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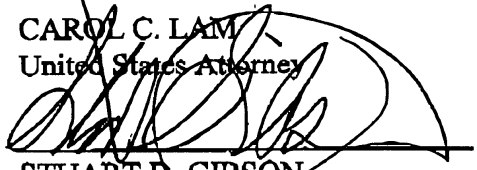
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7 UNITED STATES DISTRICT COURT  
 8  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
 )  
 11 Plaintiff, ) Case No. 04 CV 2184 LAB (AJB)  
 )  
 12 v. )  
 )  
 13 L. DONALD GUESS, et. al., ) NOTICE OF DISMISSAL WITHOUT  
 ) PREJUDICE UNDER RULE 41(a)(1)(i)  
 14 )  
 Defendants )  
 15 )

16 Plaintiff the United States of America files notice, pursuant to Rule 41(a)(1)(i), Federal Rules  
 17 of Civil Procedure, that the above-captioned action is DISMISSED WITHOUT PREJUDICE.  
 18

19 DATED: December 16, 2004

Respectfully submitted,  
 CAROL C. LAM  
 United States Attorney  
  
 STUART D. GIBSON  
 Senior Litigation Counsel  
 Tax Division, Department of Justice

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 8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
 )  
 11 Plaintiff, ) Case No. 04 CV 2184 LAB (AJB)  
 )  
 12 v. )  
 )  
 13 L. DONALD GUESS, et. al., ) CERTIFICATE OF SERVICE  
 )  
 14 Defendants. )  
 15 )

16 Carol E. Bender declares and states as follows:  
 17

18 1. I am a citizen of the United States, and I am now and was at all times material hereto  
 19 over the age of 18 years. I am employed by the United States Department of Justice, Office of the  
 20 United States Attorney for the Southern District of California, and make this Declaration based upon  
 21 my personal knowledge of the facts stated below. I am not a party to the above entitled action and  
 22 am competent to be a witness herein.

23 2. On the 17<sup>th</sup> day of December, 2004, I caused to be served to the parties listed below a  
 24 true and correct copy of:  
 25

- 26 1) NOTICE OF DISMISSAL WITHOUT PREJUDICE UNDER RULE 41(a)(1)(i); and  
 27 2) this Certificate of Service  
 28

1 by placing copies of the same in the United States mail, postage prepaid, and sent to their last known  
 2 address as follows:

<p>3 4 Darrell Hallett John Colvin 5 Chicoine &amp; Hallett 1011 Western Avenue, Suite 803 6 Seattle, Washington 98104 7 8 Michael Lipman Barbara Murray 9 Coughlan, Semmer &amp; Lipman, LLP 501 West Broadway, Suite 400 10 San Diego, California 92101-3564</p>	<p>Attorneys for Defendants:  L. DONALD GUESS XÉLAN INVESTMENT SERVICES, INC. XÉLAN ANNUITY CO. LTD. XÉLAN ADMINISTRATIVE SERVICES, INC.</p>
<p>11 Thomas Pollack, Esquire Irell &amp; Manella LLP 12 1800 Avenue of the Stars Suite 900 13 Los Angeles, California 90067-4276</p>	<p>Attorney for Defendants:  DOCTORS BENEFIT INSURANCE COMPANY MONTE T. MELLON DOCTOR'S BENEFIT HOLDING COMPANY</p>
<p>14 Miriam Fisher, Esquire James Mastracchio, Esquire 15 Morgan, Lewis &amp; Bockius, LLP 1111 Pennsylvania Avenue, NW 16 Washington, D.C. 20004</p>	<p>Attorneys for Defendants:  LESLIE S. BUCK G. THOMAS ROBERTS DOCTOR'S INSURANCE SERVICES, INC.</p>
<p>18 Frank Johnson, Esquire 402 W. Broadway, 27<sup>th</sup> Floor 19 San Diego, California 92101</p>	<p>Attorney for Defendant:  XÉLAN, THE ECONOMIC ASSOCIATION OF HEALTH CARE PROFESSIONALS</p>
<p>21 John Morrell, Esquire Higgs, Fletcher &amp; Mack, LLP 22 401 West A Street, Suite 2600 San Diego, California 92101</p>	<p>Attorney for Defendants:  XÉLAN, INC. XÉLAN PENSION SERVICES, INC. XÉLAN FINANCIAL PLANNING, INC. PYRAMIDAL FUNDING SYSTEMS, INC. dba XÉLAN INSURANCE SERVICES</p>
<p>25 Bruce Zagaris, Esquire Berliner Corcoran &amp; Rowe 26 1011 - 17<sup>th</sup> Street, NW, Suite 1100 27 Washington, D.C. 20036-4798</p>	<p>Attorney for Defendant CHRIS G. EVANS</p>

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<p>Pamela J. Naughton Sheppard Mullin Richter &amp; Hampton 12544 High Bluff Drive, Suite 300 San Diego, CA 92130-3051</p> <p>Frank Johnson, Esquire 402 W. Broadway, 27<sup>th</sup> Floor San Diego, California 92101</p>	<p>Attorneys for Defendant XÉLAN FOUNDATION, INC.</p>
<p>C. James Frush, Esquire Gordon, Thomas, Honeywell, Malanca, Peterson &amp; Daheim LLP 600 University Street, #2100 Seattle, Washington 98101</p>	<p>Attorney for Defendant DAVID JACQUOT</p>
<p>Don Rez, Esquire James Hill, Esquire Sullivan Hill Lewin Rez &amp; Engel 550 West C Street, Suite 1500 San Diego California 92101</p>	<p>Attorneys for WILLIAM A. LEONARD, JR., CHAPTER 11 TRUSTEE for XÉLAN, INC. XÉLAN PENSION SERVICES, INC. XÉLAN FINANCIAL PLANNING, INC. PYRAMIDAL FUNDING SYSTEMS, INC. dba XÉLAN INSURANCE SERVICES</p>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my belief and knowledge.

DATED this 17<sup>th</sup> day of December, 2004, at San Diego, California.

  
CAROL E. BENDER