages in such amount as are shown at trial resulting from the actions of Packet Interrogation, Inc. and John Does 1-10 for their conspiratorial role in assisting Oppelman and Joffe in their breaches of fiduciary duties, slander, and libel of MainNerve, Inc.

C. Punitive and exemplary damages against the Oppelmans and the Joffes.

D. Attorneys' fees and taxable costs against all Counterdefendants.

E. Such other, different, and further relief as the Court deems just in the circumstances.

**FOURTH CLAIM FOR RELIEF**

(Tortious Interference with Advantageous Business Relationship)

74. The foregoing allegations are incorporated in this Claim for Relief as if here set out in full.

75. Oppelman, Joffe, Vostrom, Inc., fka MainNerve Capital, Inc., John Does 1-10, and Packet Interrogation, Inc. have by word and act interfered intentionally and

1 tortiously with the advantageous business relationships which MainNerve, Inc. has enjoyed  
2 with employees, vendors, and customers.

3 76. Damages have resulted to MainNerve, Inc. from the wrongful actions of  
4 Counterdefendants.

5 WHEREFORE, Defendants / Counterclaimants the O'Shaughnessys, the Logsdons,  
6 and MainNerve, Inc. pray for the following relief against Counterdefendants:

7 A. Damages in such amount as are shown at trial resulting from the actions of  
8 the Joffes, Vostrom, Inc., fka MainNerve Capital, Inc., and the Oppelmans.

9 B. Damages in such amount as are shown at trial resulting from the actions of  
10 Packet Interrogation, Inc., and John Does 1-10 for their conspiratorial role in assisting  
11 Oppelman and Joffe in their interference with MainNerve, Inc.'s advantageous business  
12 relations.

13 C. Punitive and exemplary damages against the Oppelmans and the Joffes.

14 D. Attorneys' fees and taxable costs against all Counterdefendants.

15 Such other, different, and further relief as the Court deems just in the circumstances.

16 **FIFTH CLAIM FOR RELIEF**

17 (Breach of Contract)

18 77. The foregoing allegations are incorporated in this Claim for Relief as if here  
19 set out in full.

20 78. Oppelman (through Vostrom, Inc., fka MainNerve Capital, Inc.,) and Joffe  
21 breached their contractor and directorship agreements with MainNerve, Inc.

22 79. Damages to MainNerve, Inc. have occurred and are continuing to occur.

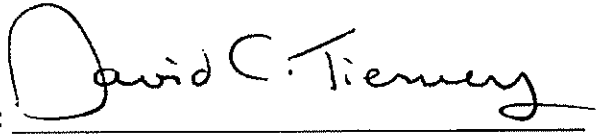
23 80. The actions of Plaintiffs / Counterdefendants Oppelmans, Vostrom, Inc., fka  
24 MainNerve Capital, Inc., and Joffes constitute a breach of contract and Defendants /  
25 Counterclaimants are entitled to their reasonable attorneys' fees under A.R.S. § 12-341.01.

26 WHEREFORE, Defendants / Counterclaimants the O'Shaughnessys, the Logsdons,  
27 and MainNerve, Inc. pray for the following relief against Counterdefendants:  
28

- 1 A. Damages in such amount as are shown at against the Joffes and the  
2 Oppelmans and Vostrom, Inc., fka MainNerve Capital, Inc.,  
3 B. Attorneys' fees and taxable costs against the Joffes and the Oppelmans; and  
4 C. Such other, different, and further relief as the Court deems just in the  
5 circumstances.

6 DATED this 18th day of August, 2005.

7 SACKS TIERNEY P.A.

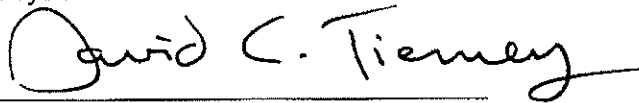
8  
9 By: 

10 David C. Tierney  
11 Stephen E. Traverse  
12 Attorneys for Defendants / Counterclaimants

13  
14 COPY OF THE FOREGOING and the attached Exhibits  
15 (Bylaws, Employment Agreements, and Meeting Minutes)  
HAND-DELIVERED this 18th day of August, 2005, to:

16 Hon. Ruth H. Hilliard  
17 Maricopa County Superior Court  
201 W. Jefferson Street  
18 Phoenix, Arizona 85003-2205

19 David N. Ramras, Esq.  
20 Ari Ramras  
21 Ramras law Offices, P.c.  
5060 N. 40th Street, Suite 103  
22 Phoenix, Arizona 85018  
Attorneys for Plaintiffs

23 

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VERIFICATION

*Colorado*  
STATE OF ARIZONA }  
*Douglas* } ss  
County of Maricopa

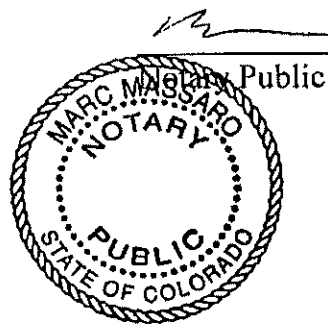
I, JEFF LOGSDON, being first duly sworn upon his oath, deposes and says:

- 1. I am one of the Defendants in the above-captioned cause of action.
- 2. I have read the foregoing Answer-Counterclaim and Third-Party Complaint, know the contents thereof and that the information contained therein is true and accurate to my knowledge, information and belief.

*[Signature]*  
JEFF LOGSDON

SUBSCRIBED AND SWORN TO before me this 15 day of August, 2005 by  
JEFF LOGSDON.

My Commission Expires: 2-19-07





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VERIFICATION


STATE OF ARIZONA }  
County of Maricopa } ss

I, JAMES O'SHAUGHNESSY, being first duly sworn upon his oath, deposes and says:

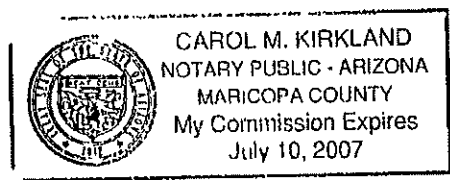
- 1. I am one of the Defendants in the above-captioned cause of action.
- 2. I have read the foregoing Answer-Counterclaim and Third-Party Complaint, know the contents thereof and that the information contained therein is true and accurate to my knowledge, information and belief.

  
JAMES O'SHAUGHNESSY

SUBSCRIBED AND SWORN TO before me this 16 day of August, 2005 by JAMES O'SHAUGHNESSY.

  
Notary Public

My Commission Expires:  
7/10/2007



# **EXHIBIT A**

## VOTING AGREEMENT

THIS VOTING AGREEMENT (this "Agreement"), by and among MainNerve, Inc. (the "Company"), the undersigned holders of the Company's Common Stock (collectively, the "Holders" and individually, each a "Holder") is entered into on this 5<sup>th</sup> day of November, 2003.

**WHEREAS**, the Holders collectively currently own a majority of the stock of the Company;

**WHEREAS**, the Holders desire to: (i) avoid disputes between them that would disrupt the successful management and control of the Company and (ii) provide for continuity of the Company's direction and management; and

**WHEREAS**, the parties hereto have indicated their willingness to enter into this Agreement upon the terms and conditions set forth below.

### **NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

1. Agreement to Vote. The Holders agree to vote all of the shares of common stock of the Company now owned or hereafter acquired by them in accordance with the provisions of this Agreement.
2. Board Size. Each of the Holders shall vote all of their shares of common stock to ensure that the size of the Company's Board of Directors shall consist of four (4) directors and the size of the Board may be subsequently increased by unanimous consent of the Board.
3. Election of Directors. On all matters relating to the election of the directors, each of the Holders shall vote all of their shares of common stock to ensure that the Victor Oppleman and Jeff Logsdon are each elected to a seat on the Company's Board of Directors ("Management Directors").
4. Independent Directors. On all matters relating to the election of any remaining directors (the "Independent Directors"), the Holders agree to vote their common stock for such additional director(s) as may from time to time be recommended by Victor Oppleman and Jeff Logsdon. No Independent Director(s) shall be an officer or employee of the Company.
5. Compensation Committee. The parties hereto hereby agree to use their best efforts to cause the Board of Directors to form and to maintain at all times a compensation committee, which shall consist of at least one Independent Director, and which committee will have the sole authority to approve stock option grants by the Company and salaries and other compensation paid to the Company's officers.

Signature Page to Voting Agreement

6. Director Benefits. The Independent Directors will be accorded treatment no less favorable than the treatment accorded any other non-employee director of the Company with respect to all matters, including, without limitation, expense reimbursement, grants of stock or stock options, benefits and access to Company information and management.

7. Votes Requiring Unanimous Holder Approval. Until such time as this Agreement has either terminated or been revoked, the Holders agree either (i) to vote the same way on the matters set forth below, or (ii) if they cannot agree, then to abstain from voting:

(a) Amend the Articles of Incorporation of the Company in a manner that alters or changes the rights, preferences or privileges of this Agreement;

(b) Authorize or issue, or obligate the Company to issue, any other equity security (including any security convertible into or exercisable for any equity security);

(c) Effect any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Company (or any of its subsidiaries formed in the future), or any consolidation or merger or any other transaction that involves the Company or any of its subsidiaries, in which in excess of 50% of the Company's voting power is transferred, or any other event that would constitute a liquidation of the Company;

(d) Effect any voluntary liquidation, dissolution or recapitalization of the Company, or become the subject of any insolvency, bankruptcy or reorganization proceeding;

(e) Make payment to any officer, director or stockholder in respect of any promissory note or any other obligation arising outside the ordinary course of the Company's business;

(h) Increase the number of shares available for issuance upon the grant of any options, warrants or rights, or adopt any option plan, stock appreciation plan, phantom stock plan or other arrangement involving equity-based compensation;

(i) Materially change the line of business of the Company from the current line of business; or

(j) Increase or decrease of the compensation package paid to management.

**Signature Page to Voting Agreement**

7. Successors in Interest.

(a) The provisions of this Agreement shall be binding upon the successors in interest to any securities of the Company held by any party to this Agreement and their successors and assigns. The Company shall not permit the transfer of any of the securities on its books or issue new certificates representing any such securities unless and until the person(s) to whom such shares are to be transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a party hereunder.

(b) Each certificate representing each of the securities shall bear a legend reading as follows:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO THE TERMS OF A VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED WITHOUT CHARGE FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF THE VOTING AGREEMENT."

8. Termination. This Agreement shall terminate upon the earlier of:

(a) The date the Company consummates the sale of the Company's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), at a price per share not less than \$100 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate proceeds to the Company (before deduction for underwriters' discounts and expenses relating to the issuance, including without limitation fees of the Company's counsel) of which exceed \$10,000,000; or

(b) November 1, 2012.

9. Amendments and Waivers. Any term hereof may be amended and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of (a) the Company, and (b) the Holders and their respective successors and assigns, holding at least a majority of the shares of common stock held by the Holders and their respective successors and assigns. Any amendment or waiver so effected shall be binding upon the Company, the Holders and all of their respective successors and assigns regardless of whether such party, assignee or other stockholder entered into or approved such amendment or waiver.

10. Enforceability/Severability. The parties agree that the voting rights and agreements made hereunder shall constitute a proxy coupled with an interest. The parties hereto agree that each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall nevertheless be held to be prohibited by or invalid under applicable law, (a) such provision shall be invalid only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and (b) the parties shall, to the extent permissible by applicable law, amend this Agreement, so as to make effective and enforceable the intent of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to contracts among Delaware residents entered into and to be performed entirely within Delaware.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Successors and Assigns. The provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinabove first written.

**COMPANY:**

**HOLDERS:**

MainNerve, Inc.

By:

  
Victor Oppleman, President

  
Victor Oppleman

By:

  
Jeff Logsdon, Secretary

  
Jeff Logsdon

# **EXHIBIT B**

## DIRECTORSHIP AGREEMENT

This Directorship Agreement is made on November 30, 2003 between MainNerve, Inc. (the "Company") and Rodney Joffe ("Joffe").

1. The Company retains Joffe as an independent contractor, and Joffe accepts retention as such effective November 30, 2003 through November 30, 2005 (the "Term"). Joffe shall serve as a member of the Board of Directors ("Directorship Services"). Joffe's Directorship Services shall not exceed 10 hours per month. Directorship Services will be rendered on an "as requested" basis comparable both to other members of the Board of Directors and may be fulfilled via telephone. Directorship Services will be performed to the best of Joffe's ability in a professional manner and quality consistent with similar positions.

2. a. As consideration for the Directorship Services, Joffe shall receive a grant of 1500 shares of common stock pursuant to the terms of the Directorship Notice of Grant hereto as Exhibit 1 ("Grant Shares") provided Joffe remains a Director as of each of the vesting dates set forth in the Directorship Notice of Grant or has not been terminated for Misconduct or for Good Reason. The Directorship Grant shall vest in accordance with the terms of the Directorship Notice of Grant.

b. If Joffe voluntarily terminates the Directorship Services or the Company terminated his Directorship Services for Misconduct, his rights to further vesting in the Notice of Stock Grant shall terminate and the unvested shares shall be retired. Notwithstanding the foregoing, Joffe's Grant Shares shall vest immediately if this Agreement or his services as member of the Board of Directors is terminated by Joffe based on Good Reason or is terminated by the Company for reasons other than Misconduct. "Misconduct" shall mean: (i) commission by Joffe of a felony or of any criminal act involving moral turpitude; (ii) deliberate or continual refusal of Joffe to perform duties reasonably requested by the Company; (iii) fraud, embezzlement or misrepresentation of written submissions to the Company by Joffe; (iv) material violation of the Federal securities laws by Joffe or any violation of Federal Securities laws that results in material harm to the business, financial condition or reputation of the Company; (v) gross misconduct or gross negligence in connection with the business of the Company (or of a subsidiary); (vi) habitual abuse of narcotics or alcohol. "Good Reason" shall mean the termination of this Agreement by Joffe following a breach of this Agreement by the Company if such Breach shall not have been corrected by the Company within 30 days of receipt by the Board of Directors of written notice from Joffe of the occurrence of such breach (which notice shall be given no more than 60 days following the knowledge of Joffe of such occurrence), which notice shall specifically set forth the nature of the breach which is the reason for such resignation and identify such occurrence as a "breach"



## DIRECTORSHIP AGREEMENT

under this Agreement.

3. Joffe shall also be reimbursed for costs advanced by in the performance of any assignment provided that such expenses are reasonable in amount, incurred for the benefit of the Company and supported by itemized accounting and expense receipts in accordance with the Company's expense reimbursement policy. Joffe shall render a suitable invoice to the Company reflecting the expenses incurred. Payment shall be due and payable 30 days thereafter.

4. Joffe's legal relationship established by this agreement is that of independent contractor and not that of an employee. Except as provided in Paragraph 3, Joffe shall also pay any and all costs incurred in the performance of this agreement except as provided above. Such costs include, but are not limited to, all taxes, all insurance (including but not limited to health insurance), automobile expenses, all professional dues, supplies (other than small quantities of office supplies available in the Company's office and used for purposes of completing assignments for the Company). Joffe will be responsible for his own payroll, FICA, FUTA, SDI, federal and state withholding taxes, and any and all other taxes relating to services rendered under this Agreement, and will hold the Company harmless from any of the above-described taxes. The Company shall use its best efforts to acquire and maintain at least \$250,000.00 in directors and officers liability insurance by no later than December 31, 2003.

5. The Company shall be able to terminate this Agreement without notice if Joffe has defaulted on any of his obligations or is otherwise in breach of this Agreement. Upon termination, all files and records developed by Joffe for the benefit of the Company and all other files and records of the Company will remain the property of the Company and any and all copies will be returned at the time of termination.

6. In performing the duties required hereunder, Joffe, his agents and employees will have access to various confidential, proprietary information belonging to the Company and treated as trade secrets, including, but not limited to, certain engineering methods, software development, customers, customer and lead lists, proposal opportunities, proposal techniques, customer needs, customer contact persons, cost and pricing methods and techniques, profit margins, suppliers and vendors ("Trade Secrets"). Notwithstanding anything to the contrary, excluded from the definition of Trade Secrets are data and information that : (i) is or becomes generally known in the relevant trade or available in the public domain; (ii) is in the possession of the receiving party prior to receipt from the disclosing party; (iii) is received by the receiving party from a third party who, to receiving party's knowledge, is not obligated

## DIRECTORSHIP AGREEMENT

to the disclosing party with respect to the Confidential Information; or (iv) is developed independently by the receiving party, provided that the person or persons developing the same have not had access to the Confidential Information of the disclosing party. By signing this agreement, Joffe agrees that he and his agents and employees will not at any time use or disclose the Trade Secrets without prior written consent of the Company other than within the course and scope of his duties under this agreement. Joffe and his agents and employees will (i) use all Trade Secrets solely for the benefit of the Company and not use or disclose, directly or indirectly, the Trade Secrets in any other connection; (ii) keep the Trade Secrets confidential and secret; (iii) keep all books, documents, records and other writings separately marked and identified as confidential and used solely on the Company's premises or under circumstances reasonably designed to assure their secrecy and safekeeping. If Joffe or his agents or employees violate the terms of this paragraph 6, notwithstanding any rights or remedies specified in this agreement or under the Uniform Trade Secrets Act, the Company will have the right to institute and maintain an action in a court of law to enjoin and/or otherwise restrict the use and dissemination of the Trade Secrets. Joffe agrees that it is the Company's express intent to obtain the maximum amount of protection of its Trade Secrets as may be obtained under the law. This restriction of this paragraph shall not apply to information in the public domain through no fault of Joffe or information rightfully obtained from a third party with no restrictions on subsequent disclosure.

7. The parties acknowledge that Joffe is engaged in activities for persons and entities other than the Company that might lead to the development of intellectual properties. Notwithstanding the foregoing, all rights in all works prepared or performed by Joffe and his agents and employees pursuant to this Agreement for the benefit of the Company, including copyrights and patents applicable to any intellectual property developed shall belong exclusively to the Company as "works made for hire" whether under 17 U.S.A. §101 or other applicable law. Joffe and his agents and employees warrant and represent that to their knowledge any materials provided to the Company by Joffe or his agents or employees shall not contain any material that belongs to another person or entity or whose use is protected under law. Joffe will be solely responsible for ensuring that any materials provided solely by Joffe for use by the Company satisfy this requirement and agree to hold the Company harmless from any and all liability or loss, including reasonable attorneys' fees, resulting from Joffe's failure to perform this duty.

8. Except for breaches of Paragraph 6 and 7 of this agreement, any dispute arising out of or related to this agreement will be resolved

DIRECTORSHIP AGREEMENT

by binding arbitration before a single arbitrator in Phoenix, Arizona. The arbitrator will apply Arizona substantive law and will have the power to award any legal and equitable remedy, excluding punitive damages. The prevailing party in the arbitration will recover its reasonable attorneys' fees and the costs of the arbitration in addition to other relief. All right to a trial by jury in any litigation is waived.

9. This Agreement may be executed in counterparts. If so, it will be construed as one agreement and will be effective upon execution by both parties. A facsimile signature shall be deemed an original signature for all purposes. This Agreement contains the entire agreement and understanding concerning its subject matter and supersedes and replaces all prior and contemporaneous negotiations and agreements between the parties, whether written or oral. Except as expressly provided above, no amendment, modification or change to this Agreement shall be binding unless set forth in a writing duly executed by all parties to be bound or affected by such amendment, modification or change. Each party cooperated in drafting this Agreement. No provision of this Agreement shall be construed against a party based on any claim the party drafted the provision or caused an uncertainty as to any provision. Any person signing this agreement has authority to enter into this agreement on behalf of himself or herself or on behalf of any entity.

MainNerve, Inc.

BY

JOFFE:

ORIGINAL

David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

MICHAEL K. JEANES, CLERK  
BY *K. Sneddon* DEP  
FILED

2005 AUG 12 PM 4:02

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; and Rodney Joffe,

Plaintiffs,

vs.

Jeff Logsdon and Kirsten Logsdon, husband and wife; James O'Shaughnessy and Sara O'Shaughnessy, husband and wife; MainNerve, Inc., a Delaware corporation,

Defendants.

No. CV 2005-011949

ORDER TO SHOW CAUSE

**NOTE: THIS IS A RETURN DATE ONLY  
TIME LIMIT: 15 MINUTES  
COUNSEL MUST NOTIFY THE COURT  
IF MORE TIME IS NECESSARY**

Good cause appearing from the Complaint, Application for Order to Show Cause, and Affidavit of Victor Oppleman, and pursuant to Rule 6(d), A.R.C.P.

**IT IS ORDERED** that you, Defendants Jeff and Kirsten Logsdon, and James and Sara O'Shaughnessy, appear at the time and place designated below, and show cause why the immediate relief should not be given which is requested in the Complaint and in the Application for Order to Show Cause, the original of which has been filed with the Clerk of this Court, and a true copy of which shall be served upon you, along with a true copy of this Order to Show Cause, by the party seeking the relief.

**BEFORE WHOM APPEARANCE TO BE MADE:**

**RUTH H. HILLIARD**  
Judge of the Superior Court

**DATE AND TIME OF APPEARANCE:**

August 19, 2005 at 9:45 A.M.

**PLACE OF APPEARANCE:**

201 W. Jefferson, Courtroom 402  
Phoenix, AZ 85003

IT IS FURTHER ORDERED that a true copy of this Order to Show Cause and a true copy of the Complaint, Application for Order to Show Cause, and the Affidavit on which it is based, shall be served upon the parties who are required to appear.

DONE IN OPEN COURT this 27 day of July, 2005.



**JUDGE OF THE SUPERIOR COURT**

**RUTH H. HILLIARD**  
Judge of the Superior Court

MICHAEL A. JEANES, CLERK  
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DOCUMENT DEPOSITORY  
2005 AUG 11 PM 12:26

IN THE ARIZONA SUPERIOR COURT  
STATE OF ARIZONA  
COUNTY OF MARICOPA

CLIENT FILE NO.

VICTOR OPPLEMAN  
vs  
JEFF LOGSDON

FILED  
BY R. SNEDDON, DEP

CASE NO. CV2005-011949  
JUDGE HILLIARD  
HEARING DATE: 08/19/05 @ 9:45 am

STATE OF ARIZONA )  
COUNTY OF MARICOPA )

AFFIDAVIT OF SERVICE

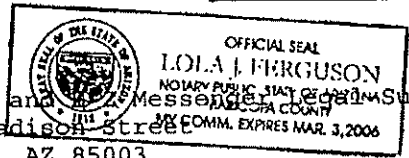
THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and an Officer of the Court. On 08/08/05 I received the CIVIL SUMMONS; COMPLAINT; CERTIFICATE ON COMPULSORY ARBITRATION; ORDER TO SHOW CAUSE; APPLICATION FOR ORDER TO SHOW CAUSE; AFFIDAVIT;

from RAMRAS LAW OFFICES, P.C.  
by DAVID N. RAMRAS and  
in each instance I personally served a copy of each document listed above upon:  
JEFF LOGSDON

on 08/09/05 at 2:50 pm at 2150 E. HIGHLAND  
PHOENIX, ARIZONA 85016 MARICOPA COUNTY  
in the manner shown below:  
in person.

Description: CAU, Male, Approx. 45 yrs. of age, 6' 0" tall, Weighing 185lbs.,  
BROWN Eyes, BLONDE Hair,

Michael Munson Affiant  
MICHAEL MUNSON, Affiant  
Subscribed and sworn to before me the Aug 10, 2005  
Lola J. Ferguson Notary  
My Commission expires: 03/03/2006



Hawkins and Messinger Legal Support Providers, LLC  
10 W. Madison Street  
Phoenix, AZ 85003  
(602) 258-8081 FAX: (602) 258-8864

SERVICE OF PROCESS	\$	16.00
MILES	7	\$ 16.80
AFFIDAVIT/NOTARY FEE	\$	10.00
TOTAL	\$	42.80

ORIGINAL

INV. # 894435 7355 10

MICHAEL K. JEANES, CLERK  
BY *L. J. J.* DEP  
FILED

2005 AUG 18 AM 9:17

1 David C. Tierney (No. 002385)  
2 Stephen E. Traverse (No. 019616)  
3 SACKS TIERNEY P.A.  
4 4250 N. Drinkwater Blvd., 4th Floor  
5 Scottsdale, AZ 85251-3693  
6 Telephone: (480) 425-2600  
7 Attorneys for Defendants LOGSDON et al.

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**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

VICTOR OPPLEMAN; and RODNEY JOFFE,

Plaintiffs,

vs.

JEFF LOGSDON and KIRSTIN LOGSDON, husband and wife; JAMES O'SHAUGHNESSY and SARA O'SHAUGHNESSY, husband and wife; MAINNERVE, INC., a Delaware corporation,

Defendants.

No. CV2005-011949

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MEMORANDUM AND APPLICATION FOR ORDER TO SHOW CAUSE**

(Return Date only scheduled for Monday, August 19, 2005 at 9:45 a.m.)

(Hon. Ruth H. Hilliard)

JEFF LOGSDON and KIRSTIN LOGSDON, husband and wife; JAMES O'SHAUGHNESSY and SARA O'SHAUGHNESSY, husband and wife; MAINNERVE, INC., a Delaware corporation,

Defendants /Counterclaimants,

vs.

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...

...

...

...

...

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 VICTOR OPPELMAN and SASHA  
2 KUCZYNSKI OPPELMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

Plaintiffs / Counterdefendants.

10 **OPPOSITION TO APPLICATION FOR ORDER TO SHOW CAUSE**

11 1. **INTRODUCTION**

12 Plaintiffs, having unsuccessfully tried to bulldoze Defendants, now apply for a  
13 receiver for MainNerve, Inc., a corporation from which shareholders and former directors  
14 Oppelman and Joffe have stolen intellectual property. Joffe and Oppelman have breached  
15 their fiduciary duties toward MainNerve, Inc., have used the assets of MainNerve, Inc. to  
16 create a product in an Oppelman-created corporation (Packet Interrogation, Inc.), and have  
17 attempted to defraud the Logsdons, the O'Shaughnessys and MainNerve, Inc.

18 The July 27, 2005 Complaint and Application for Order to Show Cause are brought  
19 by Plaintiffs under A.R.S. §§ 10-1430 and 1432 concerning receiverships ancillary to  
20 corporate dissolutions. However, the Complaint and Application never cite to (and do not  
21 comply with) the statutory requirements concerning dissolutions or receiverships.

22 No temporary restraining order and no preliminary injunction is sought in the  
23 Plaintiffs' Application for Order to Show Cause. Because there is a Counterclaim against  
24 shareholders and former directors, the Oppelmans and the Joffes, because extensive  
25 discovery will be needed from Plaintiffs and from third parties, because there is a  
26 Counterclaim for Plaintiffs and others to reply to, and Initial Disclosure due before October  
27 25, 2005, this Court should not issue the requested Order to Show Cause before a date in  
28 January-February 2006, at the earliest.



1 2. Some Key Facts.

2 As MainNerve, Inc. was being created by three good friends in 2001,  
3 O'Shaughnessy procured a very large consulting contract for MainNerve, Inc. in the  
4 telecommunications field. For some 9 months, the corporation and its principals were  
5 wholly involved in orchestrating the turn-around of that client, a corporation located in  
6 Denver, Colorado.

7 Disputes between O'Shaughnessy and Oppelman in mid-2002 led to O'Shaughnessy  
8 resigning as a MainNerve, Inc. director, remaining as a one-third shareholder, but turning  
9 to other endeavors for his day-to-day work.

10 From June 2002 through November 2003, Oppelman filled the payroll roster of  
11 MainNerve, Inc. with old friends and family as Logsdon was occupied in sales efforts.

12 On November 5, 2003, Logsdon was asked to sign a "Voting Agreement." The  
13 Voting Agreement was later voided and made ineffective by Oppelman's (and Joffe's)  
14 breaches of fiduciary duties toward MainNerve, Inc.

15 When Oppelman formed Packet Interrogation, Inc., his own separate company on  
16 February 21, 2003, Logsdon protested. Oppelman had done so (Logsdon thought) in order  
17 to move corporate opportunities out of MainNerve, Inc. into Oppelman's separate company  
18 in which O'Shaughnessy owned no interest. Oppelman gave Logsdon some stock in  
19 Packet Interrogation, Inc. in an attempt "to shut Logsdon up."

20 In early 2004, Joffe brought to Oppelman an idea for an invention in the Internet  
21 security field.

22 Joffe was then a director and shareholder of MainNerve, Inc. He and Oppelman had  
23 fiduciary duties (and directorship agreement and contractor contract obligations) toward  
24 MainNerve, Inc. These obligations were all broken as Joffe and Oppelman schemed how  
25 they could divert the Joffe idea into Packet Interrogation, Inc., thereby harming MainNerve,  
26 Inc., the O'Shaughnessys, and the Logsdons.

27 . . .

28 . . .

1 In a series of moves between early 2004 and July 2005, Oppelman and Joffe seized  
2 MainNerve, Inc.'s employees and other assets and diverted them to develop the Joffe idea  
3 as if it belonged to Packet Interrogation, Inc. If they had fully succeeded, they would have  
4 done great damage to MainNerve, Inc.

5 Logsdon "woke up" when, in August 2004, Oppelman brought pressure on Logsdon  
6 and Miles (two of four MainNerve, Inc. directors) to approve a License Agreement  
7 between MainNerve, Inc. and Packet Interrogation, Inc. If such had been done,  
8 MainNerve, Inc. would have thereby ratified Packet Interrogation, Inc.'s theft of  
9 MainNerve, Inc.'s property, the Joffe idea. By October 2004, Miles (another director of  
10 MainNerve, Inc.) had begun challenging the idea of a License Agreement with Packet  
11 Interrogation, Inc.

12 Since Logsdon and Miles would not agree to the deceptive License Agreement,  
13 Oppelman and Joffe grew angry. Thereafter, Logsdon and O'Shaughnessy WHO  
14 TOGETHER OWNED ESSENTIALLY 58.1% of the MainNerve, Inc.'s stock rebelled,  
15 REPLACED the four-man Board of MainNerve, Inc. with themselves on March 2, 2005,  
16 AS SHAREHOLDERS ARE EXPRESSLY ALLOWED TO DO per MainNerve, Inc.'s  
17 Bylaws (§ 1.9 quoted in the Answer at Paragraph 29).

18 From that point on (March 2, 2005 forward), there has been no deadlock in the  
19 MainNerve, Inc. Board of Directors.

20 The affairs of MainNerve, Inc. are run expeditiously and efficiently. The company  
21 earned \$208,750 in services business in the last 6 weeks (approximately), and has many  
22 service contracts with:

- 23 a. Salt River Project
- 24 b. Maricopa County Community College
- 25 c. E-Funds
- 26 d. DHL Worldwide Express
- 27 e. APS
- 28 f. Pinnacle West Capital Corp

1 g. The Washington Post

2 h. John C. Lincoln Hospital

3 and many others, which contracts it is fulfilling and billing on each month.

4 MainNerve, Inc., contrary to the allegations in the middle of page 7 of the  
5 Application for Order to Show Cause, IS NOT INSOLVENT. It pays its debts as they  
6 come due and is as successful as it is profitable.

7 Joffe and Oppelman have hijacked intellectual property owned by MainNerve, Inc.  
8 into Packet Interrogation, Inc. They have breached their duties toward (and have  
9 defrauded) MainNerve, Inc.

10 Joffe and Oppelman have deliberately and falsely alleged a deadlock and insolvency  
11 of MainNerve, Inc. hoping to get a receiver appointed in order to attempt to gain a business  
12 advantage.

13 3. The Law.

14 Plaintiffs assume, without support, that the question whether an Arizona court  
15 should appoint a receiver over a foreign corporation conducting operations in Arizona is  
16 governed by the law of the foreign state (here, Delaware). Plaintiffs are wrong.

17 In the first place, Plaintiffs misread the Delaware statutes on which they themselves  
18 rely. Those statutes do not vest power in this court, or in any court outside the State of  
19 Delaware – nor, of course, do the Delaware statutes even purport to do so. The statutes  
20 state, in pertinent part, only that “the Court of Chancery” – a Delaware court – may appoint  
21 a receiver when the statutory conditions are met. An Arizona court, however, obviously  
22 receives its power and authority from the Arizona legislature, not from the legislatures of  
23 foreign states.

24 Equally important, even if Plaintiffs were suing in Delaware, the Delaware Court of  
25 Chancery itself would have no power under Delaware law to appoint a receiver in this  
26 instance. Both of the statutes cited in Plaintiffs’ application enable the Delaware court to  
27 appoint a receiver only when the corporation is insolvent:

28

1 The Court of Chancery . . . may appoint 1 or more persons to be  
2 custodians, and, if the corporation is insolvent, to be receivers, of and  
3 for any corporation when . . . (2) The business of the corporation is  
4 suffering or is threatened with irreparable injury because the directors  
5 are so divided respecting the management of the affairs of the  
6 corporation that the required vote for action by the board of directors  
7 cannot be obtained and the stockholders are unable to terminate this  
8 division. 8 Del. Code § 226 (emphasis added).

9 Whenever a corporation shall be insolvent, the Court of  
10 Chancery . . . may . . . appoint 1 or more persons to be receivers of and  
11 for the corporation. 8 Del. Code § 291 (emphasis added).

12 In order for a corporation to be declared “insolvent” under Delaware law, it must be  
13 shown that the corporation “has either (1) a deficiency of assets below liabilities with no  
14 reasonable prospect that the business can be successfully continued in the face thereof, or  
15 (2) an inability to meet maturing obligations as they fall due in the ordinary course of  
16 business”. Production Resources Group, LLC v. NCT Group, Inc., 863 A.2d 772, 782  
17 (Del. Ch. 2004).

18 Plaintiffs do not and cannot meet this burden. Certainly their bald assertion that the  
19 corporation is insolvent “upon information and belief” does not meet their burden. And, as  
20 a matter of fact, their application is utterly bereft of any evidence to support a conclusion  
21 that MainNerve, Inc. is “insolvent” using the Delaware test or any other. On the contrary,  
22 MainNerve, Inc. unquestionably is solvent: the corporation’s assets far exceed its  
23 liabilities, and it is fully able to meet its maturing obligations as they fall due. For these  
24 reasons, Plaintiffs are not entitled to the appointment of a receiver over MainNerve, Inc.,  
25 even if their application were governed by Delaware law – which it is not.

26 Applying Arizona law – the correct law in this instance – it is clearer still that  
27 Plaintiffs are not entitled to the appointment of a receiver. In Arizona, a court may appoint  
28 a receiver under A.R.S. § 12-1241, or (ancillary to dissolution proceedings) under A.R.S. §  
10-1432.

The first of these statutes, Section 12-1241, states in pertinent part that “[t]he  
superior court or a judge thereof may appoint a receiver to protect and preserve property or

1 the rights of parties therein”. The Arizona Supreme Court has interpreted this statute as  
2 permitting the appointment of receivers only when “in [the court’s] opinion a receiver is  
3 necessary for the protection and preservation of [corporate] property”. Wingfoot California  
4 Homes Co. v. Valley Nat’l Bank of Phoenix, 248 P.2d 738, 739 (Ariz. 1952) (emphasis  
5 added). And receivership is such a drastic remedy that the requisite “necessity” is typically  
6 premised only on the most outrageous states of affairs. In Wingfoot, for example, there  
7 was evidence that the defendant corporation’s only assets were 43 residential properties on  
8 which the plaintiff bank held mortgages whose balances far exceeded the value of the  
9 properties; and that the corporation was several months behind on its monthly payments  
10 under the notes, yet was pocketing rents which could have brought the notes current. See  
11 also United Sanders Stores, Inc. v. Messick, 6 P.2d 430 (Ariz. 1931), where corporate  
12 assets similarly were being depleted, in fraud of the corporation’s preferred stockholders.  
13 But a mere showing that some of the shareholders disagree with corporate management on  
14 one or two points – which at best is all that Plaintiffs’ application amounts to – is never  
15 enough to justify the appointment of a receiver.

16 The second Arizona statute under which a receiver may be appointed, A.R.S. § 10-  
17 1432, applies only “in a judicial proceeding brought to dissolve a corporation”. Plaintiffs’  
18 application does not clearly state that a decree of dissolution is being sought in this action,  
19 although they apparently do want the court to appoint a receiver “to liquidate its affairs and  
20 distribute its assets” (Complaint, p. 10). In any event, Article 3 of Title 10 – “Judicial  
21 Dissolution” – has application only to the judicial dissolution of Arizona corporations.  
22 A.R.S. § 10-140(14). Because MainNerve, Inc. is a Delaware corporation, the Arizona  
23 judicial dissolution statutes can have no application here. Rather, if Plaintiffs really are  
24 seeking a decree of judicial dissolution, they should be suing in Delaware under the  
25 Delaware judicial dissolution statutes.

26 But even if the Arizona judicial dissolution statutes had any application here,  
27 Plaintiffs’ application would have to be denied. Under Arizona law, judicial dissolution  
28

1 may be ordered (over an Arizona corporation) only under at least one of the following  
2 circumstances:

- 3 1. The directors are deadlocked in the management of the corporate  
4 affairs, the shareholders are unable to break the deadlock and  
5 irreparable injury to the corporation is threatened or being suffered  
6 or the business and affairs of the corporation cannot be conducted to  
7 the advantage of the shareholders generally because of the deadlock.
- 8 2. The directors or those in control of the corporation have acted, are  
9 acting or will act in a manner that is illegal, oppressive or fraudulent.
- 10 3. The shareholders are deadlocked in voting power and have failed for  
11 a period that includes at least two consecutive annual meeting dates  
12 to elect one or more directors.
- 13 4. The corporate assets are being wasted, misapplied or diverted for  
14 noncorporate purposes.

15 A.R.S. § 10-1430(B). Plaintiffs' application includes no evidence that any of these  
16 circumstances have occurred, are occurring, or are threatened.

17 MainNerve's two-member board was properly elected under the corporation's  
18 bylaws, and the board is not deadlocked; on the contrary, the board is managing the  
19 corporation's affairs to the point that the corporation is earning more than \$100,000 per  
20 month. Nor is there any evidence (nor does Plaintiffs' application even claim) that the two-  
21 member board have engaged, are engaging, or will engage in "illegal, oppressive or  
22 fraudulent" conduct; on the contrary, as shown in the materials supporting this opposition,  
23 the board has acted to end the illegal, oppressive and fraudulent acts of the two Plaintiffs.  
24 Nor is there any evidence or claim that the shareholders of MainNerve are deadlocked,  
25 much less that they have failed to elect any directors over a 2-year period. Nor is there any  
26 evidence of corporate waste or other misapplication or diversion of corporate assets; on the  
27 contrary, defendants Logsdon and O'Shaughnessy have ended the Joffe / Oppleman rape of  
28 MainNerve and their diversion of MainNerve's assets into Packet Interrogation, Inc.

1 Delaware’s judicial dissolution statute permits the Court of Chancery to dissolve a  
2 Delaware corporation “for abuse, misuse or nonuse of its corporate powers, privileges or  
3 franchises”, and “to make such other orders and decrees with respect thereto as shall be just  
4 and equitable respecting its affairs and assets and the rights of its stockholders and  
5 creditors”. 8 Del. Code § 284(a), (b). This broadly worded test is not materially different  
6 from Arizona’s, and even applying Delaware law, there is no basis for a judicial dissolution  
7 of MainNerve – much less for the appointment of a receiver.

8 In short, whether the court applies Delaware law or Arizona law, Plaintiffs cannot  
9 meet their burden to demonstrate any basis for the appointment of a receiver over  
10 MainNerve.

11 4. The Schedule for the Court.

12 MainNerve, Inc. and the four individual defendants have only just answered (and  
13 counterclaimed). The Reply to Counterclaim will not be filed until approximately  
14 September 10, 2005. The Initial Disclosure will occur approximately October 20, 2005,  
15 assuming replies by all Counterdefendants are timely. See **Exhibit A** hereto.

16 There may be third parties (outside the litigants) who have papers that will show the  
17 bad acts of Oppelman and Joffe. The records of Oppelman and Joffe (and the corporate  
18 documents and properties (files and hard drives, which they have taken) will be needed to  
19 prove their misdeeds.

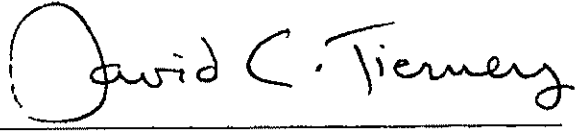
20 No temporary restraining order and no preliminary injunction have been requested  
21 by the Plaintiffs.

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1 This Court should schedule a January-February Order to Show Cause for a  
2 permanent injunction and let discovery commence.

3 DATED this 18th day of August, 2005.

4 SACKS TIERNEY P.A.

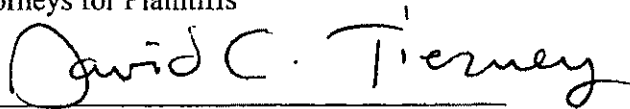
5  
6 By: 

7 David C. Tierney  
8 Stephen E. Traverse  
9 Attorneys for Defendants-Counterclaimants

10 COPY OF THE FOREGOING and the attached Exhibits  
11 (Articles, Bylaws, Employment Agreements, and Meeting Minutes)  
12 HAND-DELIVERED this 18th day of August, 2005, to:

12 Hon. Ruth H. Hilliard  
13 Maricopa County Superior Court  
14 201 W. Jefferson Street  
15 Phoenix, Arizona 85003-2205

15 David N. Ramras, Esq.  
16 Ari Ramras  
17 Ramras law Offices, P.c.  
18 5060 N. 40th Street, Suite 103  
19 Phoenix, Arizona 85018  
20 Attorneys for Plaintiffs

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SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693



# EXHIBIT A

POSSIBLE SCHEDULE FOR  
Oppleman/Joffe et al. vs. Logsdon/O'Shaughnessy et al.  
Maricopa Superior Court Case No. CV2005-011949

08/17/2005	MainNerve, inc. files Answer and Counterclaim with Additional Defendants on Counterclaim
09/22/2005	Oppleman / Joffe and wives reply. Jannols answer.
11/02/2005	Initial Disclosure Statements
11/16/2005	Start of depositions and paper discovery, based upon disclosures.
01/16/2006	End of discovery / disclosure.
02/08/2006	Pretrial Conference
02/22/2006	Trial date (4 days) May require jury on non-equity matters.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-011949

08/19/2005

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 08/25/2005

VICTOR OPPLEMAN, et al.

DAVID N RAMRAS

v.

JEFF LOGSDON, et al.

DAVID C TIERNEY

**EVIDENTIARY HEARING SET**

9:38 a.m. In chambers: This is the time set for Order to Show Cause 15 Minute Return Hearing re: Appointment of Receiver. Plaintiffs are represented by counsel, David Ramras. Defendants are represented by counsel, David Tierney.

No court reporter is present.

Discussion is held.

IT IS ORDERED setting an Evidentiary Hearing for **February 13, 2006 at 9:30 a.m. (4 days)** before:

**JUDGE RUTH HILLIARD**  
**Central Court Building**  
**201 W. Jefferson St., 4<sup>th</sup> Fl.**  
**Courtroom 402**  
**Phoenix, AZ 85003**  
**(602) 506-3145**

IT IS FURTHER ORDERED that both sides shall hand-deliver to the Clerk of this Division all exhibits to be used at the hearing **at least five (5) business days prior to the hearing**. Exhibits shall be accompanied with a numbered list of each exhibit and shall be separated with a blank sheet of colored paper. All hearing exhibits shall have been exchanged

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-011949

08/19/2005

prior to that time. No duplicate exhibits shall be presented for marking. Please contact the Clerk for this Division for proper procedure for marking and submitting exhibits (602) 506-3348.

9:46 a.m. Matter concludes.

FILED  
10 06 2005 4:58 PM  
MICHAEL K. JEANES, Clerk  
By M. PAIGEN MD  
Deputy

1 David C. Tierney (No. 002385)  
Stephen E. Traverse (No. 019616)  
2 SACKS TIERNEY P.A.  
4250 N. Drinkwater Blvd., 4th Floor  
3 Scottsdale, AZ 85251-3693  
Telephone: (480) 425-2600  
4 Attorneys for Defendants LOGSDON et al.

5  
6 SUPERIOR COURT OF ARIZONA  
7 MARICOPA COUNTY

8 VICTOR OPPLEMAN; and RODNEY  
9 JOFFE,

No. CV2005-011949

10 Plaintiffs,

11 vs.

NOTICE OF CONFLICT IN THE  
EVIDENTIARY HEARING DATE OF  
FEBRUARY 13, 2006

12 JEFF LOGSDON and KIRSTIN LOGSDON,  
husband and wife; JAMES  
13 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
14 MAINNERVE, INC., a Delaware  
15 corporation,

(Hon. Ruth H. Hilliard)

16 Defendants.

17 JEFF LOGSDON and KIRSTIN LOGSDON,  
18 husband and wife; JAMES  
19 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
20 MAINNERVE, INC., a Delaware  
21 corporation,

22 Defendants / Counterclaimants,

23 vs.

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FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

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1 VICTOR OPPELMAN and SASHA  
2 KUCZYNSKI OPPELMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

11 Plaintiffs /Counterdefendants.

12 The Court has set the Evidentiary Hearing of this matter for four days, beginning  
13 Monday, February 13, 2006 at 9:30 a.m. David C. Tierney, counsel for the Defendants /  
14 Counterclaimants, is the arbitrator in American Arbitration Association ("AAA") Case No.  
15 76 181 00084 05 MAGE, *Analytic Medical Imaging, Ltd. vs. Phoenix Diagnostic Imaging,*  
16 *Inc.* After confirming with Mr. Tierney that he was available the week of February 6,  
17 2006, the AAA scheduled a six day arbitration, thus ending on Monday, February 13, 2006,  
18 the same day the Evidentiary Hearing is scheduled to begin in the above-captioned matter.  
19 Mr. Tierney would like to bring the conflict to the Court's attention, pursuant to Maricopa  
20 County Local Rule 3.1(e).

21 Pursuant to Rule 3.1(e), Maricopa County Local Rules, the Plaintiff requests a  
22 conference to resolve the Hearing conflict, or in the alternative, an expedited ruling.

23 DATED this 6th day of October, 2005.

24 SACKS TIERNEY P.A.

25 By: 

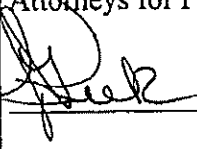
26 David C. Tierney  
27 Stephen E. Traverse  
28 Attorneys for Defendants / Counterclaimants

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COPY OF THE FOREGOING MAILED  
this 6th day of October, 2005, to:

David N. Ramras, Esq.  
Ari Ramras, Esq.  
RAMRAS LAW OFFICES, P.C.  
5060 N. 40th Street, Suite 103  
Phoenix, Arizona 85018  
Attorneys for Plaintiffs



MICHAEL K. JEANES, CLERK  
BY *cmj* DEP  
FILED

2005 OCT 12 PM 4:55

David N. Ramras - 002826  
Ari Ramras - 018887  
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5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; et. al.,

Plaintiffs,

vs.

Jeff Logsdon; et. al.,

Defendants.

No. CV2005-011949

REPLY TO COUNTERCLAIM  
BY OPPLEMAN, JOFFE, PACKET  
INTERROGATION INC., AND VOSTROM,  
INC.

For their reply to the Counterclaim, Counterdefendants Victor Oppleman and Sasha Kuczynski Oppleman; Rodney Joffe and Robyn Joffe; Packet Interrogation Inc., and VOSTROM Holdings, Inc. (collectively the "Counterdefendants") admit, deny, and allege as follows:

1. Answering ¶55 of the Counterclaim, Counterdefendants admit that Victor Oppleman and Sasha Kuczynski Oppleman; and Rodney Joffe and Robyn Joffe respectively were married at all times relevant to the allegations of the Counterclaim.

2. Answering ¶56 of the Counterclaim, Counterdefendants admit that the Jannols are California residents, and that Packet Interrogations, Inc. is a Delaware corporation, but deny the remaining allegations contained therein.

3. Answering ¶57 of the Counterclaim, Counterdefendants admit that VOSTROM Holdings, Inc. is a Delaware corporation owned by Victor Oppleman, but deny the remaining allegations

contained therein.

4. Answering ¶58 of the Counterclaim, Counterdefendants admit the allegations contained therein.

5. Answering ¶59 of the Counterclaim, Counterdefendants reallege and incorporate by reference each of the foregoing answers.

6. Answering ¶¶60-68 of the Counterclaim, Counterdefendants deny the allegations contained therein.

7. Answering ¶69 of the Counterclaim, Counterdefendants reallege and incorporate by reference each of the foregoing answers.

8. Answering ¶70 of the Counterclaim, Counterdefendants deny the allegations contained therein.

9. Answering ¶71 of the Counterclaim, Counterdefendants reallege and incorporate by reference each of the foregoing answers.

10. Answering ¶¶72 and 73 of the Counterclaim, Counterdefendants deny the allegations contained therein.

11. Answering ¶74 of the Counterclaim, Counterdefendants reallege and incorporate by reference each of the foregoing answers.

12. Answering ¶¶75 and 76 of the Counterclaim, Counterdefendants deny the allegations contained therein.

13. Answering ¶77 of the Counterclaim, Counterdefendants reallege and incorporate by reference each of the foregoing answers.

14. Answering ¶¶78-80 of the Counterclaim, Counterdefendants deny the allegations contained



therein.

15. Counterdefendants deny each of the allegations of the Counterclaim not previously admitted or qualified by answer.

#### **AFFIRMATIVE DEFENSES**

16. As a First Affirmative Defense, Counterdefendants alleges that the Counterclaim fails to state a claim upon which relief can be granted.

17. As a Second Affirmative Defense, Counterdefendants alleges that the fraud allegations of the Counterclaim are deficient and fail to comply with the requirements of Rule 9(b) ARCP.

18. As a Third Affirmative Defense, Counterdefendants alleges that the Counterclaim is barred and/or the amount of its damages, if any, must be reduced to the extent that such damages, if any, were caused or resulted from Counterclaimants' fault and/or the fault of any other party or any non-party pursuant to the provisions of A.R.S. § 12-2505 et seq.

19. As a Fourth Affirmative Defense, Counterdefendants allege that Counterclaimants' claim for punitive damages constitutes the imposition of a criminal penalty and is therefore constitutionally impermissible.

20. As a Fifth Affirmative Defense, Counterdefendants allege upon information and belief that the Counterclaim is barred by reason of breach of contract, contributory negligence, failure of consideration, fraud, illegality, laches, license, estoppel, waiver, and any other matter constituting an avoidance or affirmative defense which may hereafter be discovered.

21. As a Sixth Affirmative Defense, Counterdefendants allege that they are entitled to indemnity from MainNerve.

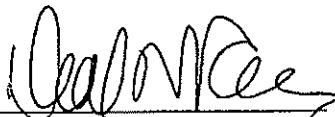
22. As a Seventh Affirmative Defense, Counterdefendants allege upon information and belief

that the Counterclaim is barred because it was filed without the knowledge or consent of and without authority from the board of directors of MainNerve.

WHEREFORE, having fully answered the Counterclaim, Counterdefendants request that Counterclaimants take nothing thereby and that Counterdefendants have their costs of suit, a reasonable attorney's fee and such other and further relief as the court deems just and proper.

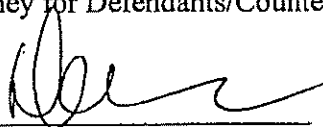
DATED: October 11, 2005

RAMRAS LAW OFFICES, P.C.

By:   
David N. Ramras  
Ari Ramras  
Attorney for Plaintiffs

A copy of the foregoing mailed  
and emailed on  
October 11, 2005 to:

David C. Tierney  
Sacks Tierney, PA  
4250 N. Drinkwater Blvd., Fourth Floor  
Scottsdale, AZ 85251  
Attorney for Defendants/Counterclaimants



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-011949

10/12/2005

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 10/18/2005

VICTOR OPPLEMAN, et al.

DAVID N RAMRAS

v.

JEFF LOGSDON, et al.

DAVID C TIERNEY

MINUTE ENTRY

The Court has received Defendants' Notice of Conflict in the Evidentiary Hearing Date of February 13, 2006.

IT IS ORDERED setting a Telephonic Status Conference on **November 22, 2005 at 9:00 a.m.** Counsel for Defendants shall arrange and initiate the call to this division: 602-506-3145.

MICHAEL K. JEANES, CLERK  
BY *M. Long* DEP  
FILED

05 OCT 24 PM 4:52

1 David C. Tierney (No. 002385)  
Stephen E. Traverse (No. 019616)  
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Telephone: (480) 425-2600  
4 Attorneys for Defendants LOGSDON et al.

5  
6 **SUPERIOR COURT OF ARIZONA**  
7 **MARICOPA COUNTY**

8 VICTOR OPPLEMAN; and RODNEY  
9 JOFFE,

No. CV2005-011949

10 Plaintiffs,

11 vs.

**STIPULATION FOR PROTECTIVE  
ORDER RE: CONFIDENTIALITY**

(Hon. Ruth H. Hilliard)

12 JEFF LOGSDON and KIRSTIN LOGSDON,  
husband and wife; JAMES  
13 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
14 MAINNERVE, INC., a Delaware  
15 corporation,

16 Defendants.

17 JEFF LOGSDON and KIRSTIN LOGSDON,  
18 husband and wife; JAMES  
19 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
20 MAINNERVE, INC., a Delaware  
21 corporation,

22 Defendants / Counterclaimants,

23 vs.

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VICTOR OPPLEMAN and SASHA  
KUCZYNSKI OPPLEMAN, husband and  
wife; and RODNEY JOFFE and ROBYN  
JOFFE, husband and wife; MARTIN  
JANNOL and JANE DOE JANNOL,  
husband and wife; PACKET  
INTERROGATION, INC., a Delaware  
corporation; VOSTROM, INC., fka  
MainNerve Capital, Inc., a Delaware  
corporation, and JOHN DOES 1-10,  
Plaintiffs /Counterdefendants.

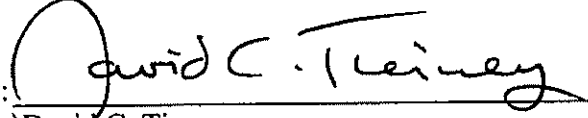
The parties hereto, mindful of the extent to which trade secrets and proprietary information are referenced in correspondence, e-mail, business plans, etc., hereby stipulate and agree to the entry of the Proposed Order concerning confidentiality.

DATED this 21 day of October, 2005.

RAMRAS LAW OFFICES, P.C.

SACKS TIERNEY P.A.

By:   
David N. Ramras  
Ari Ramras  
Attorneys for Plaintiffs /  
Counterdefendants

By:   
David C. Tierney  
Stephen E. Traverse  
Attorneys for Defendants / Counterclaimants

1 David C. Tierney (No. 002385)  
Stephen E. Traverse (No. 019616)  
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3 Scottsdale, AZ 85251-3693  
Telephone: (480) 425-2600  
4 Attorneys for Defendants LOGSDON et al.

5  
6 **SUPERIOR COURT OF ARIZONA**  
7 **MARICOPA COUNTY**

8 VICTOR OPPLEMAN; and RODNEY  
9 JOFFE,

No. CV2005-011949

10 Plaintiffs,

11 vs.

**PROPOSED  
PROTECTIVE ORDER RE:  
CONFIDENTIALITY**

(Hon. Ruth H. Hilliard)

12 JEFF LOGSDON and KIRSTIN LOGSDON,  
husband and wife; JAMES  
13 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
14 MAINNERVE, INC., a Delaware  
corporation,

15 Defendants.

17 JEFF LOGSDON and KIRSTIN LOGSDON,  
18 husband and wife; JAMES  
O'SHAUGHNESSY and SARA  
19 O'SHAUGHNESSY, husband and wife;  
20 MAINNERVE, INC., a Delaware  
corporation,

21 Defendants / Counterclaimants,

22 vs.  
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SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 VICTOR OPPELMAN and SASHA  
2 KUCZYNSKI OPPELMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

11 Plaintiffs /Counterdefendants.

12 WHEREAS, the Court has reviewed the stipulation of the parties and finds that  
13 proprietary and trade secret information may occur in this matter and pursuant to the  
14 stipulation of the parties and good cause appearing,

15 IT IS HEREBY ORDERED that the following procedure is adopted for the  
16 protection of confidential or proprietary information:

17 1. All documents and materials of any type produced in discovery by the parties to  
18 this action, as well as any information derived therefrom, that have been designated to  
19 constitute or contain "Confidential Material" shall be used only in connection with the  
20 present adversary proceeding and shall not be disclosed to any other person, corporation or  
21 entity, or used for any other purpose whatsoever.

22 2. The term "Confidential Material" shall include all information, documents, and  
23 other similar confidential materials revealed or disclosed during discovery or any of the  
24 pretrial proceedings or trial of the above-captioned matter, that are designated in writing as  
25 "Confidential Material" in the manner set forth in paragraphs 3, 5, 9 and 10 of this  
26 Protective Order. Materials shall be designated as "Confidential Material" only when the  
27 designating person has a good faith belief that the material contains confidential  
28 information, including, but not limited to trade secrets or proprietary business information,  
as well as confidential employee personnel information, that are subject to protection under  
Rule 26(c) Arizona Rules of Civil Procedure. All such materials shall be protected, used,  
handled and disposed of strictly in accordance with the provisions hereof.

1 3. all patent-related information will be designated in writing as “Confidential  
2 Material.”

3 4. Except as specifically authorized by the Court, as provided in paragraph 1,  
4 “Confidential Material” shall not be disclosed or revealed to anyone who is not authorized  
5 hereunder to receive such material and shall be used only for the purposes for or  
6 conducting this proceeding. All persons to whom “Confidential Material” is disclosed by  
7 the parties or their counsel shall be informed of and shown a copy of this Protective Order  
8 and shall agree to abide by its terms.

9 5. Subject to the good faith requirement in paragraph 2 and the designations in  
10 paragraph 3, any document containing “Confidential Material” shall be stamped with words  
11 that reflect the material is confidential. “Confidential Material” disclosed in responses to  
12 discovery requests, motions or other pleadings may be likewise marked. “Confidential  
13 Material” disclosed in trial or deposition testimony may be so designated by a statement to  
14 that effect on the record during the proceeding or within 10 days after the transcript thereof  
15 is sent to any party.

16 6. Except upon the prior written consent of the person asserting “Confidential  
17 Material” treatment, or upon order of the Court, “Confidential Material” shall be treated,  
18 used or disclosed strictly in accordance with the provisions hereof.

19 7. Access to “Confidential Material” shall be limited to the following persons  
20 assisting in the preparation for trial of this matter:

- 21 a. counsel and legal assistants for the respective parties;
- 22 b. designated employees of the parties;
- 23 c. experts and consultants (and their employees or clerical assistants)  
24 who are employed, retained, or otherwise consulted by counsel or a  
25 party);
- 26 d. persons whose counsel believes they are likely to be called to give  
27 testimony on matters relating to “Confidential Material”;

28 . . .



1 e. qualified reporters taking testimony involving "Confidential Material"  
2 and necessary stenographic and clerical personnel thereof, as well as  
3 Court personnel in the conduct of their official duties.

4 8. In the event that any party becomes required to disclose any "Confidential  
5 Material" to anyone other than the persons identified in paragraph 7, either by court or  
6 under any applicable law, it shall provide advance written notice of such order, demand or  
7 requirement to the party that produced or designated to the "Confidential Material" that is  
8 required to be disclosed. Such notice shall include a copy of the demand, subpoena, court  
9 order or other instrument requiring the disclosure and shall be given as soon as reasonably  
10 practicable, but in any event, not later than five (5) days after receipt of the demand,  
11 subpoena, court order or other instrument.

12 9. If any party determines that it is reasonably necessary in connection with the  
13 litigation of this matter to disclose "Confidential Material" in papers to be filed with the  
14 Court, such party shall file the papers in sealed envelopes stating:

- 15 a. The word "Confidential";  
16 b. The caption of the action;  
17 c. An indication of the nature of the contents of the sealed envelope,  
18 including the document numbers attached to such papers or the  
19 deponent's name and deposition page numbers; and  
20 d. A statement in the following form:

21 *This envelope is sealed pursuant to Court Order and contains*  
22 *confidential information filed in this case by [name of enclosing party] and is*  
23 *not to be opened or the contents displayed or inspected, except by the parties*  
24 *to this suit, their counsel, court personnel, or by Court Order.*

25 10. When any party advises the Court that it intends to disclose "Confidential  
26 Material" in any presentation in open Court, that party shall notify all other parties of its  
27 intention to utilize such information and the parties shall attempt to agree in advance

28 . . .

1 regarding how the Confidential Material” shall be presented to the Court, including, by way  
2 of example, redacted documents.

3 11. The receiving party, receiving party’s counsel, and receiving party’s experts or  
4 technical consultants shall not advertise, publish, sell, offer or provide the “Confidential  
5 Material” received to any person not specifically authorized hereunder.

6 12. “Confidential Material” shall not be disclosed to any person under paragraph  
7 7(b), 7(c), or 7(d) unless and until such person has agreed to be bound by the terms of this  
8 Protective Order. Signed acknowledgements shall be retained by counsel for receiving  
9 party until termination of the matter.

10 13. The failure to mark “Confidential Material” as such at the time of production  
11 will not be deemed a waiver of a party’s claim of confidentiality and will not stop a party  
12 from designating such document or information as “Confidential Material” upon discovery  
13 of the inadvertent disclosure. Counsel for the party who failed to designate the material as  
14 “Confidential Material” shall, within ten (10) days of discovery of the disclosure, notify  
15 opposing counsel. Counsel for the parties shall then cooperate to restore the confidentiality  
16 of the “Confidential Material”.

17 14. There shall be no obligation to challenge a “Confidential Material” designation  
18 when made and failure to do so shall not preclude a subsequent challenge. Either party  
19 may challenge a confidential designation made by the other party by giving written notice  
20 to the designating party identifying the document(s) or other information for which it  
21 disputes such a designation. After a period of ten (10) days, the “Confidential” designation  
22 on such document or information shall be deemed to be removed and will not be subject to  
23 this Order, unless within ten (10) days after the objection is given, the party receiving such  
24 objection attempts to resolve the dispute in good faith, but failing to do so, files a Motion  
25 for Protective Order with the Court. The burden shall be on the person claiming  
26 “Confidentiality” to establish that the material constitutes or contains proprietary or  
27 confidential information or trade secrets or other similar information subject to protection  
28 under Rule 26 ARCP. Pending a ruling on the Motion for Protective Order, the documents

1 designated as "Confidential" will remain subject to this Order and shall not be disclosed or  
2 used except as permitted herein.

3 15. The Protective Order does not preclude any party from opposing production of  
4 information or documents on appropriate grounds other than confidentiality (such as  
5 privileged) pursuant to the Arizona Rules of Civil Procedure, or other applicable law.

6 16. This Protective Order shall not be construed to restrict the right of the producing  
7 party to use documents it designates as "Confidential Material" in any manner it deems  
8 appropriate, if otherwise consistent with law.

9 17. The restrictions on communication and disclosure of "Confidential Material" set  
10 forth herein shall not apply to documents and information that are public knowledge and  
11 information or that may become public knowledge as a result of disclosure, other than as a  
12 result of a violation of this Order, or pursuant to a court order, or to documents or  
13 information possessed or acquired by discovery independent of documents or information  
14 designated as "Confidential Material," or by other means that may have lawfully brought to  
15 a party a document independent of the disclosure in this case.

16 18. Within thirty (30) days of the final termination of this proceeding, all persons to  
17 whom "Confidential Material" has been disclosed shall, at their option, either (a) destroy  
18 the "Confidential Material," or (b) return the "Confidential Material" to counsel for the  
19 person who originally produced it. All recipients of "Confidential Material" shall certify,  
20 in writing, to the designating party that they have complied with the provisions of this  
21 paragraph. Final termination of this proceeding is defined as the date on which all appeals  
22 have been exhausted, or if the Court has issued relief, the date on which any such remedy  
23 has been completed.

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19. Notwithstanding provisions of paragraph 19, this Protective Order shall continue in full force and effect with respect to "Confidential Material".

DATED this \_\_\_\_\_ day of October, 2005.

BY THE COURT

\_\_\_\_\_  
Honorable Ruth H. Hilliard  
Arizona Superior Court Judge

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

IN THE ARIZONA SUPERIOR COURT STATE OF ARIZONA, COUNTY OF MARICOPA

MICHAEL K. JEANES, CLERK

CASE NO. CV2005-011949

ATLAS NO. N/A

OPPLEMAN  
VS.  
LOGSDON

RECEIVED CCC  
DOCUMENT DEPOSITORY

CERTIFICATE OF SERVICE

2005 OCT 27 PM 3:07

Hearing Date:

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

FILED  
OCT 27 2005 3:02pm  
MICHAEL K. JEANES, Clerk  
By O. CARDENAS  
Deputy

The undersigned certifies under penalty of perjury:  
On October 7, 2005, I received:

ALIAS SUMMONS; ANSWER; COUNTERCLAIM; EXHIBIT A AND B

from E-Z MESSENGER ATTORNEY SERVICE, INC.  
for SACKS TIERNEY P.A. Attorney(s) and in each instance I personally served a copy of each each document listed above on those named below in the manner and at the time and place shown, hereinafter set forth, to wit:

DEFENDANT SERVED:  
MARTIN BERNARD JANNOL, HUSBAND

ADDRESS WHERE SERVED: 10350 SANTA MONICA BLVD., #350

CITY/STATE/ZIP: LOS ANGELES, CA 90025

DATE SERVED: 10/19/05

TIME SERVED: 11:10 A.M.

MANNER OF SERVICE:

Indicate Defendant served by placing an 'X' in the proper box

- PERSONALLY, by serving the above named individual
- by leaving copies at the dwelling house, or usual place of abode, by delivering to and leaving a true and correct copy thereof with a person of suitable age and descretion residing therein to wit:

by service upon:

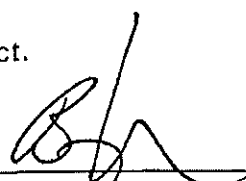
by service upon its STATUTORY AGENT:

by service upon a CORPORATE OFFICER, NAME:  
TITLE:

I certify that 'MILITARY STATUS' was checked and the defendant(s)     ARE   x   ARE NOT in the 'ACTIVE MILITARY.'

If so, what branch: \_\_\_\_\_

I certify under penalty of perjury that the forgoing is true and correct.  
Executed on October 19, 2005

  
\_\_\_\_\_  
B. FECHER, Process Server

Service of Process \_\_\_\_\_ Advances \_\_\_\_\_ Mileage \_\_\_\_\_  
Other \_\_\_\_\_ Certificate Prep \_\_\_\_\_ Total \$ \_\_\_\_\_

IN THE ARIZONA SUPERIOR COURT STATE OF ARIZONA, COUNTY OF MARICOPA

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ATLAS NO. N/A

OPPLEMAN  
VS.  
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COUNTY OF LOS ANGELES

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for SACKS TIERNEY P.A. Attorney(s) and in each instance I personally served a copy of each each  
document listed above on those named below in the manner and at the time and place shown,  
hereinafter set forth, to wit:

DEFENDANT SERVED:  
JANE DOE JANNOL, WIFE

ADDRESS WHERE SERVED: 10350 SANTA MONICA BLVD., #350  
CITY/STATE/ZIP: LOS ANGELES, CA 90025  
DATE SERVED: 10/19/05 TIME SERVED: 11:10 A.M.

MANNER OF SERVICE:  
Indicate Defendant served by placing an 'X' in the proper box  
( ) PERSONALLY, by serving the above named individual  
(x) by leaving copies at the dwelling house, or usual place of abode, by delivering to and leaving a true  
and correct copy thereof with a person of suitable age and descretion residing therein to wit:  
MARTIN BERNARD JANNOL, HUSBAND  
( ) by service upon:  
( ) by service upon its STATUTORY AGENT:  
( ) by service upon a CORPORATE OFFICER, NAME:  
TITLE:

I certify that 'MILITARY STATUS' was checked and the defendant(s)     ARE   x   ARE NOT in  
the 'ACTIVE MILITARY.'

If so, what branch: \_\_\_\_\_

I certify under penalty of perjury that the forgoing is true and correct.  
Executed on October 19, 2005

  
\_\_\_\_\_  
B. FECHER, Process Server

Service of Process \_\_\_\_\_ Advances \_\_\_\_\_ Mileage \_\_\_\_\_  
Other \_\_\_\_\_ Certificate Prep \_\_\_\_\_ Total \$ \_\_\_\_\_

**ORIGINAL**

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2005 OCT 27 PM 3:02

FILED  
BY O. CARDENAS, DEP.

1 David C. Tierney (No. 002385)  
Stephen E. Traverse (No. 019616)  
2 SACKS TIERNEY P.A.  
4250 N. Drinkwater Blvd., 4th Floor  
3 Scottsdale, AZ 85251-3693  
Telephone: (480) 425-2600  
4 Attorneys for Defendants LOGSDON et al.

5 **SUPERIOR COURT OF ARIZONA**  
6 **MARICOPA COUNTY**

7 VICTOR OPPLEMAN; and RODNEY  
8 JOFFE,

No. CV2005-011949

9 Plaintiffs,

**ALIAS SUMMONS**

10 vs.

(Hon. Ruth H. Hilliard)

11 JEFF LOGSDON and KIRSTIN  
LOGSDON, husband and wife; JAMES  
12 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
13 MAINNERVE, INC., a Delaware  
corporation,

14 Defendants.

IF YOU WANT THE ADVICE OF A  
LAWYER, YOU MAY WISH TO CONTACT  
THE LAWYER REFERRAL SERVICE AT  
602-257-4434 OR ON-LINE AT  
WWW.LAWYERFINDERS.ORG. LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

15  
16  
17 JEFF LOGSDON and KIRSTIN  
LOGSDON, husband and wife; JAMES  
18 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
19 MAINNERVE, INC., a Delaware  
corporation,

20 Defendants /Counterclaimants,

21 vs.  
22  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
28

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 VICTOR OPPLEMAN and SASHA  
2 KUCZYNSKI OPPLEMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

Plaintiffs / Counterdefendants.

11 THE STATE OF ARIZONA TO THE COUNTERDEFENDANT:

12 **JANE DOE JANNOL**

13 YOU ARE HEREBY SUMMONED and required to appear and defend, within the  
14 time applicable, in this action in this Court. If served within Arizona, you shall appear and  
15 defend within 20 days after the service of the Summons and First Amended Complaint  
16 upon you, exclusive of the day of service. If served out of the state of Arizona -- whether  
17 by direct service, by registered or certified mail, or by publication -- you shall appear and  
18 defend within 30 days after the service of the Summons and First Amended Complaint  
19 upon you is complete, exclusive of the day of service. Where service of process is upon the  
20 Arizona Director of Insurance as an insurer's agent to receive service of legal process  
21 against it in this state; then the insurer shall not be required to appear, answer or plead until  
22 expiration of 40 days after date of such service upon the Director. Service by registered or  
23 certified mail without the State of Arizona is complete 30 days after the filing of the receipt  
24 and affidavit of service with the Court. Service by publication is complete 30 days after the  
25 date of first publication. Direct service is complete when made. Service upon the Arizona  
26 Motor Vehicle Superintendent is complete 30 days after filing the Affidavit of Compliance  
27 and return receipt or Officer's Return. A.R.S. § 22-213, R.C.P. 4; A.R.S. §§ 20-222, 28-  
28 502, 28-503.



1 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend  
2 within the time applicable, judgment by default may be rendered against you for the relief  
3 demanded in the First Amended Complaint.

4 YOU ARE CAUTIONED that in order to appear and defend, you must either appear  
5 in person or file an Answer or proper response in writing with the Clerk of this Court,  
6 accompanied by the necessary filing fee within the time required, and you are required to  
7 serve a copy of any Answer or response upon the Plaintiff's attorneys. R.C.P. 10(d);  
8 A.R.S. § 12-311; R.C.P. 5; A.R.S. §§ 22-215, 22-216.

9 THE NAME AND ADDRESS of Plaintiff's attorney is:

David C. Tierney, Esq.  
Stephen E. Traverse, Esq.  
SACKS TIERNEY P.A.  
4250 North Drinkwater Blvd., 4th Flr.  
Scottsdale, Arizona 85251

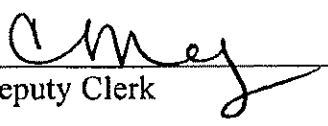
13 Requests for reasonable accommodation for persons with disabilities must be made  
14 to the division assigned to the case by parties at least three judicial days in advance of a  
15 scheduled court proceeding.

**OCT 03 2005**

16 SIGNED AND SEALED this date: \_\_\_\_\_

17 MICHAEL K. JEANES, CLERK

MICHAEL K. JEANES, Clerk

19 By   
Deputy Clerk

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

28

SACKS TIERNEY P.A., ATTORNEYS  
4150 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 David C. Tierney (No. 002385)  
2 Stephen E. Traverse (No. 019616)  
3 SACKS TIERNEY P.A.  
4 4250 N. Drinkwater Blvd., 4th Floor  
5 Scottsdale, AZ 85251-3693  
6 Telephone: (480) 425-2600  
7 Attorneys for Defendants LOGSDON et al.

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MICHAEL R. JEANES, CLERK

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BY O. CARDENAS, DEP.

8 SUPERIOR COURT OF ARIZONA  
9 MARICOPA COUNTY

10 VICTOR OPPLEMAN; and RODNEY  
11 JOFFE,

No. CV2005-011949

12 Plaintiffs,

ALIAS SUMMONS

13 vs.

(Hon. Ruth H. Hilliard)

14 JEFF LOGSDON and KIRSTIN  
15 LOGSDON, husband and wife; JAMES  
16 O'SHAUGHNESSY and SARA  
17 O'SHAUGHNESSY, husband and wife;  
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19 corporation,

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SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

20 Defendants.

21 JEFF LOGSDON and KIRSTIN  
22 LOGSDON, husband and wife; JAMES  
23 O'SHAUGHNESSY and SARA  
24 O'SHAUGHNESSY, husband and wife;  
25 MAINNERVE, INC., a Delaware  
26 corporation,

27 Defendants /Counterclaimants,

28 vs.

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583327.01

/ LO085-1

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

1 VICTOR OPPLEMAN and SASHA  
2 KUCZYNSKI OPPLEMAN; husband and  
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9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

11 Plaintiffs / Counterdefendants.

12 THE STATE OF ARIZONA TO THE COUNTERDEFENDANT:

13 MARTIN BERNARD JANNOL

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15 time applicable, in this action in this Court. If served within Arizona, you shall appear and  
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21 Arizona Director of Insurance as an insurer's agent to receive service of legal process  
22 against it in this state; then the insurer shall not be required to appear, answer or plead until  
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25 and affidavit of service with the Court. Service by publication is complete 30 days after the  
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502, 28-503.

583327.01

/LO085-1

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4250 NORTH DRINKWATER BOULEVARD  
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SCOTTSDALE, ARIZONA 85251-3693

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7 serve a copy of any Answer or response upon the Plaintiff's attorneys. R.C.P. 10(d);  
8 A.R.S. § 12-311; R.C.P. 5; A.R.S. §§ 22-215, 22-216.

9 THE NAME AND ADDRESS of Plaintiff's attorney is:

10 David C. Tierney, Esq.  
11 Stephen E. Traverse, Esq.  
12 SACKS TIERNEY P.A.  
4250 North Drinkwater Blvd., 4th Flr.  
Scottsdale, Arizona 85251

13 Requests for reasonable accommodation for persons with disabilities must be made  
14 to the division assigned to the case by parties at least three judicial days in advance of a  
15 scheduled court proceeding.

16 SIGNED AND SEALED this date: OCT 03 2005

17 MICHAEL K. JEANES, Clerk

18 MICHAEL K. JEANES, CLERK

19 By   
20 Deputy Clerk

21  
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28

1 David C. Tierney (No. 002385)  
2 Stephen E. Traverse (No. 019616)  
3 SACKS TIERNEY P.A.  
4 4250 N. Drinkwater Blvd., 4th Floor  
5 Scottsdale, AZ 85251-3693  
6 Telephone: (480) 425-2600  
7 Attorneys for Defendants LOGSDON et al.

FILED  
11-9-05 10:54 a.m.  
MICHAEL K. JEANES, Clerk  
By *L. Gilbert*  
Gilbert, Deputy

6 SUPERIOR COURT OF ARIZONA  
7 MARICOPA COUNTY

8 VICTOR OPPLEMAN; and RODNEY  
9 JOFFE,

No. CV2005-011949

10 Plaintiffs,

11 vs.

PROTECTIVE ORDER RE:  
CONFIDENTIALITY

(Hon. Ruth H. Hilliard)

12 JEFF LOGSDON and KIRSTIN LOGSDON,  
13 husband and wife; JAMES  
14 O'SHAUGHNESSY and SARA  
15 O'SHAUGHNESSY, husband and wife;  
16 MAINNERVE, INC., a Delaware  
17 corporation,

18 Defendants.

19 JEFF LOGSDON and KIRSTIN LOGSDON,  
20 husband and wife; JAMES  
21 O'SHAUGHNESSY and SARA  
22 O'SHAUGHNESSY, husband and wife;  
23 MAINNERVE, INC., a Delaware  
24 corporation,

25 Defendants / Counterclaimants,

26 vs.

27 ...

28 ...

1 VICTOR OPPLEMAN and SASHA  
2 KUCZYNSKI OPPLEMAN, husband and  
3 wife; and RODNEY JOFFE and ROBYN  
4 JOFFE, husband and wife; MARTIN  
5 JANNOL and JANE DOE JANNOL,  
6 husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

11 Plaintiffs /Counterdefendants.

12 WHEREAS, the Court has reviewed the stipulation of the parties and finds that  
13 proprietary and trade secret information may occur in this matter and pursuant to the  
14 stipulation of the parties and good cause appearing,

15 IT IS HEREBY ORDERED that the following procedure is adopted for the  
16 protection of confidential or proprietary information:

17 1. All documents and materials of any type produced in discovery by the parties to  
18 this action, as well as any information derived therefrom, that have been designated to  
19 constitute or contain "Confidential Material" shall be used only in connection with the  
20 present adversary proceeding and shall not be disclosed to any other person, corporation or  
21 entity, or used for any other purpose whatsoever.

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1 3. all patent-related information will be designated in writing as “Confidential  
2 Material.”

3 4. Except as specifically authorized by the Court, as provided in paragraph 1,  
4 “Confidential Material” shall not be disclosed or revealed to anyone who is not authorized  
5 hereunder to receive such material and shall be used only for the purposes for or  
6 conducting this proceeding. All persons to whom “Confidential Material” is disclosed by  
7 the parties or their counsel shall be informed of and shown a copy of this Protective Order  
8 and shall agree to abide by its terms.

9 5. Subject to the good faith requirement in paragraph 2 and the designations in  
10 paragraph 3, any document containing “Confidential Material” shall be stamped with words  
11 that reflect the material is confidential. “Confidential Material” disclosed in responses to  
12 discovery requests, motions or other pleadings may be likewise marked. “Confidential  
13 Material” disclosed in trial or deposition testimony may be so designated by a statement to  
14 that effect on the record during the proceeding or within 10 days after the transcript thereof  
15 is sent to any party.

16 6. Except upon the prior written consent of the person asserting “Confidential  
17 Material” treatment, or upon order of the Court, “Confidential Material” shall be treated,  
18 used or disclosed strictly in accordance with the provisions hereof.

19 7. Access to “Confidential Material” shall be limited to the following persons  
20 assisting in the preparation for trial of this matter:

- 21 a. counsel and legal assistants for the respective parties;
- 22 b. designated employees of the parties;
- 23 c. experts and consultants (and their employees or clerical assistants)  
24 who are employed, retained, or otherwise consulted by counsel or a  
25 party);
- 26 d. persons whose counsel believes they are likely to be called to give  
27 testimony on matters relating to “Confidential Material”;

1 e. qualified reporters taking testimony involving "Confidential Material"  
2 and necessary stenographic and clerical personnel thereof, as well as  
3 Court personnel in the conduct of their official duties.

4 8. In the event that any party becomes required to disclose any "Confidential  
5 Material" to anyone other than the persons identified in paragraph 7, either by court or  
6 under any applicable law, it shall provide advance written notice of such order, demand or  
7 requirement to the party that produced or designated to the "Confidential Material" that is  
8 required to be disclosed. Such notice shall include a copy of the demand, subpoena, court  
9 order or other instrument requiring the disclosure and shall be given as soon as reasonably  
10 practicable, but in any event, not later than five (5) days after receipt of the demand,  
11 subpoena, court order or other instrument.

12 9. If any party determines that it is reasonably necessary in connection with the  
13 litigation of this matter to disclose "Confidential Material" in papers to be filed with the  
14 Court, such party shall file the papers in sealed envelopes stating:

- 15 a. The word "Confidential";  
16 b. The caption of the action;  
17 c. An indication of the nature of the contents of the sealed envelope,  
18 including the document numbers attached to such papers or the  
19 deponent's name and deposition page numbers; and  
20 d. A statement in the following form:

21 *This envelope is sealed pursuant to Court Order and contains*  
22 *confidential information filed in this case by [name of enclosing party] and is*  
23 *not to be opened or the contents displayed or inspected, except by the parties*  
24 *to this suit, their counsel, court personnel, or by Court Order.*

25 10. When any party advises the Court that it intends to disclose "Confidential  
26 Material" in any presentation in open Court, that party shall notify all other parties of its  
27 intention to utilize such information and the parties shall attempt to agree in advance  
28 . . .



1 regarding how the Confidential Material” shall be presented to the Court, including, by way  
2 of example, redacted documents.

3 11. The receiving party, receiving party’s counsel, and receiving party’s experts or  
4 technical consultants shall not advertise, publish, sell, offer or provide the “Confidential  
5 Material” received to any person not specifically authorized hereunder.

6 12. “Confidential Material” shall not be disclosed to any person under paragraph  
7 7(b), 7(c), or 7(d) unless and until such person has agreed to be bound by the terms of this  
8 Protective Order. Signed acknowledgements shall be retained by counsel for receiving  
9 party until termination of the matter.

10 13. The failure to mark “Confidential Material” as such at the time of production  
11 will not be deemed a waiver of a party’s claim of confidentiality and will not stop a party  
12 from designating such document or information as “Confidential Material” upon discovery  
13 of the inadvertent disclosure. Counsel for the party who failed to designate the material as  
14 “Confidential Material” shall, within ten (10) days of discovery of the disclosure, notify  
15 opposing counsel. Counsel for the parties shall then cooperate to restore the confidentiality  
16 of the “Confidential Material”.

17 14. There shall be no obligation to challenge a “Confidential Material” designation  
18 when made and failure to do so shall not preclude a subsequent challenge. Either party  
19 may challenge a confidential designation made by the other party by giving written notice  
20 to the designating party identifying the document(s) or other information for which it  
21 disputes such a designation. After a period of ten (10) days, the “Confidential” designation  
22 on such document or information shall be deemed to be removed and will not be subject to  
23 this Order, unless within ten (10) days after the objection is given, the party receiving such  
24 objection attempts to resolve the dispute in good faith, but failing to do so, files a Motion  
25 for Protective Order with the Court. The burden shall be on the person claiming  
26 “Confidentiality” to establish that the material constitutes or contains proprietary or  
27 confidential information or trade secrets or other similar information subject to protection  
28 under Rule 26 ARCP. Pending a ruling on the Motion for Protective Order, the documents

1 designated as "Confidential" will remain subject to this Order and shall not be disclosed or  
2 used except as permitted herein.

3 15. The Protective Order does not preclude any party from opposing production of  
4 information or documents on appropriate grounds other than confidentiality (such as  
5 privileged) pursuant to the Arizona Rules of Civil Procedure, or other applicable law.

6 16. This Protective Order shall not be construed to restrict the right of the producing  
7 party to use documents it designates as "Confidential Material" in any manner it deems  
8 appropriate, if otherwise consistent with law.

9 17. The restrictions on communication and disclosure of "Confidential Material" set  
10 forth herein shall not apply to documents and information that are public knowledge and  
11 information or that may become public knowledge as a result of disclosure, other than as a  
12 result of a violation of this Order, or pursuant to a court order, or to documents or  
13 information possessed or acquired by discovery independent of documents or information  
14 designated as "Confidential Material," or by other means that may have lawfully brought to  
15 a party a document independent of the disclosure in this case.

16 18. Within thirty (30) days of the final termination of this proceeding, all persons to  
17 whom "Confidential Material" has been disclosed shall, at their option, either (a) destroy  
18 the "Confidential Material," or (b) return the "Confidential Material" to counsel for the  
19 person who originally produced it. All recipients of "Confidential Material" shall certify,  
20 in writing, to the designating party that they have complied with the provisions of this  
21 paragraph. Final termination of this proceeding is defined as the date on which all appeals  
22 have been exhausted, or if the Court has issued relief, the date on which any such remedy  
23 has been completed.

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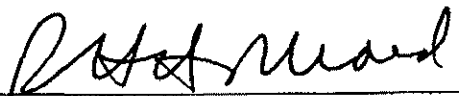
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19. Notwithstanding provisions of paragraph 19, this Protective Order shall continue in full force and effect with respect to "Confidential Material".

DATED this 2 day of ~~October~~<sup>Nov.</sup>, 2005.

BY THE COURT

  
\_\_\_\_\_  
Honorable Ruth H. Hilliard  
Arizona Superior Court Judge

SACKS TIERNEY P.A., ATTORNEYS  
4250 NORTH DRINKWATER BOULEVARD  
FOURTH FLOOR  
SCOTTSDALE, ARIZONA 85251-3693

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-011949

11/22/2005

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 11/29/2005

VICTOR OPPLEMAN, et al.

DAVID N RAMRAS

v.

JEFF LOGSDON, et al.

DAVID C TIERNEY

MINUTE ENTRY

9:05 a.m. In chambers: This is the time set for Telephonic Status Conference on Defendants' Notice of Conflict with Evidentiary Hearing Date of February 13, 2006. All parties appear telephonically. Plaintiffs are represented by counsel, David Ramras. Defendants Logsdon, O'Shaughnessy and Mainnerve, Inc. are represented by counsel, David Tierney.

No court reporter is present.

Discussion is held.

IT IS ORDERED vacating Evidentiary Hearing set for February 13, 2006 and resetting same for **February 14, 2006 at 9:30 a.m.**

IT IS FURTHER ORDERED that both sides shall hand-deliver to the Clerk of this Division all exhibits to be used at the hearing **at least three (3) business days prior to the hearing.** Exhibits shall be accompanied with a numbered list of each exhibit and shall be separated with a blank sheet of colored paper. All hearing exhibits shall have been exchanged prior to that time. No duplicate exhibits shall be presented for marking. Please contact the Clerk for this Division for proper procedure for marking and submitting exhibits (602) 506-3348.

9:07 a.m. Matter concludes.

MICHAEL K. JEANES, CLERK  
BY *M. Jeanes* DEP  
FILED

2005 FEB -2 PM 5:48

1 David C. Tierney (No. 002385)  
Stephen E. Traverse (No. 019616)  
2 SACKS TIERNEY P.A.  
4250 N. Drinkwater Blvd., 4th Floor  
3 Scottsdale, AZ 85251-3693  
Telephone: (480) 425-2600  
4 Attorneys for Defendants LOGSDON et al.

5  
6 **SUPERIOR COURT OF ARIZONA**  
7 **MARICOPA COUNTY**

8 VICTOR OPPLEMAN; and RODNEY  
9 JOFFE,

10 Plaintiffs,

11 vs.

12 JEFF LOGSDON and KIRSTIN  
LOGSDON, husband and wife; JAMES  
13 O'SHAUGHNESSY and SARA  
O'SHAUGHNESSY, husband and wife;  
14 MAINNERVE, INC., a Delaware  
corporation,

15 Defendants.

No. CV2005-011949

**NOTICE OF SETTLEMENT**

(Hon. Ruth H. Hilliard)

16 JEFF LOGSDON and KIRSTIN  
17 LOGSDON, husband and wife; JAMES  
O'SHAUGHNESSY and SARA  
18 O'SHAUGHNESSY, husband and wife;  
19 MAINNERVE, INC., a Delaware  
corporation,

20 Defendants /  
21 Counterclaimants,

22 vs.

23 ...

24 ...

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1 VICTOR OPPLEMAN and SASHA  
2 KUCZYNSKI OPPLEMAN, husband  
3 and wife; and RODNEY JOFFE and  
4 ROBYN JOFFE, husband and wife;  
5 MARTIN JANNOL and JANE DOE  
6 JANNOL, husband and wife; PACKET  
7 INTERROGATION, INC., a Delaware  
8 corporation; VOSTROM, INC., fka  
9 MainNerve Capital, Inc., a Delaware  
10 corporation, and JOHN DOES 1-10,

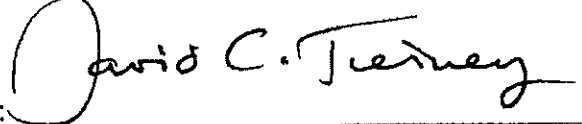
11 Plaintiffs /Counterdefendants.

12 Pursuant to Arizona Rules of Civil Procedure 5.1(c), Defendants / Counterclaimants  
13 JEFF LOGSDON and KIRSTIN LOGSDON, husband and wife; JAMES  
14 O'SHAUGHNESSY and SARA O'SHAUGHNESSY, husband and wife; MAINNERVE,  
15 INC., by and through their undersigned counsel hereby give notice to the Court that the  
16 parties have reached a settlement of all claims in this action.

17 The parties hereto will shortly file a Stipulation for Dismissal with Prejudice and  
18 submit a proposed Order for Dismissal with Prejudice in order to finalize the dismissal.

19 RESPECTFULLY SUBMITTED this 2nd day of February, 2006.

20 SACKS TIERNEY P.A.

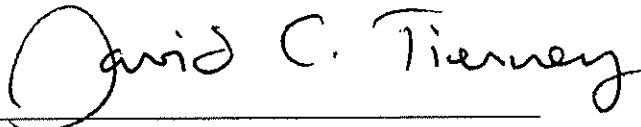
21 BY: 

22 David C. Tierney  
23 Stephen E. Traverse  
24 Attorneys for Defendants / Counterclaimants

25 COPY OF THE FOREGOING VIA  
26 FACSIMILE this 2nd day  
27 of February, 2006 to:

28 David N. Ramras, Esq.  
Ari Ramras, Esq.  
RAMRAS LAW OFFICES, P.C.  
5060 N. 40th Street, Suite 103  
Phoenix, Arizona 85018  
Attorneys for Plaintiffs /Counterdefendants

Facsimile No.: (602) 955-2101



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-011949

02/06/2006

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 02/13/2006

VICTOR OPPLEMAN, et al.

DAVID N RAMRAS

v.

JEFF LOGSDON, et al.

DAVID C TIERNEY

**SETTLEMENT/PLACED ON INACTIVE CALENDAR**

The court having been advised this case has settled,

IT IS ORDERED vacating the Evidentiary Hearing set for February 14, 2006.

IT IS FURTHER ORDERED **placing** this matter on the Inactive Calendar for dismissal on **March 8, 2006**, without further notice, unless prior to that date a Judgment is entered, or a Stipulation and Order to Dismiss is presented.

David N. Ramras – 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

MICHAEL K. JEANES, CLERK  
BY *[Signature]* DEP  
FILED

2006 FEB. 21 PM 4:04

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; et. al.,

Plaintiffs,

vs.

Jeff Logsdon; et. al.,

Defendants.

No. CV2005-011949

STIPULATION FOR DISMISSAL

(Assigned to the Honorable Ruth Hilliard)

The parties advise the Court that they have settled this litigation and thus stipulate that the Order annexed hereto may immediately be entered.

DATED: 2/21/06

RAMRAS LAW OFFICES, P.C.

By: *[Signature]*  
David N. Ramras  
Attorney for Plaintiffs

Sacks Tierney PA

By: *[Signature]*  
David C. Tierney  
Attorney for Defendants/Counterclaimants



David N. Ramras – 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; et. al.,

Plaintiffs,

vs.

Jeff Logsdon; et. al.,

Defendants.

No. CV2005-011949

ORDER OF DISMISSAL

(Assigned to the Honorable Ruth Hilliard)

Pursuant to Stipulation and good cause appearing, it is ordered that Plaintiffs' complaint and Defendants'/Counterclaimants' Counterclaim are hereby dismissed with prejudice, each party to bear their own costs and attorney's fees.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

A copy of the foregoing mailed  
on \_\_\_\_\_, 2006, to:

David C. Tierney  
Sacks Tierney, PA  
4250 N. Drinkwater Blvd., Fourth Floor  
Scottsdale, AZ 85251  
Attorney for Defendants/Counterclaimants

David N. Ramras  
Ramras Law Offices, P.C.  
5060 N. 40<sup>th</sup> Street, #103  
Phoenix, AZ 85018  
Attorney for Plaintiffs

---

David N. Ramras - 002826  
Ari Ramras - 018887  
RAMRAS LAW OFFICES, P.C.  
5060 North 40<sup>th</sup> Street, Suite 103  
Phoenix, Arizona 85018  
Telephone (602) 955-1951  
Attorney for Plaintiffs

**FILED**  
*2-28-06 3:12pm*  
MICHAEL K. JEANES, Clerk ✓  
By *L. Gilbert*  
L. Gilbert, Deputy

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Victor Oppleman; et. al.,

Plaintiffs,

vs.

Jeff Logsdon; et. al.,

Defendants.

No. CV2005-011949

ORDER OF DISMISSAL

(Assigned to the Honorable Ruth Hilliard)

Pursuant to Stipulation and good cause appearing, it is ordered that Plaintiffs' complaint and Defendants'/Counterclaimants' Counterclaim are hereby dismissed with prejudice, each party to bear their own costs and attorney's fees.

DATED: 2/28/06

*Ruth Hilliard*  
\_\_\_\_\_  
Judge of the Superior Court

A copy of the foregoing mailed  
on \_\_\_\_\_, 2006, to:

David C. Tierney  
Sacks Tierney, PA  
4250 N. Drinkwater Blvd., Fourth Floor  
Scottsdale, AZ 85251  
Attorney for Defendants/Counterclaimants

David N. Ramras  
Ramras Law Offices, P.C.  
5060 N. 40<sup>th</sup> Street, #103  
Phoenix, AZ 85018  
Attorney for Plaintiffs

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