

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 3:08-cv-02050 (SAF)</b>
	)	
<b>MARK CUBAN,</b>	)	
	)	
<b>Defendant</b>	)	
_____	)	

**MARK CUBAN'S MOTION TO DISMISS**

Mark Cuban moves to dismiss Plaintiffs' Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, and pursuant to Federal Rule of Civil Procedure 9(b) for failure to plead with particularity all of the circumstances constituting fraud.

This motion is supported by an accompanying memorandum of law.

Respectfully submitted,

**DEWEY & LEBOEUF LLP**

/s/ Lyle Roberts

By: \_\_\_\_\_

Lyle Roberts (*pro hac vice*)  
D.C. Bar No. 464789  
Ralph C. Ferrara (*pro hac vice*)  
D.C. Bar No. 156380  
Stephen A. Best  
D.C. Bar No. 428447  
Henry W. Asbill  
D.C. Bar No. 938811  
DEWEY & LEBOEUF LLP  
1101 New York Avenue, NW  
Washington, D.C. 20005  
Telephone: (202) 346-8000  
Facsimile: (202) 346-8102  
lroberts@dl.com  
rferrara@dl.com  
sbest@dl.com  
hasbill@dl.com

Christopher J. Clark (*pro hac vice*)  
N.Y. Bar No. 2854222  
DEWEY & LEBOEUF LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 259-8000  
Facsimile: (212) 259-6333  
cjclark@dl.com

*Attorneys for Mark Cuban*

OF COUNSEL:

Stephen M. Ryan  
Texas Bar No. 24002881  
DEWEY & LEBOEUF LLP  
1000 Main Street, Suite 2550  
Houston, Texas 77002  
Telephone 713-287-2025  
713-445-2125 – Fax  
sryan@dl.com

Paul Coggins  
Texas Bar No. 04504700  
Kip Mendrygal  
Texas Bar No. 24041472  
FISH & RICHARDSON P.C.  
1717 Main Street, Suite 5000  
Dallas, Texas 75201  
Telephone: 214-747-5070  
Facsimile: 214-747-2091  
coggins@fr.com  
mendrygal@fr.com

**CERTIFICATE OF SERVICE**

On January 14, 2009, I electronically submitted Mark Cuban's Motion Dismiss, along with a proposed order, with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Lyle Roberts

---

Lyle Roberts