

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 06/26/07

DEPT. 64

HONORABLE Kenneth R. Freeman

JUDGE

S. SMYTHE

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

F. LOPEZ, C/A

Deputy Sheriff

B. DIAZ

Reporter

10:30 am

BC352639

Plaintiff JONATHAN K. GOLDEN  
Counsel

FREDERIC G. MARKS, ET AL  
VS.  
WAYNE JOYNER, ET AL.

Defendant FREEMAN, FREEMAN & SMILEY  
Counsel BY: JOHN P. GODSIL

**NATURE OF PROCEEDINGS:**

TRIAL (NJ) COMPLAINT FOR DECLARATORY RELIEF, ETC.

Trial is resumed from 6-25-07, with all counsel present as heretofore.

Wayne Joyner, previously sworn, resumes testifying on examination by plaintiffs per Evidence Code Section 776.

Charles Hayes is sworn and examined by plaintiffs per Evidence Code Section 776.

Stuart Smith and Frederic G. Marks, previously sworn, are re-called and testify further for plaintiffs.

Plaintiffs' exhibits 19 (letter dated 3-12-99 to FEI Customers from TUSPCO Inc.), 20 (Book One Order Form) and 30 (e-mail dated 2-1-00 from Charles Hayes to Jack Hurwitz) are admitted in evidence, as are plaintiffs' exhibits 4 through 10, 17, 22 and 23, each previously marked for identification only.

The plaintiffs rest.

The defendants move for judgment pursuant to Code of Civil Procedure Section 631.8.

The court will consider the motion at the same time he deliberates on the case in total.

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FREEMAN, FREEMAN & SMILEY  
BY: JOHN P. GODSIL

**NATURE OF PROCEEDINGS:**

Wayne Joyner, previously sworn, is re-called and testifies for the defendants.

Plaintiffs' counsel reads from Mr. Joyner's deposition.

Peter Giansante is sworn and testifies for the defendants.

Defendants' exhibits 112 (letter dated 3-28-88 to Jean Mollenhauer from Wayne Joyner), 116 (Declaration of Trust dated 4-16-92), 119 (letter dated 7-9-92 to Mr. and Mrs. Greg (sic) Rooten from Wayne Joyner) and 147 (supplemental proprietary notices) are admitted in evidence, as are defendants' exhibits 101, 107, 108, 111, 133, 140 through 145, 149 and 159, each previously marked for identification only.

The defendants rest, subject to further evidence to be submitted via declarations and deposition excerpts.

All sides rest.

Pursuant to the stipulation of counsel, all exhibits not referenced at trial but included in the respective exhibit books are admitted in evidence, to wit:

**FOR PLAINTIFFS**

- 1: Pre-publication Subscription Agreement between

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**NATURE OF PROCEEDINGS:**

- TUSPCO Inc. and Frederic G. Marks;
- 2: Book Subscription Trust dated 7-11-78;
- 3: Book Subscription Trust dated 3-2-92;
- 11: Letter dated 10-13-04 to Nancy Marks from Wayne Joyner;
- 12: Letter dated 11-29-04 to Wayne Joyner from Frederic G. Marks;
- 13: Letter dated 1-31-05 to Wayne Joyner from Frederic G. Marks;
- 14: Letter dated 5-20-05 to Wayne Joyner from Frederic G. Marks;
- 15: Letter dated 9-15-05 to Wayne Joyner from Frederic G. Marks;
- 16: Letter dated 12-1-05 to Subscribers to Book 1 from Frederic G. Marks;
- 18: Letter dated 7-17-98 to FEI Customers from TUSPCO;
- 21: Letter dated 4-1-99 to FEI Customers from TUSPCO;
- 24: Photograph of Volume one of hardbound edition,

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**NATURE OF PROCEEDINGS:**

plus photocopy of check and miscellaneous documents, including list of pre-subscribers;

25: Letter dated 3-15-88 to Frederic G. Marks from Suzanne Galambos;

26: Letter dated 11-15-91 to Frederic G. Marks from Suzanne Galambos;

27: Letter dated 6-16-92 to Mr. and Mrs. Frederic G. Marks from Suzanne Galambos;

28: Letter dated 3-8-96 to Mr. and Mrs. Frederic G. Marks from TUSPCO;

29: Letter dated 9-28-96 to Mr. and Mrs. Frederic G. Marks from TUSPCO;

31: Book One subscription spreadsheet; and

32: Miscellaneous notes, memos and letters.

**FOR DEFENDANTS**

102: Pre-Publication Subscription Agreement dated 7-28-78 (Joseph/Trudy Droll);

103: Pre-Publication Subscription Agreement dated 8-1-78 (Stuart L. Smith);

104: Pre-Publication Subscription Agreement dated

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**NATURE OF PROCEEDINGS:**

- 8-8-78 (Jack H. Hurwitz);
- 105: Pre-Publication Subscription Agreement dated 8-8-78 (Greg (sic)/Donna Rooten);
- 106: Pre-Publication Subscription Agreement dated 9-8-78 (Jean Mollenhauer);
- 109: Declaration of Mitchell J. Lange dated 8-28-85;
- 110: Letter dated 12-13-85 to Frederic Marks from Harold Shilberg;
- 113: Judgment on Stipulation in THE UNIVERSAL XYZ CORPORATION v. LANGE;
- 114: Letter dated 11-15-91 to Frederic G. Marks from Suzanne J. Galambos;
- 115: Book Subscription TUSPCO Trust;
- 117: Letter dated 6-5-92 to Mr./Mrs Andrew J. Galambos from Gregg/Donna Rooten;
- 118: Letter dated 6-29-92 to Gregg Rooten from Wayne Joyner;
- 120: Letter dated 3-8-96 to Mr. and Mrs. Frederic G. Marks from James D. Gafford;
- 121: Letter dated 9-28-96 to Mr. and Mrs. Frederic

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**NATURE OF PROCEEDINGS:**

G. Marks from James D. Gafford;

122: Memorandum of Agreement between TUSPCO and William Martin;

123: Letter dated 5-18-98 to FEI Customers from TUSPCO;

124: Memorandum of Agreement dated 6-18-98 between TUSPCO and Peter Sisco;

125: Letter dated 7-17-98 to FEI Customers from TUSPCO;

126: First Amendment to Agreement between TUSPCO and Peter Sisco, dated 8-25-98;

127: Letter dated 3-12-99 to FEI Customers from TUSPCO;

128: Letter dated 4-1-99 to FEI Customers from TUSPCO;

129: Memorandum of Agreement dated 4-14-99 between TUSPCO and Peter Sisco;

130: Order dated 6-10-99 In the Matter of The Natural Estate Trust;

131: Memorandum of Agreement dated 7-4-99 between TUSPCO and Peter Sisco;



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BY: JOHN P. GODSIL

**NATURE OF PROCEEDINGS:**

- 152: Form Interrogatories to Jean Mollenhauer dated 10-27-06, and Responses Thereto;
- 153: Form interrogatories to Rogan Coombs dated 10-27-06, and Responses Thereto;
- 154: Form Interrogatories to Joseph Droll dated 10-27-06, and Responses Thereto;
- 155: Form Interrogatories to Gregg Rooten dated 10-27-06, and Responses Thereto;
- 156: Form Interrogatories to Marilyn Wood dated 10-27-06, and Responses Thereto;
- 157: Form Interrogatories to Thomas R. Wood dated 10-27-06, and Responses Thereto;
- 158: Form Interrogatories to Greg Staininger dated 10-27-06, and Responses Thereto;
- 160: Special Interrogatories to Joseph Hentz dated 10-27-06;
- 161: Special Interrogatories to Stuart Smith dated 10-27-06;
- 162: Special Interrogatories to Jean Mollenhauer dated 10-27-06;

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**NATURE OF PROCEEDINGS:**

- 163: Special Interrogatories to Rogan Coombs dated 10-27-06;
- 164: Special Interrogatories to Joseph Droll dated 10-27-06;
- 165: Special Interrogatories to Gregg Rooten dated 10-27-06;
- 166: Special Interrogatories to Marilyn Wood dated 10-27-06;
- 167: Special Interrogatories to Thomas R. Wood dated 10-27-06;
- 168: Special Interrogatories to Greg Staininger dated 10-27-06;
- 169: Collective Responses Of Plaintiffs To Special Interrogatories;
- 170: Letter dated 11-21-06 to John P. Godsil from Jonathan K. Golden;
- 171: Declaration of Jean Mollenhauer dated 4-19-07;
- 172: Declaration of Gregg Rooten dated 4-19-07;
- 173: Declaration of Stuart Smith dated 4-20-07;
- 174: Declaration of Frederic G. Marks dated 4-29-07;

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**NATURE OF PROCEEDINGS:**

and

175: Minutes from Special Joint Meeting dated 2-21-96.

Final argument in this matter will be conducted by briefs, which are to be submitted on 7-5-07, 7-12-07 and 7-19-07, respectively, plaintiffs to lead.

In addition, counsel are to appear in this court on 7-27-07 at 10 a.m. for the court's rendering of its decision. At that time either or both sides may request a Statement of Decision.