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June 29, 2004

The Honorable Judge Mark Forcum
Southern Branch
400 County Center
Redwood City, CA 94063

Re: Hypertouch Inc. v. Discover Financial Services, Inc.
Small Claims Case Nos. SCC 101498 and 101499

Dear Judge Forcum:

On March 11, 2004, judgment was entered in the above matter in favor of Plaintiff, Hypertouch Inc., and against Defendant Discover Financial Services, Inc. ("Discover"). On April 22, 2004, Discover filed two Notices of Appeal— one for each of the above cases. These Notices were accepted by the Court and a Trial was set for June 4, 2004.

On June 2, 2004, Discover filed a Request for Dismissal for each of the above cases with the Court. For some reason, the Dismissals wound up at the Central Branch rather than the Southern Branch where the trial was being held. Consequently, the Southern Branch did not receive the Dismissals until on or about June 7, 2004. This resulted in the trial going forward on June 4th and two judgments being entered in favor of Hypertouch, Inc., which, curiously, were for a greater amount than the previous judgments. In examining the Court's "Judgment on Small Claims Appeal" in Case No. 101499, the Judge Pro Tem awarded Hypertouch, Inc. \$306.00 for "bad faith appeal," assumingly because Discover failed to appear in court on June 4th.

Despite that the judgments awarded in both cases exceed the Small Claims Court's jurisdictional limit; Discover simply requests that the additional sanction of \$306.00 be reversed. Discover did not intentionally ignore or avoid appearing at the trial on June 4, 2004; it believed the cases had both been dismissed as it filed the Dismissals before the trial was to take place. In fact, Hypertouch, Inc. was served with each of the Dismissals as well and was told prior to June 4th that the Dismissals were being filed.

Discover respectfully requests that it should not be penalized for the confusion that resulted from the mailing of the Requests for Dismissal. I telephoned the Court once Discover received notice of the judgments and was informed that the Central Branch should have noted on

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the computer system that the Dismissals were filed; however, for "some reason" which the clerk did not know, the Central Branch failed to make any notation and simply mailed the documents to the Southern Branch. The Clerk informed me that this was a "Court error."

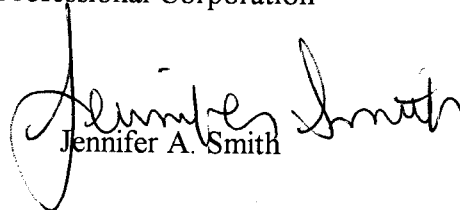
Due to the circumstances described above, we request, on behalf of our client, that the \$306.00 assessed against Discover for "bad faith appeal" be reversed in Case No. 101499.

Thank you for your consideration.

Respectfully,

BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation

By


Jennifer A. Smith

Enclosures

cc: Discover Financial Services, Inc.
Abraham Colman, Inc.
Hypertouch Inc.