

**FILED**

**IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
(PROBATE DIVISION) 2007 MAR 26 PM 2:00**

**IN THE MATTER OF:** )  
**ESTATE OF DAN W. MADDOX,** )  
**Deceased.** )

**RICHARD R ROOKER, CLERK**

**No. 98P-170**

*Richard R. Rooker* J.C.

**IN THE MATTER OF:** )  
**ESTATE OF MARGARET H. MADDOX,** )  
**Deceased.** )

**No. 98P-171 ✓**

**STATE OF TENNESSEE, by and through** )  
**VICTOR S. (TORRY) JOHNSON, III,** )  
**District Attorney General, ex. rel.** )  
**TOMMYE MADDOX WORKING, et al.** )

**Plaintiffs/Petitioners,** )

**v.** )

**No. 04P-1430**

**ROBIN G. COSTA, individually and as** )  
**Trustee for and on behalf of the** )  
**MADDOX FOUNDATION TRUST,** )  
**a Tennessee charitable foundation** )  
**that was created pursuant to a** )  
**Trust Agreement dated** )  
**October 19, 1968, et al.** )

**Defendants/Respondents.** )

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**ORDER TO SHOW CAUSE AND FOR OTHER APPROPRIATE RELIEF**

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This matter came before the Court on March 12, 2007 for hearing upon the State of Tennessee's Motion For An Order To Show Cause, Enforce Compliance and Other Appropriate Relief and upon Diversified Trust Company's Motion For An Order To Show Cause. Having considered the proof presented in the form of affidavits (including specifically affidavits filed by and on behalf of Defendants Robin G. Costa and Maddox Foundation Corporation (hereinafter

the “Maddox Corporation”)), documentary exhibits, previous orders of this Court, the argument of counsel and the entire record in the cause, the Court finds as follows:

1. This action commenced with the filing of Plaintiff’s Complaint on August 31, 2004.

2. On September 28, 2004 this Court entered an order stating in relevant part as follows:

[T]he Court finds that no legal fees or other expenses incurred in the captioned litigation may be paid from Trust Assets (hereafter defined below) until and unless the requesting party shall have met the requirements hereinafter set forth which are as follows:

1. The requesting party shall comply with the procedures established by the provisions of Davidson County Local Rule § 39.14; and

2. The requesting party shall meet the substantive legal requirements articulated in Nickas v. Capadalis, 954 S.W. 2d 735 (Tenn. Ct. App. 1997); Marshall v. First National Bank, 622 S.W. 2d 558, 560 (Tenn. Ct. App. 1981); (citing Pierce v. Tharp), 455 S.W. 2d 145 (Tenn. 1970); and

3. The requesting party shall have obtained prior approval of the payment of such fees from this Court.

3. On November 18, 2004 a civil action was commenced in DeSoto County, Mississippi Chancery Court (the “First Mississippi Litigation”) by the State of Mississippi as Plaintiff against the Maddox Corporation, and both Ms. Costa and Ms. Working in their representative capacities as Directors of the Corporation. This Complaint was signed by “George Ready” in his capacity as “Special Assistant Attorney General” for the State of Mississippi.

4. On November 29, 2004, this Court entered an Order stating in relevant part as follows:

[T]he Court hereby ORDERS that Robin G. Costa, individually and as Director of the Maddox Foundation is enjoined from using any and all assets,

investments or other monies held by the Maddox Foundation Corporation and its subsidiaries and related entities, including the numerous for-profit entities owned in whole or in part by the Maddox Foundation Corporation, as well as the Maddox Foundation Trust, to defend the present lawsuit, unless and until Ms. Costa petitions and receives approval from this Court to do otherwise.

5. On August 25, 2005 the Maddox Corporation filed a pleading in the First Mississippi Litigation joining in a motion for summary judgment filed by the plaintiff, State of Mississippi. This pleading was prepared and filed by Ronnie Musgrove, C. Dale Shearer, and Thomas C. Lacy, Jr., all of whom were stated to be attorneys at the Mississippi law firm of Copeland, Cook, Taylor & Bush, P.A. ("Copeland Cook").

6. On August 30, 2005, this Court entered partial summary judgment in favor of Plaintiff, the State of Tennessee, with respect to certain aspects of the claim for declaratory relief in Count II of the Amended Complaint and certified that judgment as final under Rule 54, Tennessee Rules of Civil Procedure. The Defendants filed a timely appeal to the Tennessee Court of Appeals.

7. In its 990-PF tax return for the year ending December 31, 2005, the Maddox Corporation reports having paid Copeland Cook fees in the total amount of \$1,398,216.

8. In its 990-PF tax return for the year ending December 31, 2005, the Maddox Corporation reports having paid the Tennessee law firm of Neal & Harwell fees in the total amount of \$513,292. According to the Affidavit of Gerald B. Neenan, \$270,546.29 of that amount was incurred in defense of the Kevin Brooks sexual harassment lawsuit against the Maddox Corporation, \$40,295.44 of that amount was incurred in connection with general legal services unrelated to litigation, and \$180,141.49 was incurred in connection with other litigation in Mississippi including the First Mississippi Litigation. At the hearing on this matter counsel for the Maddox Corporation acknowledged that there had been certain inadvertent billing errors

resulting in fees in the total amount less than \$5,000 charged to and paid by the Maddox Corporation for services in connection with this *Quo Warranto* action. The Plaintiff, State of Tennessee, did not offer any contrary evidence and stipulated that the basis of its Motion as it related specifically to the fees paid to Neal & Harwell was limited to the \$180,141.49 incurred in connection with Mississippi Litigation.

9. In an e-mail message dated October 31, 2006, Mississippi Attorney General Jim Hood stated that in the First Mississippi Litigation the interests of the state of Mississippi and the Maddox Corporation were “synonymous” and that the Maddox Corporation had agreed to pay the legal fees of George Ready.

10. On August 3, 2006 the Maddox Corporation filed a civil action against Tommye Maddox Working and Diversified Trust Company (“DTC”) in DeSoto County, Mississippi Circuit Court. (the “Second Mississippi Litigation”). This civil action was prepared and filed by Ronnie Musgrove, C. Dale Shearer and P. Vance Daly, attorneys affiliated with Copeland Cook.

11. On August 8, 2006 the Tennessee Court of Appeals filed its Opinion in this case affirming in material part this Court’s final judgment and holding in relevant parts as follows:

The legal situs of the Maddox Trust remains in Tennessee, and Tennessee has retained jurisdiction over the trust.

...

[T]he transfer of the Maddox Trust from Tennessee to Mississippi in 1999 was invalid and ineffective, the State of Tennessee has retained jurisdiction over the Maddox Trust, without interruption, since October 19, 1968. While the Maddox Corporation may have its principal place of administration in Mississippi, that Mississippi nonprofit corporation is but an asset of the Maddox Trust, and the situs of the Maddox Trust is in Davidson County, Tennessee.

....

The State of Tennessee's jurisdiction over the Maddox Trust, and over the assets of the Maddox Trust, including those held by the Maddox Corporation, is based on a "factor other than the trust's principal place of administration," namely the fact that Tennessee never lost jurisdiction due to the trustees' failure to comply with T.C.A. § 35-1-122.

The Maddox Corporation and Ms. Costa filed with the Tennessee Supreme Court a timely application for further review pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure.

12. On August 24, 2006, Ms. Costa and the Maddox Corporation, acting through the aforementioned C. Dale Shearer, obtained an *ex parte* temporary restraining order from the Chancery Court of DeSoto County, Mississippi against, *inter alia*, District Attorney General Johnson, DTC, and Plaintiff's counsel in this action. This temporary restraining order purported to enjoin General Johnson, DTC and Plaintiff's counsel from maintaining motions and other proceedings in this Court in both this *Quo Warranto* action and in the Maddox Estate matters.

13. On August 29, 2006, Ms. Costa began the process of transferring assets from investment accounts at Merrill Lynch to the ultimate recipient of the assets, BankPlus. The transfer of assets process continued and was completed on November 3, 2006. According to the evidence submitted by the Defendants in connection with the hearing on these Motions, as of December 31, 2006, the Maddox Corporation portfolio of assets transferred from Merrill Lynch to BankPlus totaled \$34,696,032.80 (the "Maddox Investments").

14. BankPlus is a Mississippi state chartered bank having all of its branches located in the state of Mississippi. All of its ATMs are located in the State of Mississippi. Its general counsel is a former partner in Copeland Cook. A portion of its headquarters is housed in an office building that is also occupied by Copeland Cook.

15. On September 1, 2006, the aforementioned C. Dale Shearer on behalf of Ms. Costa and the Maddox Corporation submitted a proposed permanent injunction against Gen. Johnson, DTC, plaintiff's counsel and others in the First Mississippi Litigation.

16. On September 19, 2006 this Court held a hearing on certain motions filed in the Maddox Estates. Counsel for Ms. Costa and counsel for the Maddox Corporation were in attendance at that hearing. The transcript of the proceeds at that hearing reflects that the Court made the following statements from the bench during open court:

The Authority of the Diversified Trust Company or DTC as Trustee needs to be expanded to reflect that, in their capacity as trustee of the Maddox Foundation Trust, they are able to oversee the expenditures that may be expended an/or the liabilities that may be incurred by the Mississippi corporation without regard to infringement upon ordinary and necessary expenses, which I'll try to define here in a moment, so that as Trustee, no extraordinary expenses nor any encumbrances of any significant nature are made without the prior express approval of the trustee.

...

Certainly no harm can come from this Court trying to preserve the status quo. By status quo I think [I] mean the ordinary, reasonable and necessary operation of the Mississippi corporation as an asset of the Maddox Foundation Trust.

17. The fact of the ongoing transfer of Maddox Investments from Merrill Lynch to BankPlus was not disclosed at the September 19, 2006 hearing.

18. On September 27, 2006, this Court entered an Order stating in relevant part as follows:

[T]he Court intends by the entry of this Order to maintain the status quo and to preserve the assets of the Maddox Foundation Trust and the Maddox Foundation Corporation until such time as the trial of the *Quo Warranto* Lawsuit is completed.

...

The Court ORDERS AND INSTRUCTS that DTC's authority as Trustee and special limited fiduciary of the Maddox Foundation Trust be and hereby is

expanded in order to reflect that DTC oversee and monitor any and all expenditures anticipated to be expended and/or liabilities anticipated to be incurred by the Maddox Foundation Corporation (except for those determined to be ordinary and necessary expenses by DTC) for the purpose of ensuring that no extraordinary expenditures nor encumbrances of any significant value are made without the prior expressed approval of DTC or this Court.

19. On November 3, 2006, a meeting between DTC and its counsel with Ms. Costa, her counsel and counsel for the Maddox Corporation took place in Memphis, Tennessee. Prior to that meeting, DTC requested certain information from Ms. Costa and the Maddox Corporation. Ms. Costa and the Maddox Corporation furnished some but not all of the information DTC requested.

20. On December 18, 2006, the Tennessee Supreme Court denied Ms. Costa and the Maddox Corporation's T.R.A.P. 11 application for permission to appeal. As a result, the August 8, 2006 ruling of the Tennessee Court of Appeals became final. The mandate of the Court of Appeals issued on January 3, 2007.

21. On December 29, 2006, the Maddox Corporation filed a civil action against James N. Maddox in United States District Court for the Northern District of Mississippi. (the "Third Mississippi Litigation") This lawsuit was filed by the aforementioned Ronnie Musgrove, C. Dale Shearer and P. Vance Daly who are all affiliated with Copeland Cook.

22. On February 1, 2007, this Court entered an Order regarding DTC's Motion for Instructions. That Order provides in relevant part as follows:

The Court ORDERS AND INSTRUCTS that DTC's authority, as Trustee and limited special fiduciary on behalf of the Maddox Foundation Trust, be and hereby is expanded to encompass the full range of authority granted by the Maddox Foundation Trust agreement (and any applicable amendments), the UTC, including but not limited to those powers enumerated in Tenn. Code Ann. § 35-15-1001(b)(5) and common law.

23. On February 5, 2007, DTC's counsel wrote a letter to counsel for Ms. Costa and the Maddox Corporation that states in relevant part as follows:

As Trustee, DTC instructs the Maddox Foundation Corporation with respect to the following effective immediately:

\* The Maddox Foundation Corporation is not to make any expenditure or incur any obligation in excess of \$5,000 without prior notice to and approval of DTC.

\* The Maddox Foundation Corporation is not to make any grant, disbursement, commitment, or other distribution of any asset, including real property, or enter into any contract to make any grant, disbursement or distribution without prior notice to and approval of DTC, including grants disbursements and distributions that are pursuant to a contractual obligation of the Maddox Foundation Corporation.

24. On February 7, 2007, counsel for DTC wrote a letter to the General Counsel of Merrill Lynch stating in relevant part as follows:

. . . In the interim you are instructed not to make any disposition or transfer of any assets of the Maddox Foundation or the Maddox Foundation Corporation without the prior written approval of DTC.

25. On February 9, 2007, without notice to or approval from DTC, the Maddox Corporation drew \$815,000 on its line of credit with Merrill Lynch and transferred the funds from that draw to Maddox Hockey, Inc.

26. The transfer of the Maddox Investments from Merrill Lynch to BankPlus is contrary to both this Court's instructions as expressed at the hearing on September 19 and this Court's Order entered on September 27, 2006.

27. The Maddox Corporation's draw of \$815,000 on the Merrill Lynch line of credit on February 9, 2007 ~~is contrary to~~ <sup>IS OF CONCERN TO THE COURT IN LIGHT OF RK</sup> this Court's instructions as expressed at the hearing on September 19, this Court's Order entered on September 27, 2006, this Court's Order entered

February 1, 2007 and the instructions given to Ms. Costa and the Maddox Corporation by DTC in its letter of February 5, 2007.

28. The Court has before it insufficient information upon which to determine whether the payment of approximately \$1.4 million to Copeland Cook in 2005 is or is not a direct violation of an express Order previously entered by this Court. Nevertheless, this Court finds that the use of foundation assets, including assets held in a fiduciary capacity by the Maddox Corporation, for the payment of attorneys fees to Copeland Cook or any other attorneys from and after the effective date of this Order for or in connection with any litigation irrespective of the forum of said litigation wherein the Maddox Corporation takes a position that is contrary to or inconsistent with the prior ruling of the Tennessee Court of Appeals as quoted above, would be an inappropriate use of fiduciary assets.

29. The Court has before it <sup>NO RK</sup>insufficient information upon which to determine that the law firm of Neal & Harwell has received payment of any fees in defense of this lawsuit other than the amounts admitted to have been billed and paid in error. There being no dispute that the error was detected and corrected, the Court finds that it is unnecessary for Neal & Harwell to submit its invoices for *in camera* review by this Court.

30. As co-executrix of the Maddox Estates and fiduciary, Ms. Costa has caused certain payments to be made from trust and/or estate assets to attorneys, specifically to Copeland Cook, without prior court approval. Inasmuch as Ms. Costa has yet to be discharged as co-executrix in the Maddox Estate, she has not accounted to the Court for these premature payments nor has she demonstrated that the fees were reasonable, necessary and in the best interest of the Estates and Trusts. The Court finds that this issue is not yet ripe for adjudication and therefore declines to rule at this time with respect to whether the payment of fees to Copeland Cook and

other attorneys, specifically in connection with but not limited to the First, Second and Third Mississippi Litigation, was an appropriate expenditure of Estate and/or Trust assets. The resolution of this issue should be and therefore shall be reserved pending further proceedings and Orders of this Court.

31. The Plaintiff's motion seeks the following relief:

(a) An order for Ms. Costa to appear and show cause why she should not be held in contempt of this Court's Orders of September 28 and November 29, 2004, September 27, 2006 and February 1, 2007 for having transferred the Maddox Investments from Merrill Lynch to BankPlus;

(b) An order requiring Ms. Costa and the Maddox Corporation to transfer the Maddox Investments from BankPlus to some other appropriate depository institution having a presence in the State of Tennessee;

(c) An order requiring Ms. Costa to appear and show cause why she should not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for having made a draw on the Merrill Lynch line of credit in the amount of \$815,000 without having first obtained DTC's approval of said draw;

(d) Removal of Ms. Costa as co-executor of the Maddox Estates;

(e) An order for Ms. Costa to appear and show cause why she should not be held in contempt of this Court's Orders of September 28, and November 29, 2004 for having used Foundation assets to pay legal fees to Copeland Cook;

(f) An order for Ms. Costa and the Maddox Corporation to seek recovery of the fees paid to Copeland Cook pending subsequent application to this Court for approval of said fees;

(g) An order requiring Ronnie Musgrove to submit an application for permission to practice *pro hac vice* before he is allowed to make any additional appearances on behalf of Ms. Costa and/or the Maddox Corporation in this case;

(h) An order requiring Neal & Harwell to submit its invoices for 2005 that have been paid by the Maddox Corporation for an *in camera* inspection by this Court.

32. DTC's motion seeks the following relief:

(a) An order requiring Ms. Costa and the Maddox Corporation to appear and show cause why they should not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for having made a draw of \$815,000 on the Merrill Lynch line of credit without first seeking or obtaining the approval of DTC;

(b) An order requiring Ms. Costa and the Maddox Corporation to appear and show cause why they should not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for (i) having failed to follow the valid instructions of DTC with respect to prior notice and approval of expenditures or obligations of the Maddox Corporation in excess of \$5,000; (ii) for having made the \$815,000 draw on the Merrill Lynch line of credit; and (iii) for having failed to provide DTC with the information which DTC has requested in its role as Trustee; and

(c) An Order requiring the Maddox Corporation and Ms. Costa to provide information to and comply with the instructions of DTC in its role as Trustee of the Maddox Foundation Trust.

The Court has determined based upon the evidence presented that the Plaintiff's Motion should be **GRANTED IN PART** and **DENIED IN PART** as is more fully set out herein and

that DTC's Motion should be **GRANTED** as is more fully set out herein. Specifically, the State of Tennessee's Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

The Motion described in paragraph 31(a) above is **GRANTED**. Ms. Costa shall appear **at a date and time to be set by the agreement of the parties, or subsequent order of this Court**, and show cause why she should not be held in contempt of this Court's Orders of September 28 and November 29, 2004, September 27, 2006 and February 1, 2007 for having transferred the Maddox Investments from Merrill Lynch to BankPlus.

The Motion described in paragraph 31(b) above is **GRANTED**. It is therefore **ORDERED ADJUDGED AND DECREED** that Ms. Costa and the Maddox Corporation shall immediately transfer or cause to be transferred the Maddox Investments from BankPlus to a financial institution, reasonably acceptable to DTC, and having a presence in the State of Tennessee. In the event that Ms. Costa, the Maddox Corporation and DTC are unable to reach agreement on the financial institution to which transfer is to be made, then the Court **ORDERS** that the assets be transferred from BankPlus to Bancorp South.

The Motion described in paragraph 31(c) above is **GRANTED**. Ms. Costa shall appear **at a date and time to be set by the agreement of the parties, or subsequent order of this Court**, and show cause why she should not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for having made a draw on the Merrill Lynch line of credit in the amount of \$815,000 without having first obtained DTC's approval of said draw.

The Motion described in paragraph 31(d) above is taken under advisement pending the hearing to be set.

The Motions described in paragraph 31(e) and (f) above are **GRANTED IN PART** and **DENIED IN PART**. The Court **ORDERS** that Ms Costa shall appear **at a date and time to be**

set by the agreement of the parties, or subsequent order of this Court, and show cause why she should not be prohibited prospectively from spending Maddox Foundation assets including assets held in a fiduciary capacity by the Maddox Corporation, for the payment of attorneys fees to Copeland Cook or any other attorneys from and after the effective date of this Order for or in connection with any litigation irrespective of the forum of said litigation wherein the Maddox Corporation takes a position that is contrary to or inconsistent with the prior ruling of the Tennessee Court of Appeals as quoted above. The Court further **ORDERS** that Ms Costa shall, submit RK upon motion or subsequent order of this Court, ~~but in no event later than the ultimate trial on the merits of the Quo Warranto litigation, submit, in accordance~~ RK IN COMPLIANCE with Local Rule 39.14, a motion for this Court's approval of fees, expenses and costs that have been previously charged against Estate and/or Trust assets without prior court approval, including specifically, without limitation, the fees paid to Copeland Cook and Neal & Harwell.

The Motion described in paragraph 31(g) above is **GRANTED**. Ronnie Musgrove shall not be allowed to appear in this Court and/or in this proceeding in a representative capacity for Ms. Costa and/or the Maddox Corporation without first having been admitted to practice before this Court *pro hac vice*.

The Motion described in paragraph 31(h) above is **DENIED**. The Court will not require Neal & Harwell to submit its invoices for 2005 that have been paid by the Maddox Corporation for an *in camera* inspection by this Court, there having been no information submitted to support this request. RK  
DTC's Motion is **GRANTED** in greater particularity as follows:

The Motion described in paragraph 32(a) above is **GRANTED**. Ms. Costa and the Maddox Corporation is **ORDERED** to appear on at a date and time to be set by the agreement of the parties, or subsequent order of this Court, and show cause why they should

not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for having made a draw of \$815,000 on the Merrill Lynch line of credit without first seeking or obtaining the approval of DTC;

The Motion described in paragraph 32(b) above is **GRANTED**. Ms. Costa and the Maddox Corporation is **ORDERED** to appear at a date and time to be set by the agreement of the parties, or subsequent order of this Court, and show cause why they should not be held in contempt of this Court's Orders of September 27, 2006 and February 1, 2007 for: ~~(i) having failed to follow the valid instructions of DTC with respect to prior notice and approval of expenditures or obligations of the Maddox Foundation Corporation in excess of \$5,000; (ii) having made the \$815,000 draw on the Merrill Lynch line of credit; and (iii) having failed to provide DTC with the information which DTC has requested in its role as Trustee.~~

The Motion described in paragraph 32(c) above is **GRANTED**. The Maddox Corporation and Ms. Costa are hereby **ORDERED** to provide information to and comply with the instructions of DTC in its role as Trustee of the Maddox Foundation Trust. It is further **ORDERED** that the employees of the Maddox Corporation and Ms. Costa are under an affirmative duty and responsibility to provide such information as shall be requested by the Trustee from time to time so that the Trustee may perform its functions as set forth in the previous orders of this Court.

Moreover, it is hereby **ORDERED ADJUDGED AND DECREED** that from and after the effective date of this Order, neither Ms. Costa ~~nor the Maddox Corporation~~ <sup>Acquiring into the company as</sup> shall make any transfer of funds or expenditure for any single item or to any individual creditor in excess of the amount of \$5,000 per transfer or expenditure without the express prior approval of DTC or such other Trustee as this Court may by subsequent order appoint. In so ruling, the Court does not

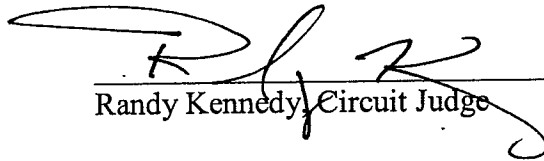
mean to suggest or imply that Ms. Costa or the Maddox Corporation is entitled to expend or transfer less than \$5,000 per transfer or expenditure if such expenditure or transfer is a waste of Estate and/or Trust assets and/or otherwise outside the reasonable, ordinary, and necessary operation of the Maddox Corporation.

*THIS ORDER SHALL NOT BE CONSIDERED TO PROHIBIT MS. COSTA FROM SPENDING HER OWN MONEY. RK.*

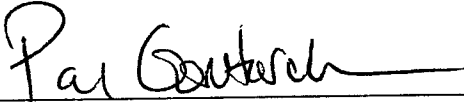
All other matters are reserved pending further proceedings and orders of this Court.

This Order is effective March 12, 2007 *nunc pro tunc*.

**IT IS SO ORDERED.**

  
Randy Kennedy, Circuit Judge

**PREPARED FOR ENTRY BY:**



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served via hand delivery upon:

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on this the 16<sup>th</sup> day of March, 2007.

  
\_\_\_\_\_  
Attorney for Plaintiff