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2 7287 Lakeside Drive
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4 Eric M. Epstein, SBN 64055
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5 1901 Avenue of the Stars, #1100
Los Angeles, CA 90067-6002
6 310/552-5366

7 ATTORNEYS FOR PLAINTIFFS

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10
11 TOBY HARRIS, KEVIN O'CONNOR,)
MICHAEL SANDERCOCK, ALEX LANE)
12 and MICHAEL BEY, on behalf of)
themselves, the general public, and all others)
13 similarly situated,)

14 Plaintiffs,)

15 vs.)

16 INVESTOR'S BUSINESS DAILY, INC., a)
California Corporation; DIRECT)
17 MARKETING SPECIALISTS, INC., a)
California corporation; DATA ANALYSIS,)
18 INC.; WILLIAM O'NEIL & CO.,)
INCORPORATED, a California corporation)
19 and Does 2 through 10,)

20 Defendants.)
21

Case No. BC269313
R/T Case No. BC274964
(Assigned to Elizabeth A. Grimes, Dept. 30)

**RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF TOBY HARRIS - SET FOUR**

22 Propounding Party: Defendant, Investor's Business Daily
23 Responding Party: Plaintiff, Toby Harris
24 Set No.: Four

25 **PRELIMINARY STATEMENT**

26 Investigation and discovery are continuing. Plaintiff, Toby Harris (hereinafter "Responding
27 Party"), may not have knowledge and/or possession of all documents which are relevant to the
28 request herein. As such, Responding Party's responses herein are given without prejudice to amend

1 this response.

2 GENERAL STATEMENTS AND OBJECTIONS

3 Responding Party objects to this request for production of documents, and each request
4 therein, to the extent that it calls for the production of privileged documents protected by the
5 attorney-client privilege, and/or attorney work product privilege. In addition, Responding Party
6 objects to this Demand to the extent that it calls for production of documents already in the
7 possession of Propounding Party on the grounds that duplicate production of documents is
8 unnecessary, unduly burdensome and oppressive.

9 Responding Party has made a reasonable effort to locate and produce all documents in
10 Responding Party's possession in compliance with each request. If Propounding Party subsequently
11 asserts an interpretation of any request that is different from the Responding Party, Responding
12 Party reserves the right to supplement said response and objections. The responses set forth below
13 represent Responding Party's present knowledge based on the discovery, investigation, and
14 preparation to date. Such discovery, investigation, and preparation is continuing. Responding Party
15 expressly reserves the right to rely on and use any further information and documents ascertained
16 upon completion of discovery, investigation and preparation.

17 These general objections are incorporated into the specific responses set forth below and the
18 following responses are made without waiver of any of the general objections.

19 RESPONSES

20 Request for Production No. 29:

21 Responding Party objects to this request on the grounds that all documents identified in
22 response to Form Interrogatory No. 17.1 propounded to Responding Party were produced in
23 discovery by Defendants to Plaintiffs and are therefore in the possession of Defendants.
24 Accordingly, duplicate production of documents is unduly burdensome, oppressive, and an abuse
25 of the discovery process.

26 Dated: December 15, 2006

ERIC M. EPSTEIN, A Professional Corporation

27 By: _____
28 Eric M. Epstein
Attorney for Plaintiffs

1 PROOF OF SERVICE--CCP 1011; 1013a(3)

2 I am a resident of the United States and employee in the County of Los Angeles, State of
3 California, over the age of eighteen years and not a party to the within action or proceeding; my
business address is 1901 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

4 On December 15, 2006, I served the within document(s) described as **RESPONSE TO**
5 **REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF TOBY HARRIS -**
6 **SET FOUR** on the interested parties in this action in a sealed envelope addressed to the persons
set forth below:

7 Silver & Freedman, APLC
8 Belle C. Mason, Esq.
2029 Century Park East, 19th Floor
Los Angeles, CA 90067-3005

9 BY MAIL: I am "readily familiar" with the firm's practice of collection and processing
10 correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on
that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course
11 of business. I am aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than 1 day after date of deposit for mailing in
12 affidavit.

13 BY FACSIMILE: I transmitted to the interested parties by facsimile, pursuant to
14 California Rules of Court, Rule 2006. The facsimile number(s) I used are noted with the
address of each party. The facsimile machine I used complied with California Rules of Court,
15 Rule 2004, and no error was reported by the machine. Pursuant to California Rules of Court,
Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of
16 which is attached hereto.

17 BY PERSONAL SERVICE: I caused such document(s) to be delivered by an employee of
18 United Express Messenger, Inc. which said delivery was confirmed by United Express
Messenger, Inc.

19 BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package
20 provided by an overnight delivery carrier and placed said envelope for collection and overnight
21 delivery at a regularly utilized drop box of the overnight delivery carrier.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed on December 15, 2006, at Los Angeles, California.

24
25 _____
Linda Collins
26
27
28

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Case No. BC269313
R/T Case No. BC274964
(Assigned to Elizabeth A. Grimes, Dept. 30)

**RESPONSE TO REQUEST FOR
ADMISSIONS TO PLAINTIFF, TOBY
HARRIS - SET ONE**

22 Propounding Party: Defendant, Investor's Business Daily

23 Responding Party: Plaintiff, TOBY HARRIS

24 Set No.: One

25 Introductory Statement

26 These responses are made solely for the purpose of this action. Each response is subject to all
27 appropriate objections (including, but not limited to, objections concerning competency, relevancy,
28 materiality, propriety and admissibility), which would require the exclusion of any statement contained

1 herein were it to be made by a witness present and testifying in Court. All such objections and grounds
2 are reserved and may be asserted at the time of trial or any other time during the pendency of this action.

3 Responding Party has not yet completed investigation of the facts nor completed trial
4 preparation. Therefore, the following responses are given without prejudice to Responding Party's right
5 to produce, at the time of trial or any other time, subsequently discovered evidence relating to the proof
6 of presently known material facts, and to produce all evidence when ever discovered, relating to the
7 proof of subsequently discovered material facts relating to the truth of the subject admissions.

8 Except for explicit facts admitted herein (if any), no admissions of any nature whatsoever are
9 implied or should be inferred. The fact that any request has been answered should not be taken as an
10 admission or acceptance of the existence of any of the background facts set forth therein or assumed by
11 such request.

12 Responses

13 Request for Admission No. 1:

14 Deny

15 Request for Admission No. 2:

16 Admit.

17 Request for Admission No. 3:

18 Deny

19
20 Dated: December 15, 2006

ERIC M. EPSTEIN, A Professional Corporation

21
22 By: _____
23 Eric M. Epstein
24 Attorney for Plaintiffs
25
26
27
28

1 PROOF OF SERVICE--CCP 1011; 1013a(3)

2 I am a resident of the United States and employee in the County of Los Angeles, State of
3 California, over the age of eighteen years and not a party to the within action or proceeding; my
business address is 1901 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

4 On December 15, 2006, I served the within document(s) described as **RESPONSE TO**
5 **REQUEST FOR ADMISSIONS TO PLAINTIFF, TOBY HARRIS - SET ONE**
on the interested parties in this action in a sealed envelope addressed to the persons set forth
below:

6 Silver & Freedman, APLC
7 Belle C. Mason, Esq.
2029 Century Park East, 19th Floor
8 Los Angeles, CA 90067-3005

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10 correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on
that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course
11 of business. I am aware that on motion of party served, service is presumed invalid if postal
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20 provided by an overnight delivery carrier and placed said envelope for collection and overnight
delivery at a regularly utilized drop box of the overnight delivery carrier.
21

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct. Executed on December 15, 2006, at Los Angeles, California.
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25 _____
Linda Collins
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19 and Does 2 through 10,)

20 Defendants.)

21

22 Asking Party: Defendant, Investor's Business Daily

23 Answering Party: Plaintiff, TOBY HARRIS

24 Set Number: Two

25

PRELIMINARY STATEMENT

26

27 This answering party has not fully completed investigation of the facts relating to the case,
28 has not fully completed discovery in this action and has not completed preparation for trial. All of
the answers contained herein are based only on such information and documents which are presently

1 available to and specifically known to this answering party, and discloses only those contentions
2 which presently occur to such answering party. It is anticipated that further discovery, independent
3 investigation, legal research and analysis will supply additional facts, add meaning to known facts,
4 as well as establishing new factual conclusions and legal contentions, all of which may lead to
5 substantial additions to, changes in, and variations from, the contentions herein set forth. The
6 following interrogatory responses are given without prejudice to answering party's right to produce
7 evidence of any subsequently discovered fact or facts which this answering party may later recall.
8 Answering party accordingly reserves the right to change any and all answers herein as additional
9 facts are ascertained, analyses are made, legal research is completed, and contentions are made. The
10 answers contained herein are made in a good faith effort to supply as much factual information and
11 as much specification of legal contentions as are presently known, but should in no way lead to the
12 prejudice of this answering party in relation to further discovery, research or analysis.

13 These introductory comments shall apply to each and every response given herein, and shall
14 be incorporated by reference as though fully set forth in each of the responses appearing hereafter.

15 17.1 (a) Request 1;

16 (b) See Exhibit "1" attached hereto and by reference thereto incorporated herein. There may
17 be additional facts relevant to this request which have not yet been ascertained or which
18 are not now available to Answering Party and Answering Party reserves the right to
19 amend his answer when the same have been ascertained.

20 (c) Investigation and discovery are continuing and all persons who have knowledge of these
21 facts may not now be known to Answering Party. However, notwithstanding the above,
22 and reserving the right to amend, the following is submitted: Dean S. Barron, Kevin
23 O'Connor, Steve Souder, Joe Swantek, Candace Mayeron, and Asking Party's Custodian
24 of Records.

25 (d) See lines 158 through 318 of Exhibit "2" attached hereto and by reference thereto
26 incorporated herein.

27 (a) Request 3:

28 (b) See Exhibit "1" attached hereto and by reference thereto incorporated herein. There may

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Dated: December 15, 2006

ERIC M. EPSTEIN, A Professional Corporation

By: _____
Eric M. Epstein
Attorney for Plaintiffs

1 PROOF OF SERVICE--CCP 1011; 1013a(3)

2 I am a resident of the United States and employee in the County of Los Angeles, State of
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4 business address is 1901 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

5 On December 15, 2006, I served the within document(s) described as **RESPONSE TO**
6 **FORM INTERROGATORIES PROPOUNDED TO PLAINTIFF, TOBY HARRIS, SET**
7 **TWO** on the interested parties in this action in a sealed envelope addressed to the persons set
8 forth below:

9 Silver & Freedman, APLC
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I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct. Executed on December 15, 2006, at Los Angeles, California.

Linda Collins