INTRODUCTION

Plaintiff by his undersigned counsel, alleges the following based upon the investigation by Plaintiff's counsel, which included, among other things, a review of the publicly filed documents, announcements, United States Securities and Exchange Commission ("SEC") filings, and wire and press releases issued by VMware, Inc. ("VMware" or the "Company"), news media reports about the Company and other information readily available on the Internet. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.
SUMMARY

1. This is a class action on behalf of all persons who purchased or otherwise acquired the common stock of VMware between April 22, 2008 and July 22, 2008 (the “Class Period”). As a direct result of the market learning of Defendant’s misrepresentations and omissions, the price of VMware shares declined and Plaintiff and the Class suffered a loss on their investments in VMware.

JURISDICTION AND VENUE

2. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5.

3. Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements complained of herein affected persons this District.

PARTIES

4. Plaintiff Max Troy (“Plaintiff”) purchased VMware common stock as described in the attached certification and was damaged thereby.

5. Defendant Diane B. Greene (“Greene”) was, at times relevant hereto, President and Chief Executive Officer of VMware, until she was replaced by the Company’s board of directors on July 8, 2008.

6. Defendant Mark S. Peek (“Peek”) is, and was at all times relevant hereto, Chief Financial Officer of VMware.

7. Defendants Greene and Peek (collectively, “Defendants”), because of
their positions with the Company, possessed the power and authority to control the contents of VMware's quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. They were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information available to them but not to the public, Greene and Peek knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. Greene and Peek are liable for the false statements pleaded herein.

SUBSTANTIVE ALLEGATIONS:

Background

8. VMware is a Delaware corporation which maintains its principal executive offices at 3401 Hillview Avenue, Palo Alto, California 94304. The Company provides computer virtualization solutions that separate the operating system and application software from the underlying hardware to address a range of complex IT problems that include infrastructure optimization, business continuity, software lifecycle management and desktop management. VMware is a subsidiary of EMC Corporation.
False and Misleading Statements Issued During the Class Period

9. On April 22, 2008, VMware issued a press release, titled “VMware Reports First-Quarter Results; Virtualization Leader Grew First Quarter Revenues 69% to $438 Million,” announcing the Company’s first quarter 2008 financial results. The press release stated, in relevant part, as follows:

PALO ALTO, Calif., April 22, 2008 — VMware, Inc. (NYSE: VMW), the global leader in virtualization solutions from the desktop to the datacenter, today announced financial results for the first quarter of 2008:

* Revenues for the first quarter were $438 million, an increase of 69% compared to the first quarter of 2007.

* GAAP operating income for the first quarter was $48 million, compared to $46 million in the first quarter of 2007. Non-GAAP operating income was $106 million, an increase of 62% over the year-ago quarter.

* GAAP net income for the quarter was $43 million, or $0.11 per diluted share, compared to $41 million, or $0.12 per diluted share, in the year-ago quarter. Non-GAAP net income for the quarter was $88 million, or $0.22 per diluted share, compared to $0.16 a year ago.

“Q1 was another quarter of increased demand for VMware virtualization products and solutions,” said Diane Greene, president
and chief executive officer of VMware. “Our strategy to continually deliver superb quality and market-expanding solutions well ahead of the competition is working and we’re advantaging our lead with our well developed multi-tier partner distribution model. We are seeing customers progress more rapidly through the virtualization adoption path; many are now moving right into a VMware-based architecture so that they can pool their resources, deliver capacity on demand, and also get an insurance policy for business continuity and disaster recovery.”

First-quarter U.S. revenues grew 65% compared to the year-ago quarter on increased demand from large enterprises standardizing on the VMware platform and an increase in the number of smaller transactions delivered through VMware channel partners.

International revenues, which increased 74%, were driven in part by triple-digit business growth across Australia and emerging markets including Brazil, China, India and Russia.

Software license revenue grew 73% compared to the same period last year to $294 million and service revenue, including support, subscription and professional services, increased 62% to $144 million.
VMware plans to host a conference call today to review its first-quarter results and discuss its financial outlook. The call is scheduled to begin at 2:00 p.m. PT/ 5:00 p.m. ET and can be accessed via the Web at http://ir.vmware.com. The Internet broadcast and related slides will be available live, and a replay will be available following completion of the live broadcast for approximately 30 days.

First Quarter Highlights

During the first quarter VMware announced and shipped new products and technologies in four key areas: (1) desktop virtualization, (2) datacenter virtualization, (3) management & automation for the datacenter and (4) platform security. VMware announced OEM agreements with four major hardware vendors to pre-install the VMware ESXi hypervisor on their servers. The company announced major enhancements to its channel partner programs to help the more than 13,000 indirect channel partners reselling VMware expand their virtualization practices and drive new customer adoption. This quarter also marked the launch of VMworld Europe, the industry's first European virtualization conference. Held in Cannes, France, VMworld Europe drew more than 4,500 customers and partners.
Specific, notable quarterly highlights include:

* General availability of VMware Virtual Desktop Manager 2, which allows users to securely connect to their virtual desktops in the datacenter and gives IT administrators an easy and cost-effective way to manage virtual desktops.

* General availability of VMware Lifecycle Manager, which enables companies to implement a consistent and automated process for requesting, approving, deploying, updating, and retiring virtual machines.

* The announcement of VMware VMsafe™, a new security initiative endorsed by more than 20 security vendors that protects applications running in virtual machines in ways previously not possible in physical environments.

Visit www.vmware.com/go/q108highlights for a comprehensive list of VMware highlights from the first quarter.

Financial Outlook

The following forward-looking statements are based on current expectations and are subject to uncertainties and risks discussed below and in documents filed by VMware with the United States Securities and Exchange Commission. Actual results may differ
materially.

* VMware continues to expect 2008 revenue growth of approximately 50% compared to 2007.

* Second quarter 2008 revenues are expected to increase approximately 55% compared to the second quarter of 2007.

***

10. The next day, in response to this positive news, the price of VMware shares shot up $2.82 from the previous day’s close on heavy trading volume, and continued to rise for the next two trading days, to close on April 25, 2008 at $64.84 per share.

11. On May 9, 2008, the Company filed its Form 10-Q for the period ended March 31, 2008, which included the Company’s previously reported financial results. The Form 10-Q was signed by defendant Peek. Defendants Greene and Peek also signed certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 stating that they reviewed the Form 10-Q, that the report did not contain any untrue statements of material fact, and that the financial statements presented in all material respects the financial condition, results or operations and cash flows of the Company.

12. Defendants knew but recklessly disregarded and failed to disclose to the investing public that the April 22, 2008 press release was materially misleading because it failed to fully disclose that: (i) the Company was facing increasing competition, and lower-priced rival products were lengthening the time
it took for VMware to close deals; and (ii) customers were taking longer to sign lucrative multi-year enterprise license agreements, and were instead signing smaller, short-term contracts. Thus, the Company had no reasonable basis to make projections about its financial results.


VMware Reports Second-Quarter 2008 Results

PALO ALTO, Calif., July 22, 2008 — VMware, Inc. (NYSE: VMW), the global leader in virtualization solutions from the desktop to the datacenter, today reported financial results for the second quarter of 2008:

* Revenues for the second quarter were $456 million, an increase of 54% from the second quarter of 2007.

* GAAP operating income for the second quarter was $61 million, compared to $47 million for the same period last year.

* Non-GAAP operating income was $112 million, an increase of 52% from the second quarter of 2007.

* GAAP net income for the quarter was $52 million, or $0.13 per diluted share, compared to $34 million, or $0.10 per diluted share, for the second quarter of 2007.

* Non-GAAP net income for the quarter was $92 million, or $0.23
per diluted share, compared to $52 million, or $0.16 per diluted share, for the second quarter of 2007.

* Cash exceeded $1.5 billion and deferred revenue was $721 million as of June 30, 2008.

Second quarter U.S. revenues grew 43% to $240 million from the second quarter of 2007. International revenues grew 68% to $216 million from the second quarter of 2007 driven by strength in Europe and Australia.

Software license revenue grew 39% to $284 million from second quarter of 2007. Service revenues, which include support, subscription and professional services, were $172 million, an increase of 85% from the second quarter of 2007.

“VMware had another solid quarter, proving that the quality of our products and the immediate return on investment that they yield is delivering high value to customers,” said Paul Maritz, president and chief executive officer of VMware. “I am personally excited to become part of a company that has the potential to become one of the truly important and enduring companies in the software industry.”
“Our mission is to help customers run datacenters that use powerful, cost-effective, modern hardware to deliver dramatically higher levels of flexibility, manageability and efficiency. Today, much of our growth comes from customers expanding from basic server consolidation, yet increasingly more customers are seeking to virtualize their entire datacenter and desktop environments with VMware Infrastructure. We are also on the threshold of a major new opportunity – as customers begin to leverage VMware as both the on-ramp to the Cloud and for key elements of the Cloud itself. We are well-positioned to become a truly strategic platform for businesses of all sizes.”

Second Quarter Highlights
During the second quarter, VMware made several strategic announcements:

* Announced general availability of bundled application and infrastructure management products for the datacenter. VMware Lifecycle Manager, VMware Lab Manager and VMware Stage Manager provide a more cost-effective and powerful way to manage the entire software lifecycle. In particular, they enable end user self-provisioning of virtual machines, give IT departments complete control of virtual machine environments and provide application
owners with application release management capabilities.

* Announced general availability of VMware Site Recovery Manager, a pioneering new product for disaster recovery management and automation that simplifies business continuity planning and testing, and reduces the risk and complexity associated with executing disaster recovery.

* Announced the acquisition of B-hive Networks, a privately-held application performance management software company. With this acquisition, which closed on July 1, VMware enhances the VMware portfolio of application and infrastructure management products by offering proactive performance management and service level reporting for applications running within virtual machines. B-hive's R&D facility and team also forms the core of VMware's new development center in Israel.

* Announced general availability of VMware ThinApp 4, an application virtualization solution that lets customers run multiple versions of virtually any application on any Windows operating system without conflict. This product is the result of our first quarter acquisition of Thinstall.

* Announced the VMware Alliance Affiliate Initiative (Channel Affiliate Program) – CA, Dell (Equal Logic), EMC, McAfee, NetApp, Riverbed, and Vizioncore (a subsidiary of Quest Software)
have created VMware-oriented virtualization training and tools for channel partners as well as financial incentives on the sale of their products combined with VMware solutions.

* Announced new Original Equipment Manufacturer agreements with key Chinese vendors Lenovo and Inspur to distribute and support VMware Infrastructure 3 on their systems. These agreements will help to further accelerate the adoption of VMware virtualization technologies in China.

* Dell delivered a broad line of server systems embedded with VMware ESXi hypervisor including Dell PowerEdge 2950, R900, 1950, 2900, M600 blade and M605 blade systems. Other major vendors embedding VMware ESXi in their systems include HP, IBM, Fujitsu Siemens, Hitachi, HP and NEC.

***

Financial Outlook
The following forward-looking statements are based on current expectations and are subject to uncertainties and risks discussed below and in documents filed by VMware with the United States Securities and Exchange Commission. Actual results may differ materially.

* 2008 revenues are targeted to grow approximately 42% to 45% compared to 2007.
Third quarter 2008 revenues are targeted to be within a range of approximately $462 to $468 million.

Third quarter GAAP operating margin is targeted to be between 11% and 13%. This guidance includes stock-based compensation, employer payroll tax on employee stock transactions, amortization of intangible assets and capitalized software development costs which are targeted at 9% of projected revenue.

* * *

14. That same day, July 22, 2008, at a conference call for analysts and investors, the Company’s CFO, defendant Peek, acknowledged that increased competition and lengthening sales cycles were negatively affecting the Company's revenue, stating in part, the following:

   Now let me turn to our outlook for 2008 and the third quarter. Two weeks ago, we communicated to you that we expected our 2008 revenue to be below the previous guidance of 50% growth over 2007. Over the last several weeks, we have worked to understand the impact of various factors on our business in the short-term.

   **We have three primary engines of growth in the near-term.**

   **First, our ELA business. Second, our channel transaction business, including our new customer growth. And third, our ability to build and sell new products to both new and existing customers.**

   As we look out into the second half of 2008, we continue to see
strong momentum in our channel partner transaction business and acquisition of new customers. We're adding new customers at a rapid rate, and during the second quarter, we had more VI server orders than any quarter in our history.

We have, as noted, just delivered new products in the automation and desktop space, and we will continue to deliver on our product pipeline. **So we see two of the three engines firing away. However, we see the deteriorating economy affecting the third engine, the ELA business, for two reasons.**

First, customers are subjecting their large enterprise agreements to a longer review process, particularly in the US, and to a lesser extent, in Europe. We're convinced this is due to the uncertain macroeconomic conditions. We continue to close deals, in spite of these challenges, although sometimes smaller in size, and have closed a number of ELAs early in the third quarter that slipped from Q2.

Second, in certain cases, customers are deciding to forego the discount associated with buying for longer-term deployment, and purchase product to meet shorter-term needs. That said, customers continue to purchase our products because of their quality and the acknowledged return on investment they represent.

**We also recognize that Microsoft will be seeking to displace**
our VMware Click for Enhanced Coverage Linking

Searches infrastructure on certain accounts. They have only a subset of the product solution we have, and their product is, of necessity, much less mature, and we intend to further our value proposition. We are not aware of having lost any deals to them, but there is a potential that their marketing and sales efforts will slow decision cycles, while customers sort the facts out for themselves.

For these reasons, we have adjusted our expectations on revenue growth, and now anticipate 2008 revenues to grow between 42% and 45%. We believe that the third quarter will be seasonally slower and that Q3 revenue will be in the range of $462 million to $468 million.

As we align our operating costs with these new revenue forecasts, we are targeting our third quarter non-GAAP operating margins, which exclude stock-based compensation and certain other operating expenses, to be between 20% and 22%, with some slight improvement in the fourth quarter.

[Emphasis added.]

15. This news shocked the market, causing the price of VMware shares to drop $0.97 per share the next day on unusually heavy trading volume of more than nine million shares traded, and the price continued falling over the next three trading days, to close at $34.07 per share on July 25, 2008 – a more than 10.5%
16. During the Class Period, the Defendants knew but recklessly
disregarded and failed to disclose to the investing public that: (i) the Company was
facing increasing competition and lower-priced rival products were lengthening
the time it took for VMware to close deals; (ii) customers were taking longer to
sign lucrative multi-year enterprise license agreements, and were instead signing
smaller, short-term contracts; and (iii) as a result of the foregoing, Defendants
misrepresented the Company's business and future prospects. As a result,
Defendants' Class Period statements concerning the Company's business,
operations and future prospects were, at minimum, reckless.

21. As a result of Defendants' misleading statements and failure to
disclose, VMware stock traded at inflated levels during the Class Period.
However, as a direct result of the market learning of Defendants' wrongdoing, the
price of VMware shares declined and Plaintiff and the Class suffered a loss on
their investments in VMware.

ADDITIONAL SCIENTER ALLEGATIONS

22. As alleged herein, Defendants acted with scienter in that Defendants
knew that the public documents and statements issued or disseminated in the name
of the Company were materially false and misleading, knew that such statements
or documents would be issued or disseminated to the investing public, and
knowingly and substantially participated or acquiesced in the issuance or
dissemination of such statements or documents as primary violations of the federal
securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of
their receipt of information reflecting the true facts regarding VMware, their
control over, and/or receipt and/or modification of VMware’s allegedly materially
misleading misstatements and/or their associations with the Company which made
them privy to confidential proprietary information concerning VMware,
participated in the fraudulent scheme alleged herein.

23. Defendants were further motivated to engage in this course of
conduct in order to allow Company insiders to collectively sell 86,541 shares of
their personally held VMware common stock for gross proceeds in excess of $5.8
million. The insider shares sold during the Class Period are set forth more fully in
the following chart:

<table>
<thead>
<tr>
<th>INSIDER / TITLE</th>
<th>DATE</th>
<th>SHARES</th>
<th>PRICE</th>
<th>PROCEEDS</th>
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<td>Carl M. Eschenbach</td>
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<td>304</td>
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<td>Executive Vice President</td>
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<td>$1,039,000.00</td>
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<td>Mark S. Peek</td>
<td>06/05/2008</td>
<td>64,833</td>
<td>$67.89</td>
<td>$4,401,512.00</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td><strong>86,541</strong></td>
<td></td>
<td><strong>$5,879,816.00</strong></td>
</tr>
</tbody>
</table>

**LOSS CAUSATION**

24. By misrepresenting VMware’s financial performance, Defendants
presented a misleading picture of VMware’s business and prospects. Thus, instead
of truthfully disclosing during the Class Period that VMware’s business was not as
healthy as represented, Defendants failed to disclose the Company’s actual
25. These material omissions caused and maintained the artificial inflation in VMware’s stock price throughout the Class Period and until the true facts were revealed to the market.

26. Defendants’ misleading statements and omissions had the intended effect and caused VMware stock to trade at artificially inflated levels throughout the Class Period.

27. The public revelations regarding the truth about VMware’s business and financial performance, when disclosed to the market, caused the value of the Company’s common stock to decline, thereby damaging Plaintiff and the Class.

COUNT I

Breach of Fiduciary Duty

28. Plaintiff repeats and realleges each and every allegation described above as if fully set forth herein.

29. Defendants owed a fiduciary duty to the Class as purchasers and owners of VMware securities.

30. Defendants, by means of the foregoing misleading statements and omissions, breached their fiduciary duties to the Class.

COUNT II

For Violations of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

31. Plaintiff repeats and realleges each and every allegation contained
above as if fully set forth herein.

32. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

33. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of VMware common stock during the Class Period.

34. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for VMware common stock. Plaintiff and the Class would not have purchased VMware common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.
COUNT III

For Violations of §20(a) of the 1934 Act
Against All Defendants

35. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

36. Defendants R Greene and Peek acted as controlling persons of the Company within the meaning of § 20(a) of the Exchange Act. By reason of their senior executive positions they had the power and authority to cause the Company to engage in the wrongful conduct complained of herein.

37. By reason of such wrongful conduct, Defendants Greene and Peek are liable pursuant to § 20(a) of the Exchange Act. As a direct and proximate result of their wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of VMware stock during the Class Period.

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired VMware common stock during the Class Period (the "Class").

39. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of August 1, 2008, VMware had more than 88 million shares of stock outstanding, owned by
hundreds if not thousands of persons.

40. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the 1934 Act was violated by the Defendants;

(b) whether Defendants omitted and/or misrepresented material facts;

(c) whether Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether Defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of VMware common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

41. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

42. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.
43. A class action is superior to other available methods for the fair and
efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring this action to be a proper class action pursuant to
Fed.R.Civ.P. 23;

B. Awarding Plaintiff and the members of the Class damages,
including interest;

C. Awarding Plaintiff reasonable costs and attorneys’ fees; and

D. Awarding such equitable/injunctive or other relief as the Court
may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: November 24, 2008

BARNHILL & VAYNEROV LLP

By: 
Steven M. Barnhill (#123000)
Maxim Vaynerov (#177520)
8200 Wilshire Boulevard, Suite 400
Beverly Hills, California 90211
Telephone: (310) 943-8989
Facsimile: (310) 943-8998

Attorneys for Plaintiff
SWORN CERTIFICATION OF PLAINTIFF
VMWARE, INC. SECURITIES LITIGATION

1. MAX TROY
(Please Print Your Name)

1. I have reviewed the Complaint and authorized its filing.

2. I did not purchase VMWARE, INC., the security that is the subject of this action, at the
direction of plaintiff's counsel or in order to participate in any private action arising under this title.

3. I am willing to serve as a representative party on behalf of a class and will testify at
deposition and trial, if necessary.

4. My transactions in VMWARE, INC. during the Class Period set forth in the Complaint are
as follows:

I bought 500 shares on 5/29/08 at $60.64 per share
I bought ______ shares on ______ at $____ per share
I bought ______ shares on ______ at $____ per share
I bought ______ shares on ______ at $____ per share
I sold ______ shares on / / at $____ per share
I sold ______ shares on / / at $____ per share
I sold ______ shares on / / at $____ per share
I sold ______ shares on / / at $____ per share

(List Additional Transactions On Separate Page If Necessary)

5. I have not served as a representative party on behalf of a class under this title during the
last three years.

6. I will not accept any payment for serving as a representative party, except to receive my
pro rata share of any recovery or as ordered or approved by the court including the award to a
representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the
representation of the class.

☐ Check here if you are a current employee or former employee of the defendant Company.

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

X Dated: 10/27/08

(Please Sign Your Name Above)
NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Otis D. Wright II and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV08-7726 ODW (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

CV-18 (03/06) NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  

CASE NUMBER  
CV08-07726 ODW (Ex)  

MAX TROY, Individually and on Behalf of All Others Similarly Situated,  

v.  

DIANE B. GREENE and MARK S. PEEK,  

DEFENDANT(S).  

SUMMONS  

TO:  
DEFENDANT(S):  DIANE B. GREENE and MARK S. PEEK  

A lawsuit has been filed against you.  

Within ___20___ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached □ complaint □ _______________ amended complaint □ counterclaim □ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff’s attorney, Maxim Vaynerov ______________, whose address is Barnhill & Vaynerov LLP, 8200 Wilshire Blvd., Suite 400, Los Angeles, CA 90211. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.  

Clerk, U.S. District Court  

Dated: ___________________________  
NOV 24 2008  

By: _______________________________  
NATALIE LONGORIA  
Deputy Clerk  

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].
I. (a) PLAINTIFFS (Check box if you are representing yourself □)

MAX TROY, Individually and On
Behalf of All Others Similarly Situated.

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):
Los Angeles County, California

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing
yourself, provide same.)
BARNHILL & VAYNEROV LLP
8200 Wilshire Boulevard, Suite 400
Beverly Hills, California 90211
(310) 943-8989

DEFENDANTS
DIANE B. GREENE, MARK S. PEEK

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

PTF DEF
Citizen of This State
☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State

PTF DEF
Citizen of Another State
☐ 2 ☐ 2 Incorporated or Principal Place of Business in Another State

Citizen of Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation

IV. ORIGIN (Place an X in one box only.)

☐ Original ☐ 1 Removed from ☐ 2 Remanded from ☐ 3 Reinstated or
Proceeding State Court Appellate Court ☐ 4 Transferred from another district (specify):
Reopened ☐ 5

☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☐ No (Check ‘Yes’ only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☐ No

MONEY DEMANDED IN COMPLAINT: $ 0

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Breath of Fiduciary Duty, 15. U.S.C. § 78(b) and 78(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC
Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 510 Selective Service
☐ 550 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USCA 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veterans' Benefits
☐ 160 Stockholders' Suit
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL INJURY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability
☐ 390 Bankruptcy
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157
☐ 424 Voting
☐ 426 Employment
☐ 427 Housing/Accommodations
☐ 429 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
☐ 520 Other General
☐ 535 Death Penalty
☐ 540 Mandamus/Other
☐ 550 Prison Condition

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remarried or closed? ☐ No ☐ Yes

If 'Yes', list case number(s):

FOR OFFICE USE ONLY: 
Case Number: CV08-07726

CV-71 (07/05)

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VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? □ No □ Yes
If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) □ A. Arise from the same or closely related transactions, happenings, or events; or
□ B. Call for determination of the same or substantially related or similar questions of law and fact; or
□ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
□ D. Involve the same patent, trademark, or copyright, and one of the factors identified above in a, b, or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)
□ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Max Troy - Los Angeles County

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).
□ Check here if the U.S. government, its agencies or employees is a named defendant.

Diane B. Greene - Santa Clara County
Mark S. Peck - Santa Clara County

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)
Note: In land condemnation cases, use the location of the tract of land involved.

COUNT I - Los Angeles County
COUNT II - Los Angeles County
COUNT III - Los Angeles County

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

<table>
<thead>
<tr>
<th>Nature of Suit Code</th>
<th>Abbreviation</th>
<th>Substantive Statement of Cause of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>861</td>
<td>HIA</td>
<td>All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1395ff(b))</td>
</tr>
<tr>
<td>863</td>
<td>DIWC</td>
<td>All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child’s insurance benefits based on disability. (42 U.S.C. 405(g))</td>
</tr>
<tr>
<td>863</td>
<td>DIWW</td>
<td>All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))</td>
</tr>
<tr>
<td>864</td>
<td>SSID</td>
<td>All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.</td>
</tr>
<tr>
<td>865</td>
<td>RSI</td>
<td>All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))</td>
</tr>
</tbody>
</table>