

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

FILED
LOS ANGELES SUPERIOR COURT

MAR 23 2007

John A. Clarke, Executive Officer/Clerk
By A. Hendrickson Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

11 FREDERIC G. MARKS, JOSEPH HENTZ,)
12 STUART SMITH, JEAN MOLLENHAUER,)
13 ROGAN COOMBS, JOSEPH DROLL,)
14 GREGG ROOTEN, THOMAS R. WOOD,)
15 MARILYN WOOD, GREG STAININGER,)
16 and JOHN FOUNTAIN,)

17 Plaintiffs,

18 vs.

19 WAYNE JOYNER and CHARLES W.)
20 HAYES, individually and as Trustees of)
21 THE UNIVERSAL SCIENTIFIC)
22 PUBLICATIONS COMPANY TRUST,)
23 THE UNIVERSAL SCIENTIFIC)
24 PUBLICATIONS COMPANY, INC., THE)
25 NATURAL ESTATE TRUST, and DOES 1)
26 through 50, Inclusive,)

27 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**APPENDIX OF EXHIBITS AND
DECLARATIONS OF CATHERINE
L. SEKELY AND CHARLES W.
HAYES IN SUPPORT OF
DEFENDANT HAYES'S MOTION
FOR SUMMARY JUDGMENT OR,
ALTERNATIVELY, SUMMARY
ADJUDICATION OF ISSUES**

*[Filed concurrently with Notice of
Defendant Charles W. Hayes's Motion
for Summary Judgment or, Alternatively,
Summary Adjudication of Issues and
Separate Statement]*

Hearing Date: May 7, 2007
Time: 8:30 a.m.
Dept: 64

Motion Cut-Off: Per Code
Discovery Cut-Off: Per Code
Trial Date: June 6, 2007

28 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

29 **PLEASE TAKE NOTICE** that defendant Charles W. Hayes hereby submits the
30 following Appendix of Exhibits, Declarations of Catherine L. Sekely and Charles W.
31

1 Hayes in support of his motion for summary judgment or, in the alternative, motion for
2 summary adjudication of issues.

3 **EXHIBIT**

DESCRIPTION

4 Exhibit A Pre-Publication Subscription Agreement
5 Exhibit B Charles W. Hayes's Requests for Admission to Plaintiff
6 Frederic G. Marks, Set One
7 Exhibit C Plaintiff Frederic G. Marks's Responses to Hayes's Requests
8 for Admission, Set One
9 Exhibit D The Universal Scientific Publications Company, Inc. Book
10 Subscription Trust dated 1978 [the "TUSPCO Trust"]
11 Exhibit E Declaration of Mitchell J. Lange
12 Exhibit F Charles W. Hayes's Requests for Admission to Plaintiff Joseph
13 Hentz, Set One [Requests for Admission to "Other Plaintiffs"]
14 Exhibit G Plaintiffs' Responses to Hayes's Requests for Admissions, Set
15 One ["Other Plaintiffs" Responses]
16 Exhibit H Mitchell J. Lange's Application and Financial Statement
17 Exhibit I Charles W. Hayes's Special Interrogatories to Plaintiff Frederic
18 G. Marks, Set One
19 Exhibit J Plaintiff Frederic G. Marks's Responses to Hayes's Special
20 Interrogatories, Set One
21 Exhibit K Charles W. Hayes's Special Interrogatories to Joseph Hentz,
22 Set One [Special Interrogatories to "Other Plaintiffs"].
23 Exhibit L Plaintiffs' Responses to Hayes's Special Interrogatories, Set
24 One ["Other Plaintiffs Responses to Special Interrogatories"]
25
26
27

<u>1</u>	<u>EXHIBIT</u>	<u>DESCRIPTION</u>
2	Exhibit M	Wayne Joyner's Special Interrogatories to Plaintiff Frederic G.
3		Marks, Set One
4	Exhibit N	Plaintiff Marks's Responses to Joyner's Special Interrogatories,
5		Set One
6	Exhibit O	Plaintiff Marks's Supplemental Responses to Hayes's Special
7		Interrogatories, Set One
8	Exhibit P	TUSPCO Trust dated 1992
9	Exhibit Q	Stipulation to Judgment by Lange
10	Exhibit R	Letter from Suzanne J. Galambos to Frederic G. Marks dated
11		March 15, 1988
12	Exhibit S	Deposition Testimony of Frederic G. Marks
13	Exhibit T	Letter from Wayne Joyner to Jean Mollenhauer
14		dated March 28, 1988
15	Exhibit U	Letter from Gregg Rooten to Andrew Galambos
16		dated June 5, 1992
17	Exhibit V	Letter from Wayne Joyner to Gregg Rooten dated July 9, 1992
18	Exhibit W	Non-California Authorities; CRC, Rule 3.1113(j)

19
20
21
22
23
24
25
26
27
28

DECLARATION OF CATHERINE L. SEKELY

I, CATHERINE L. SEKELY, declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the courts of the State of California, and I am an associate of the law firm of Lacey, Dunn & Do, counsel of record for defendant Charles W. Hayes. This declaration is in support of Mr. Hayes's motion for summary judgment, or in the alternative, summary adjudication of issues. I make this declaration of my own personal knowledge, and, if called upon and sworn as a witness, I could and would testify based on my own personal knowledge to the following facts:

2. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff Marks's Pre-Publication Subscription Agreement that was produced by Plaintiff Marks on February 9, 2007.

3. Attached hereto as Exhibit "B" is a true and correct copy of Charles W. Hayes's Requests for Admission to Plaintiff Frederic G. Marks, Set One.

4. Attached hereto as Exhibit "C" is a true and correct copy of Plaintiff Frederic G. Marks's Responses to Hayes's Requests for Admission, Set One.

5. Attached hereto as Exhibit "D" is a true and correct copy of The Universal Scientific Publications Company, Inc. Book Subscription Trust dated 1978 [the "TUSPCO Trust"].

6. Attached hereto as Exhibit "E" is a true and correct copy of the Declaration of Mitchell J. Lange that I obtained from the court file for Orange County Superior Court Case Number 44-26-51.

7. Attached hereto as Exhibit "F" is a true and correct copy of Charles W. Hayes's Requests for Admission to Plaintiff Joseph Hentz, Set One [Requests for Admission to "Other Plaintiffs"].

- 1 8. Attached hereto as Exhibit "G" is a true and correct copy of Plaintiffs'
2 Responses to Hayes's Requests for Admissions, Set One ["Other Plaintiffs" Responses].
- 3 9. Attached hereto as Exhibit "H" is a true and correct copy of Mitchell J.
4 Lange's Application and Financial Statement that I obtained from the court file for Orange
5 County Superior Court Case Number 44-26-51.
- 6 10. Attached hereto as Exhibit "I" is a true and correct copy of Charles W.
7 Hayes's Special Interrogatories to Plaintiff Frederic G. Marks, Set One.
- 8 11. Attached hereto as Exhibit "J" is a true and correct copy of Plaintiff Frederic
9 G. Marks's Responses to Hayes's Special Interrogatories, Set One.
- 10 12. Attached hereto as Exhibit "K" is a true and correct copy of Charles W.
11 Hayes's Special Interrogatories to Joseph Hentz, Set One [Special Interrogatories to "Other
12 Plaintiffs"].
- 13 13. Attached hereto as Exhibit "L" is a true and correct copy of Plaintiffs'
14 Responses to Hayes's Special Interrogatories, Set One ["Other Plaintiffs Responses to
15 Special Interrogatories"].
- 16 14. Attached hereto as Exhibit "M" is a true and correct copy of Wayne Joyner's
17 Special Interrogatories to Plaintiff Frederic G. Marks, Set One.
- 18 15. Attached hereto as Exhibit "N" is a true and correct copy of Plaintiff Marks's
19 Responses to Joyner's Special Interrogatories, Set One.
- 20 16. Attached hereto as Exhibit "O" is a true and correct copy of Plaintiff Marks's
21 Supplemental Responses to Hayes's Special Interrogatories, Set One.
- 22 17. Attached hereto as Exhibit "P" is a true and correct copy of TUSPCO Trust
23 dated 1992.
- 24 18. Attached hereto as Exhibit "Q" is a true and correct copy of Stipulation to
25 Judgment by Lange.

1 19. Attached hereto as Exhibit "R" is a true and correct copy of Letter from
2 Suzanne J. Galambos to Frederic G. Marks dated March 15, 1988

3 20. Attached hereto as Exhibit "S" are true and correct copies of the relevant
4 pages of testimony from the February 9, 2007 and February 13, 2007 Deposition of
5 Plaintiff Frederic G. Marks.

6 21. Attached hereto as Exhibit "T" is a true and correct copy of Letter from
7 Wayne Joyner to Jean Mollenhauer dated March 28, 1988.

8 22. Attached hereto as Exhibit "U" is a true and correct copy of Letter from
9 Gregg Rooten to Andrew Galambos dated June 5, 1992.

10 23. Attached hereto as Exhibit "V" is a true and correct copy of Letter from
11 Wayne Joyner to Gregg Rooten dated July 9, 1992.

12 24. Attached hereto as Exhibit "W" are true and correct copies of the Non-
13 California Authorities cited in support of this Motion pursuant to California Rules of
14 Court, Rule 3.1113(j).

15 I declare under penalty of perjury under the laws of the State of California that the
16 forgoing is true and correct.

17 Executed on March 23, 2007, at Glendale, California.

18
19 
20 CATHERINE L. SEKELY
21
22
23
24
25
26
27

DECLARATION OF CHARLES W. HAYES

I, CHARLES W. HAYES, declare as follows:

1. I am the sole trustee of the TUSPCO Trust, a co-trustee of the Natural Estate Trust, and President of The Universal Scientific Publications Company, Inc. ("TUSPCO"). I make this declaration of my own personal knowledge, and, if called upon and sworn as a witness, I could and would testify based on my own personal knowledge to the following facts contained herein:

2. According to TUSPCO's records, all plaintiffs paid for their books prior to 1984.

3. I became a trustee of the TUSPCO Trust *after* the theft of the original trustee, M.J. Lange, which I am informed and believe was discovered by Andrew J. Galambos on or about July 6, 1984. I resigned as a trustee of the TUSPCO Trust on July 13, 1989 because, as I advised him, Professor Galambos could be the trustee of the TUSPCO Trust himself. I again became a trustee on March 2, 1992 due to Professor Galambos's Alzheimer's related symptoms.

4. The trustees of the Natural Estate Trust have every intention of publishing the entirety of Book 1 based on the expressed desire and intent of Professor Galambos.

5. TUSPCO's publication of *Sic Itur Ad Astra* ("Volume 1") in 1999 was a financial failure and attracted virtually no readers beyond the former students of Professor Galambos. Specifically, Volume 1 was published in 2,000 hard-bound pre-numbered copies at a cost of \$35.04 per unit to fulfill approximately 1,300 pre-subscribers and in 2,500 softbound copies at a cost of \$18.62 per unit for general sale. TUSPCO has sold only 10 hard-bound copies at \$2,500 each (700 copies remain) and 2,000 soft-bound copies at \$125 each (500 copies remain). The soft-bound copies were sold primarily to students of Professor Galambos (approximately 1,650 copies). The remaining sales (approximately 350 copies) were sold on Amazon.com, Laissez Faire Books, Barnes & Noble, and through

1 the TUSPCO website. It should be noted that there were also many multi-copy discounts
2 of up to 40% when purchased through TUSPCO. The wholesale price to Amazon.com,
3 Laissez Faire Books, and Barnes & Noble was discounted 50% of the retail price.
4 TUSPCO lost money on the publication. Since Professor Galambos is no longer alive, it is
5 the duty of the trustees of the Natural Estate Trust not only to *publish* his theories, but also
6 to *perpetuate and protect* the theories. Consequently, publication of V-201 in the same
7 format as Volume 1 will not be repeated.

8 6. Prior to the filing of the Complaint, no plaintiff had ever requested that I
9 provide them with an accounting of the assets of any entity.

10 I declare under penalty of perjury under the laws of the State of California that the
11 forgoing is true and correct.

12 Executed on March 22, 2007, at Coronado, California.

13
14 
15 CHARLES W. HAYES
16
17
18
19
20
21
22
23
24
25
26
27
28

MARKS, Mr. Frederic G.

CONTRACT # 1
transfer from
prior contract.

PRE-PUBLICATION SUBSCRIPTION AGREEMENT

1. PARTIES AND PURPOSE.

1.1 Parties. The parties to this agreement are THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC. ("TUSPCO") and the Subscriber (referred to herein as "Subscriber") whose name is signed at the end of this agreement.

1.2 Purpose. This agreement contains the terms of the offer of TUSPCO for a pre-publication subscription agreement to the special limited first edition(s) of some, one or all of five or more forthcoming books described in paragraph 1.3 below.

1.3 Definitions and Abbreviations. The following terms shall be defined as follows and shall have the meanings stated hereinafter.

"AJG" means Andrew J. Galambos.

"FEI" means The Free Enterprise Institute.

"TUSPCO" means The Universal Scientific Publications Company, Inc.

"Subscriber" means the Subscriber whose name is signed at the end of this agreement.

"Book 1" means the book containing the theories taught by Andrew J. Galambos in the volitional science courses (principally courses V-50 and V-201) of FEI.

In the event of the inability of AJG to write Book 1 due to his death or incapacity, Book 1 may be supplied by TUSPCO in the alternate form of edited selections from the tape recorded lectures of AJG edited to the best of the ability of the authorized representative(s) of FEI and the proprietary heir(s) of AJG who would be performing such editing, it being understood that this alternate form would be second best, but vastly superior, to not having Book 1 exist at all. Book 1 is scheduled for publication during the year 1987, it being the firm intention, but not the promise or guarantee of TUSPCO, that Book 1 will be published in the year 1987. The reason for the lack of a promise or guarantee as to date of delivery is not only the obvious possi-



Prototype 1978, by Andrew J. Galambos (concepts only, not legal format).



Copyright 1978, by Frederic G. Marks and Andrew J. Galambos.

bility of a vis major in all human affairs, but also the precarious condition of this country's future as well as that of all mankind (see, for example, paragraph 6.5).

"Book 2" means a facsimile copy of Isaac Newton's Philosophiae Naturalis Principia Mathematica, reproduced from the original Latin first edition of 1687 in the year 1987, which will be redesignated as year 300 in the new rational calendar, together with an English language foreword by AJG and also, if the time of AJG permits, but not on a guaranteed basis, a biographical dissertation on the significance and philosophical interpretation of Isaac Newton and his works to world history, not based upon new facts, but based upon new significance, interpretation and philosophical values that Newton has created from the point of view of AJG's theories. The term "Book 2" shall mean, at a minimum, the facsimile reproduction of, and foreword to, Philosophiae Naturalis Principia Mathematica, it being understood that delivery of the biography of Newton by AJG is optional. Delivery of Book 2 in either of the forms described above constitutes full delivery of Book 2 under the agreement. Book 2 is scheduled for publication during the year 1987, it being the firm intention, but not the promise or guarantee of TUSPCO, that Book 2 will be published in the year 1987. The reason for the lack of a promise or guarantee as to delivery date is not only the obvious possibility of a vis major in all human affairs, but also the precarious condition of this country's future as well as that of all mankind (see, for example, paragraph 6.5).

"Book 3" means the biography of Joseph B. Galambos, Father of AJG, written by Suzanne J. Galambos with information to a large extent supplied by AJG and partly depending upon certain translations to be supplied by AJG. Book 3 is scheduled for publication (contingent upon the prior publication of Book 1) in the year 1987, or as soon thereafter as it can be finished. In the event Book 3 is not written or completed by Suzanne J. Galambos for reason of incapacity or any other reason, AJG shall undertake the writing of Book 3, although in that case it will take longer.

"Book 4" means a biography of the back-flow-stream of AJG's own theories, including a biography of the unique operational method of AJG's enterprises and of AJG himself and those who were associated with AJG. Book 4 is scheduled for publication as soon after the year 1987 as it can be completed.

"Book 5" means a shorter biography of Joseph B. Galambos intended for publication in 1982, the year of the 100th anniversary of the ^{birth of} subject of the biography. 1982 is too

soon to have ready for publication the larger biography (Book 3), but Book 5 will be a complete, though shorter, work.

"Book 6", "Book 7", et al., are future books to be published that may be added to this contract by supplementary contract, which will be appended to this contract.

Note: The book numbers in this and future supplementary contracts do not necessarily indicate the publication order chronologically, but rather the scheduling order, contractually by TUSPCO.

2. SUBSCRIPTIONS.

By signing this agreement in duplicate original, Subscriber accepts the offer contained herein according to its terms, effective the date of acceptance of this agreement by TUSPCO. Both signed duplicate originals of this agreement shall be signed by TUSPCO which shall retain one duplicate original, delivering the other duplicate original to Subscriber.

3. PRICE.

The cost of the book(s) to Subscriber consists of four components:

- (1) Basic price;
- (2) Discount(s), if any;
- (3) Inflation adjustment;
- (4) Sales tax.

The four components are described below.

3.1 Basic Price. The basic price for each book subscribed to is the amount written in under "basic price" in paragraph 8 below entitled "Book Order Form and Price Computation". The basic price for each book may be changed from time to time, but at any given time will be the same for all persons then subscribing.

3.2 Discount(s), if any. TUSPCO shall have a publicly stated discount policy in effect from time to time which TUSPCO reserves the right to alter to fit different times and different economic and rational considerations relevant to selling the book(s). At the time of original usage of this pre-publi-

cation subscription agreement (on 1978, June 28), the only discount policy in effect is a quantity discount.

3.3 Inflation Adjustment. The inflation adjustment shall be applied to the basic price, less discount(s), and will be established and computed in the manner described in this paragraph 3.3. The purpose of this inflation adjustment is to secure the benefits of this agreement to the parties hereto, it being the desire of TUSPCO to deliver the book(s) subscribed for, and it being the desire of Subscriber to obtain such book(s). The purpose of the pre-publication subscription agreement is to provide a market for the books in order to justify the effort of AJG, TUSPCO, and their affiliates to produce the books. Since inflation of the magnitude currently prevailing in the United States of America can seriously erode or destroy the purchasing power of the pre-publication subscriptions, the inflation adjustment to this contract is regrettably necessary.

The inflation adjustment described herein shall be payable annually during the life of this agreement. It is to be noted at the outset that any of the following inflation adjustments will be applicable only to the unpaid balance due, and shall be paid annually on the anniversary date of this agreement. When the face amount of the contract price of the book(s) subscribed for has been paid in full, there shall be no further inflation adjustment added to the basic price, less discount(s), if any. For example, if the basic contract price, less discount(s), if any, shown in Subscriber's agreement is \$550.00, and if Subscriber subscribes on 1978, July 1, paying the \$550.00 in full, the inflation adjustment would not apply. However, if Subscriber, for example, paid \$250.00 on 1978, July 1, and paid the remaining balance of \$300.00 at the rate of \$50.00 per month for six months, with the last payment being made on 1979, January 1, then the inflation adjustment would apply to the sum of \$300.00, or any portion thereof, so long as such sum or any portion thereof has not been paid. Upon payment of any portion of the unpaid balance the inflation adjustment no longer applies to such portion which has been paid. It is to be noted that this is an unusual feature of this agreement in the sense that most vendors would not accept the inflation risk over future times of later delivery, even after having received payment in full.

Each annual inflation adjustment will be any one, but only one, of the following inflation adjustments, numbered (1) through (5) in order of their priority.

(1) Inflation adjustment number 1 will be up to, but not to exceed, the amount of ten percent (10%) per

year, and this inflation adjustment will prevail from the date of this subscription agreement until the date of delivery of the books to Subscriber provided, in the sole and exclusive judgment of TUSPCO, the magnitude of inflation prevailing in the United States of America during the period of time from first announcement of this pre-publication subscription agreement to the delivery of the books does not exceed ten percent (10%) per annum on a cumulative basis.

(2) Inflation adjustment number 2 will be used in place of inflation adjustment number 1 if, in the sole and exclusive opinion of TUSPCO, inflation prevailing in the United States of America ever exceeds ten percent (10%) per year in the United States of America on a cumulative basis from the date of first usage (1978, June 28) of this pre-publication subscription agreement to the date of delivery of the book(s). In the year in which TUSPCO first determines that inflation adjustment number 1 will not be used for the reasons stated herein, an inflation adjustment based upon the value of gold will become the inflation adjustment hereunder. In such case, the basic price as of the date Subscriber enters into this agreement shall be calculated in full and fractional ounces of gold as established on the "free market" (see definition below) as of the date Subscriber entered into this agreement. At the option of TUSPCO the amount of the inflation adjustment shall be either (a) the annual payment of additional lawful money of the United States of America in an amount sufficient to purchase the number of full and fractional ounces of gold equal to the number of full and fractional ounces of gold which the basic price would have purchased on the date of entry into the agreement, less a credit for the amount of the basic price, less discounts, plus inflation adjustment (1), previously paid by Subscriber; or (b) if then legal, and only if payee should then require it, Subscriber shall deliver to TUSPCO annually the number of full and fractional ounces of gold which the basic price, less discount(s), would have purchased on the date of entry into the agreement, less the amount of full and fractional ounces of gold which could be purchased at the date of each annual inflation adjustment with the amount previously paid by Subscriber on account of the basic price, less discount, if any, plus inflation adjustment (1) previously paid, if any.

The term "free market" price of gold shall mean the price of gold on the London market. If the London market is no longer operative at the time necessary to determine the free market price of gold, then the term "free market" price of gold shall be the price of gold on the Zurich, Switzerland market for gold at the time of determination of the price of gold. If both the London and Zurich, Switzerland markets for gold are not operative, then the "free market" price of gold shall be the price of gold on the New York City market for gold at the time for determination of the price of gold. If none of the foregoing markets for gold is operative, then the "free market" price of gold shall be that which is prevailing wherever gold is sold in a regularly operative, unregulated market. It is understood and recognized by TUSPCO and Subscriber that the price of gold is subject to wide fluctuations. Therefore, the adjustment based upon the "free market" price of gold shall not be made if such adjustment would result in the basic price, less discount(s), if any, being reduced in the amount of gold which it could purchase. The gold clause adjustment shall only be an upward adjustment, by reason of the necessity of protecting the purchasing power of the basic price so that TUSPCO will be able to produce and distribute the book as contemplated by this agreement.

(3) At the time of making this agreement, the law of the United States of America has recently been changed to allow the use of a gold clause as provided in (2) above. If such a gold clause ever becomes illegal before the time for delivery of the book(s), the inflation adjustment shall be made based upon any other precious metal such as silver or platinum which is commonly traded in a free market, provided it is then legal to make adjustments in the price under this agreement with reference to the price of precious metals other than gold. In making the inflation adjustment by use of precious metals other than gold, the inflation adjustment shall be computed by reference to the gold clause described in (2) above up until the last day when such a gold clause was legal to use. As of such last day, the inflation adjustment will be translated from the "free market" price of gold to the free market price of the other precious metal selected for such inflation adjustment. For example, if, on the last day when such a gold clause was legal to be used,

one ounce of gold would have bought 30 ounces of silver, and silver is the new inflation adjustment medium selected by TUSPCO, and if the "basic price" less discounts, if any, which was Subscriber's subscription price, had a gold equivalent of 3.125 ounces of gold, then the inflation adjustment basic price, less discounts (if any), translated into silver would result in the Subscriber's basic price, less discounts (if any), being stated as 93.75 ounces of silver (30 x 3.125 = 93.75).

The exact precious metal to be selected in the event it is necessary to use alternative (3) shall be at the sole and exclusive discretion of TUSPCO. Reference in the balance of this paragraph to "silver" as an example or illustration means, where the context requires, "a precious metal other than gold".

The inflation adjustment in silver shall only be an upward adjustment, and such adjustment shall not be made if such adjustment would result in the basic price, less discounts (if any), being reduced in the amount of silver which it could purchase.

As with the inflation adjustment in gold, at the option of TUSPCO, the amount of the inflation adjustment in silver shall be either (a) the annual payment of additional lawful money of the United States of America in an amount sufficient to purchase the number of full and fractional ounces of silver equal to the number of full and fractional ounces of silver which the basic price, stated in ounces of gold, would have purchased on the date of transition from the gold inflation adjustment to the silver inflation adjustment, less a credit for the amount of the basic price, less discounts, plus inflation adjustments, previously paid by Subscriber; or (b) if then legal, and only if payee should then require it, Subscriber shall deliver to TUSPCO annually the number of full and fractional ounces of silver which the basic price, stated in ounces of gold, less discount(s) would have purchased on the date of transition from the gold inflation adjustment to the silver inflation adjustment, less the amount of full and fractional ounces of silver which could be purchased at the date of each annual inflation adjustment with the amount previously paid by Subscriber on account of the basic price, less discount, if any, plus inflation adjustment (1) or (2) previously paid, if any.

(4) In the event that use of an inflation adjustment based upon the price of a precious metal other than gold is illegal at the time it is necessary to compute the inflation adjustment hereunder, then such inflation adjustment shall be made by use of an index of commodities or generally used products other than precious metals. The index of commodities which shall be used is shown on Exhibit "A" which is attached hereto and incorporated herein by reference.

(5) If all of the foregoing are illegal to use at the time it is necessary to compute the inflation adjustment, then in order to preserve the real purchasing power of the subscription price, the inflation adjustment shall be computed with reference to any recognized inflation index which was in existence on the date of first usage of this contract (1978, June 28) and which is still in existence as of each annual inflation adjustment date.

The amount of the inflation adjustment under either alternative (4) or (5) shall be in the ratio of such inflation index on the date of first usage of this contract (1978, June 28), as compared with the increase in such inflation index on any annual inflation adjustment date. For example, if such inflation index was stated as equal to the number 100 on the date of first usage of this contract (1978, June 28), and is 130 at some subsequent inflation adjustment date, then the amount of inflation adjustment at such inflation adjustment date shall be payment of additional lawful money of the United States of America in the amount equal to one hundred thirty percent (130%) of the basic price, less discount, if any, less a credit for the amount of the basic price, less discount(s), plus inflation adjustment (1), (2), or (3) previously paid by Subscriber.

Delivery of the book(s) is subject to the prior payment of the remaining balance of any portion of the basic price then due, including inflation adjustments.

The use of the gold clause for making the inflation adjustment is demonstrated by the following example. Suppose the initial unpaid balance of the basic price of book(s) purchased under this agreement by Subscriber is five hundred dollars (\$500.00) and the price of gold at the time of entry into this contract is

\$160.00 per ounce. Five hundred dollars (\$500.00) would purchase 3.125 ounces of gold at the time of entry into this agreement. The inflation adjustment factor would be the free market price of gold at the time required for payment of the inflation adjustment. Assume such price was \$240.00 an ounce at the time required for payment of the inflation adjustment. It would then take \$750.00 in lawful money of the United States of America to purchase 3.125 ounces of gold and Subscriber would owe the \$750.00 amount, less any portion of the unpaid balance of \$500.00 which Subscriber had paid before time for the inflation adjustment. The inflation adjustment does not apply to any portion of the unpaid balance after such portion is paid; therefore, there would be a proration of the inflation adjustment for any portion of the unpaid balance paid between the dates of each annual inflation adjustment. The same type of adjustment would be made if alternatives (3), (4), and (5) were necessary to be used hereunder.

3.4 Sales Tax. At the time the book(s) are ready for delivery and the amount of the inflation adjustment to basic price has been determined, there shall be added to the sum of the basic price plus inflation adjustment the amount of any sales tax, or any other tax, imposed upon sale of the book(s) at the rate in effect at the time of the delivery, including sales tax or similar tax imposed by the United States of America, the State of California, or any agency or political subdivision thereof, which shall be an additional portion of the price to be paid by Subscriber. Payment of any sales tax, or any other tax, required to be imposed upon sale of the book(s) shall be a condition precedent to delivery of the book(s) to Subscriber.

4. TRUST FUND.

4.1 Subscription Price Paid to Trust Fund. Subscriber shall pay his subscription price not to TUSPCO, but to a special trust fund established to receive, hold, and disburse the subscription payments under this and counterpart contracts entered into with other Subscribers.

4.2 Duties of Trustee. The Trustee shall receive the subscription payments, in trust, and shall hold such subscription payments in a trust fund separate and apart from all assets of TUSPCO or Subscriber. The Trustee shall not withdraw funds from the trust fund except (1) to pay over to TUSPCO the subscription payments of Subscribers at the time specified herein, or (2) to refund to Subscribers their subscription payments at the time specified herein for any such refund.

The Trustee shall pay subscription payments from the trust fund to TUSPCO at such time as TUSPCO has Subscriber's book(s) ready for delivery to Subscriber. The Trustee shall also pay to TUSPCO from the trust fund such portion of the accumulated trust funds as are necessary for the production expenses of Books 1, 2, 3, 4, and 5 including, by way of example but not limitation, typesetting, paper, printing, publishing, binding, editorial and administrative expenses incurred after completion of the author's manuscript.

4.3 Trustees of Trust; Successor Trustee; Administration. The original Trustees of this trust fund are M. J. Lange and J. A. Miller. The word "Trustee" used in the singular also refers to the Trustees acting jointly where the context so requires. Successor Trustees for any trustee shall be appointed by TUSPCO in the event of the death, disability, incompetency, or insanity of any trustee, or in the event any trustee defaults in any contract or conducts himself in an irrational manner. Any successor trustee appointed by TUSPCO shall be an individual person, or a corporate trustee, other than TUSPCO or any parent, subsidiary or affiliated company of TUSPCO and other than any record or beneficial owner of shares of TUSPCO or of any parent, subsidiary or affiliated company of TUSPCO.

The special trust fund created hereby shall be known as "The Universal Scientific Publications Company, Inc. Book Subscription Trust" which may be abbreviated to "TUSPCO Trust" and Subscribers shall make their payments hereunder to the TUSPCO Trust and shall receive refunds, if any, from the TUSPCO Trust. Notwithstanding the foregoing, TUSPCO guarantees in full (100%) any payment required to be made from the trust to Subscriber, except under certain circumstances described in paragraph 6.5 below. Additional administrative provisions governing the operation of the trust fund are set forth in a separate trust agreement which is not directly a part hereof.

5. TIME PAYMENT PLAN.

TUSPCO may, in its sole and exclusive discretion, make available to Subscriber a time payment plan by which the subscription price herein is paid out in periodic installments. The number of installments and the length of the period over which installments are payable will be determined by TUSPCO based upon the Subscriber's total subscription on the principle that the larger the subscription the longer the installment payout period may be. Installment payment terms shall be set forth on a separate promissory note which shall be attached hereto and incorporated by reference.

In the event of default by Subscriber under any time payment plan entered into between TUSPCO and Subscriber, TUSPCO shall have the option either (1) to impose a late payment charge equal to ten percent (10%) of the amount of any late payment, with a minimum of \$10.00 per late payment, increased in proportion to the increase of inflation as computed under the inflation adjustment herein, or (2) to cancel this agreement immediately and refund to Subscriber the entire amount of subscription price paid, without interest, which refund shall completely terminate Subscriber's rights to receive delivery of any book(s) hereunder. In the event of any such late payment charges, such charge shall be paid by Subscriber no later than the due date of the next installment payment. In the event of the failure of Subscriber to pay any late payment charge(s) such late payment charge(s) shall be used to reduce any discount(s) previously given to Subscriber and, if and when all discount(s) are cancelled by reason of the application of late payment charge(s) for that purpose, any remaining late payment charge(s) shall be added to the basic price hereunder. The basic price as increased by reduction or elimination of the discount(s) if any, or addition to the basic price, shall be subject to the entire inflation adjustment provided for elsewhere herein. In no event shall the number of book(s) delivered to Subscriber at the delivery date exceed the number of book(s) which can be purchased with the amount paid by Subscriber after adjustment of Subscriber's purchase price by addition of any late payment charge(s) which have not been paid by Subscriber. TUSPCO may, in the event of a default by Subscriber on this contract, withhold delivery to Subscriber of any book until such default is removed.

6. TERMINATION OF AGREEMENT.

6.1 Termination Due to Circumstances Beyond Control of TUSPCO. If the book(s) which are the subject of this agreement cannot be delivered by TUSPCO due to circumstances beyond the control of TUSPCO, a full refund will be made of the amount paid by Subscriber, including any inflation adjustment, plus interest at the rate of six percent (6%) per annum, and sales tax actually collected from Subscriber. Payment shall be made in whatever currency is legally available at the time for payment.

6.2 Interest. The interest payable on any refund accrues from the time Subscriber's subscription payments were in actual possession of the Trustees.

6.3 Return of Document. In case of termination of this agreement for any cause, the Subscriber must return his

counterpart original of this agreement to TUSPCO for cancellation as a prerequisite to obtaining refund of his subscription payment and interest. In the event Subscriber has lost his original counterpart of this agreement, Subscriber, in order to obtain a refund, must deliver to TUSPCO a statement signed manually and personally by Subscriber and properly witnessed in such form as is acceptable to TUSPCO and provided by TUSPCO for such purpose, at Subscriber's expense, to the effect that Subscriber has lost his counterpart original of this document and by signing such statement requests the refund and acknowledges TUSPCO, upon payment of the refund, shall be released from all responsibility to deliver any book(s) to Subscriber. In case it is necessary to use a statement by Subscriber in lieu of a lost subscription agreement, Subscriber agrees to pay to TUSPCO a service charge of \$10.00, increased in proportion to the increase of inflation as computed under the inflation adjustment herein from the date of entry into this agreement by Subscriber until the date of use of such statement in lieu of a lost subscription agreement.

6.4 Termination of Agreement by Lapse of Time. If Book 1 or Book 2 is not ready for delivery to Subscriber by 1987, December 31, upon Subscriber's request, a full refund will be made of the amount paid by Subscriber for Book 1 or Book 2 plus interest at the rate of six percent (6%) per annum, and including any inflation adjustment actually collected and sales tax actually collected from Subscriber. If Book 3 or Book 4 is not ready for delivery to Subscriber by the date 1990, December 31, upon Subscriber's request, a full refund will be made of the amount paid by Subscriber for Book 3 or Book 4 plus interest at the rate of six percent (6%) per annum, and including any inflation adjustment and sales tax actually collected from Subscriber.

6.5 Conditions that would void, cancel, and terminate this agreement. This contract shall terminate immediately and TUSPCO shall be released of all obligation to Subscriber, other than any applicable refund obligation described elsewhere herein, in the event of the occurrence of any of the following:

(1) In the event the ground rule of the United States were to burst or fail, the contract would be voided, cancelled, and terminated. The ground rule of the United States is defined for the purposes of this contract as the assumption that the future of the United States will not be any worse than the past. For purposes of semantic clarification and to ensure that there be no disagreement as to whether the ground rule has indeed burst (failed) or not, the following will be, for purposes of this contract, automatically accepted by TUSPCO and the Subscriber as cases of ground rule bursting (failure):

(a) Any war, declared or undeclared, affecting the mainland of the United States which involves weapons of total extinction capability wherein entire cities can be exterminated. These include, but are not limited to nuclear weapons, bacteriological weapons, nerve gas weapons, and means of poisoning or otherwise destroying human beings by the millions.

(b) Overthrow of the present United States Constitution.

(c) A condition of continual rioting, violence, or turbulence wherein the police are no longer able to effect even the minimal amount of protection that is available at the time that this agreement is dated.

(d) A foreign nation's defeat and/or occupation of the United States of America.

(e) An inflation of such magnitude that the purchasing power of the dollar has diminished to less than 10% of its purchasing power at the time this contract was entered into.

(f) A pollution catastrophe which causes over one million deaths in a year in the United States.

(g) A police state wherein enterprise, initiative, profit, and pursuit of happiness have no realizable meaning. Examples would include total price controls, wage controls, rent controls, rationing, etc., wherein one could undertake no entrepreneurial activity within the meaning of the theory of primary property.

(h) Any condition wherein payment of moneys (in this case refund of the Subscriber's payment) would be limited or impaired or altogether eliminated by virtue of the fact that there was no one to pay or no one to receive or no basis to make payment with (cf. with case [a]).

In case of such catastrophes which terminate the contract, TUSPCO will, if within the laws of nature it is possible, make refund under the procedures set forth herein.

(2) Any change in political laws of the United States of America or the state of California or any other state having jurisdiction over the parties hereto whereby continuation of this agreement becomes illegal.

(3) Economic conditions prevailing in the United States of America such as to result in a loss of purchasing power of the subscription under this and similar contracts with the result that the total subscription, including inflation adjustments, would be insufficient to allow TUSPCO to produce and deliver the book(s) with a profit to TUSPCO, in which unhappy circumstance, which would be totally beyond individual volitional control (vis major), Trustee would refund to all Subscribers, on a pro-rata basis, 100% of the Trust Fund then remaining and TUSPCO would have no further liability to Subscriber.

(4) Generally prevailing conditions of social unrest, chaos and terror which make it unsafe or impossible safely to deliver the book(s), in which case, notwithstanding anything else herein, the refund to Subscriber shall be limited to Subscriber's pro-rata share of the trust fund. Under such circumstances the guarantee of the refund of the subscription price paid, including inflation adjustment collected (if any), plus interest, is void because repayment could not be guaranteed by any person or company. Such refund would be beyond capability of any person or company in the low social technology we live in.

(5) Notwithstanding anything to the contrary herein, if the assets of the trust fund are seized or made unavailable for the purposes of this agreement by any state, or by any coercive force, the obligation of TUSPCO to make or guarantee any refund to Subscriber shall cease, and shall be null and void.

(6) TUSPCO may terminate this contract and refund Subscriber's subscription payments plus 6% interest if, for psychological reasons of frustration and desperation due to lack of market support (such as occurred to other major innovators as is shown by the lives of Newton and Semmelweis, among others) AJG, the innovator of the theories of volition and primary property, reduces or terminates FEI, and/or TUSPCO, which AJG does not desire to do. It is to be called to the attention of Subscriber that the contingency described herein will not materialize in the event that a respectable market gratitude and endorsement of FEI's and TUSPCO's products endure through this period toward year 300 P.I. (Post Integration) (1987). If the Subscribers prefer that the major expansion of the promulgation of the innovations taught at FEI and to be published through TUSPCO proceed successfully, then Subscribers have ample opportunity to provide adequate market gratitude and endorsement such that the market environment should favorably affect the innovator of these products to encourage further disclosures.

6.6 Termination On Account of Certain Causes.

TUSPCO reserves the right to terminate this contract and to refuse to make delivery to any Subscriber on the following grounds: (1) behavior of Subscriber in a manner contrary to the principles taught by AJG through FEI and its affiliates, AJG being the developer of the product(s) which are the subject of this agreement; (2) should Subscriber be expelled from FEI classes; (3) if Subscriber has committed any act of coercion or attack on property without making appropriate restitution. Upon termination due to such causes, TUSPCO shall make a full refund to Subscriber of all monies paid. Such refund shall be paid without interest, but any inflation adjustment actually paid by Subscriber shall also be refunded. The refund shall constitute a full release of FEI and TUSPCO of all claims by Subscriber, and Subscriber consents to this in advance as part of this agreement, independent of the concurrence of Subscriber at the time of the refund and independently of whether the Subscriber returns the duplicate original of this agreement for cancellation.

If Subscriber refuses to accept the refund payment check received from the trust, or from TUSPCO, TUSPCO shall have the right to cause or require such refund to be placed in a special trust account or escrow account pursuant to a written trust agreement or other arrangements showing Subscriber is entitled to receive the entire amount of such account. Such trust account or escrow arrangement shall be established by the attorney for TUSPCO, and such attorney shall be entitled to receive reasonable compensation for the work of establishing such trust account, not to exceed an amount equal to four percent (4%) of the refund, but not less than \$50.00 adjusted for inflation since 1978, June 28, as provided herein, payable from the refund amount at the time it is released from the TUSPCO trust or paid by TUSPCO into the refund trust account or escrow, which expense for attorneys' fees could be avoided by Subscriber's prompt acceptance of his refund check, thereby obviating the expense, cost and annoyance of setting up such a refund trust or escrow account.

6.7 Extension of Agreement. The scheduled delivery date for Books 1 and 2 under this agreement is on or before 1987, December 31. At the option of Subscriber, the delivery date of Books 1 and 2 under this agreement may be extended to such later time as TUSPCO may propose. In the event the delivery date of the book(s) is extended to such later date as TUSPCO proposes, as part of such extension, TUSPCO shall also provide additional compensation to Subscriber (in amount to be proposed by TUSPCO at such time) for delay in delivery. When

delivery date is so extended by TUSPCO the contract as to Books 1 and 2 shall not be terminated by non-delivery as of 1987, December 31, and this contract shall continue in existence as to Books 1 and 2. No firm delivery date has been set for Books 3 and 4; however, the delivery date of Books 3 and 4 shall be no earlier than the delivery date of Books 1 and 2. The delivery date for Books 3 and 4 shall not be before Books 1 and 2, but will be planned for delivery not later than 1990, December 31, (and preferably sooner). For any Book other than 1, 2, 3, 4, and 5, the delivery date shall be such date as is specified in a separate attachment to this agreement, to be signed on behalf of TUSPCO and Subscribers ordering such books. At the option of Subscriber, the delivery date of Books 3 and 4 under this agreement may be extended to such later time as TUSPCO may propose. In the event the delivery date of Books 3 and 4 is extended to such later date as TUSPCO proposes, as part of such extension TUSPCO shall provide additional compensation to Subscriber (in amount to be proposed by TUSPCO at such time) for delay in delivery. Any Subscriber who does not accept the proposed extension of delivery date shall receive a full refund of all subscription payments made by such Subscriber together with interest at the rate of six percent (6%) per annum accrued from the time such funds were in the possession of the trustee.

6.8 Other Books. In order to use this contract for sale of other books to Subscriber, TUSPCO specifically adopts this contract for the purpose of selling such other books as are shown on the attached supplement sheet to this contract which identifies such books as Book 6, Book 7, etc.

7. MISCELLANEOUS.

7.1 Status of TUSPCO. It is intended that TUSPCO shall be the publisher of the book(s) to which Subscriber is subscribing herein. TUSPCO is the same company formerly known as The Liberal Publishing Co., Inc., ("TLPC") the name of which has been changed to The Universal Scientific Publications Company, Inc. ("TUSPCO"). TUSPCO reserves the right to change its name at any time hereafter provided that such change of name shall not in any way change the nature of the contractual rights and duties of TUSPCO and Subscriber.

7.2 TUSPCO Transfer of Agreement. TUSPCO reserves the right to delegate to a successor individual, corporation or company (including affiliate, parent, or subsidiary company), TUSPCO's obligations to Subscriber hereunder, subject to TUSPCO's agreement to guarantee performance of its duties by such successor.

7.3 Arbitration. The parties hereto agree that any dispute between the parties shall be submitted to arbitration which shall be conducted pursuant to the principles of volitional science as developed by Andrew J. Galambos. The decisions of the arbitrator(s) made herein shall be final and binding and shall not be subject to appeal to or review by any federal or state court.

7.4 Publication. In the event of default by Subscriber, TUSPCO may publish this agreement and evidence of the default. By signing this agreement the Subscriber waives any right to sue in any court for any alleged damages for slander or libel arising out of such publications. TUSPCO neither desires nor intends to cause publication of the agreement and evidence of default except in case of default or contractual failure on the part of Subscriber.

7.5 Future Editions. The book(s) to which Subscriber is subscribing are special limited first edition(s) (except Book 2 which is a special first FBI facsimile commemorative edition with the probable, but not guaranteed, first publication of a biographical treatment of Newton written by AJG). TUSPCO or its successors in interest reserve the right to publish or license publications of other editions of the book(s) at any time after the first edition. Any such future edition shall be designed and produced so as not to impair the unique nature and presumed value of the first edition. That is, such future edition(s) shall not be designated "first edition" and shall be clearly distinguished from the first edition.

7.6 Serialization of the Book(s). TUSPCO may elect to publish the book(s) in serial form, chapter-by-chapter, or section-by-section from time to time for any reason, such as paper shortage problems, convenience of the author, etc. In such case the serial publications shall be delivered to Subscribers who have paid their full subscription price or who are paying their subscription price in installments and who have not defaulted on such installment payments, and who pay such portion of the inflation adjustment as then would be due on a pro-rata basis for the serial portions of the book delivered. It is to be noted that serialization is neither probable nor desirable, but is an alligator (a contingency) provision for undesirable conditions that may prevent normal publication in typical book form.

7.7 Numbered Books. Books 1, 2, 3, 4, and 5 to be produced pursuant to this agreement shall be numbered serially. The lowest numbers, and certain other numbers of historical or

proprietary interest to AJG and the principals of TUSPCO, its parent corporation, affiliates and close contractual associates, shall be reserved for AJG, the principals of TUSPCO, its parent corporation, affiliates and close contractual associates. All other numbers are available for sale, in order of subscription, with priority to persons to retain numbers previously subscribed for in an earlier contract for purchase of Book 1. Any non-renewal of subscription to such numbers in or after Book 1 shall be reassigned by TUSPCO to its principals or other persons including new Subscribers as TUSPCO deems fit in its sole and exclusive discretion. TUSPCO reserves the right to make available to Subscribers the numbers for Books 2, 3, 4, and 5, which are the same numbers which Subscriber has obtained for Book 1, so long as Subscriber subscribes to all of Books 1, 2, 3, 4, and 5 offered under this contract. While availability of such Book 1 numbers for Books 2, 3, 4, and 5 is not guaranteed, it is likely that persons subscribing to all of Books 1, 2, 3, 4, and 5 would have the opportunity to have the same numbers for all five books.

7.8 Change of Address. Subscriber must keep TUSPCO informed of his address and give notice of any change of name, address and telephone number, so that TUSPCO will know where to deliver the book(s) subscribed for. If no current address is available at the time of delivery of the book(s), TUSPCO will place the books in storage and insure them at Subscriber's expense. At such time as Subscriber requests delivery of the book(s), they will be delivered to him upon receipt of payment of any balance due on his subscription price, including inflation adjustment, the storage costs, the insurance costs, plus ten percent (10%) of the basic price plus inflation adjustment as compensation to TUSPCO for its efforts in storing the book(s). If a Subscriber who has not provided a current address and telephone number to TUSPCO fails to make arrangements for delivery of his books within four years after the books are available for delivery, then TUSPCO shall have the right to cancel Subscriber's subscription and to resell such books free of any obligation to deliver them to Subscriber, in which case Subscriber shall receive a refund of his subscription price actually paid, including inflation adjustment, without interest less the storage and insurance costs described in this paragraph, and, also, less the 10% of the basic price plus inflation adjustment referred to earlier. Such refund can be made only after an address is obtained from the Subscriber. In the interim, the moneys will be held in a special trust account or escrow account pursuant to the terms set forth in the final paragraph of 6.6. TUSPCO does not accept or assume any liability to Subscriber arising from

the cause that Subscriber failed properly to notify TUSPCO of all changes of name, address, or telephone number.

7.9 Amendment Procedure to this Contract. In the event that TUSPCO should find improvements or clarifications to make in this contract at a later time, TLPC may offer to Subscribers a proposed amendment. Those who accept the proposed amendment will sign their agreement to the amendment and return one copy to TUSPCO and retain the duplicate copy for themselves. Upon such bilateral acceptance, the proposed amendment would be part of this contract from that date. Those who do not accept the amendment would not be affected and their contract would remain as it was. It should be noted that TUSPCO will not offer any amendment that is unilaterally advantageous to TUSPCO and disadvantageous to the Subscriber. Any proposed amendment would be of mutual advantage to both parties, and if the Subscriber disagrees, he would be free to reject the amendment.

[Balance of page left intentionally blank.]

1980-01-01 10:00 AM

8. BOOK ORDER FORM AND PRICE COMPUTATION.

	Quantity Ordered	Basic Price Per Book	Total Basic Price Per Book
Book 1*	<u>4</u> { 3	\$ <u>216.00</u> \$ <u>248.62</u>	\$ <u>961.86</u>
Book 2*	<u>-</u>	\$ <u>-</u>	\$ <u>-</u>
Book 3*	<u>-</u>	\$ <u>-</u>	\$ <u>-</u>
Book 4*	<u>-</u>	\$ <u>-</u>	\$ <u>-</u>
Book 5*	<u>-</u>	\$ <u>-</u>	\$ <u>-</u>
Additional Books**	<u>-</u>	See Supplement Sheet	\$ <u>-</u>

Total Basic Price of all orders***

\$ 961.86

Discount applicable, if any:**** (Computation attached as supplementary page and incorporated by reference.)

\$ 0

Total Basic Price less Discounts, if any

\$ 961.86

Amount Paid upon Signing Contract *Paid from refund from prior contract per transfer agreement dated 1978, Dec. 3*

\$ 961.86

Balance Due, if any, and included as initial principal sum on Promissory Note dated w/a

\$ 0

* Books 1, 2, 3, 4, and 5 are as described in this contract in paragraph 1.3.

** Any books or products ordered from TUSPCO pursuant to this contract, other than Books 1, 2, 3, 4, and 5 are shown on an attached supplement sheet, and the total order from the attached supplement sheet is entered on this line entitled "Additional Purchases".

*** The total basic price of all orders does not include the inflation adjustment to be paid annually as explained in this contract.

**** TUSPCO shall have publicly stated discount policies in effect from time to time which TUSPCO reserves the right to alter to fit different times and different economic and rational considerations relevant to selling the book(s), including but not limited to quantity discounts, and other discounts which may be established from time to time.

Subscriber(s) agree that the intellectual content and nature of this contract are the primary (intellectual) property of AJG, and, for this reason, Subscriber(s) agree to refrain from reproducing, distributing, or showing this contract to any party not a participant in or principal to this contract under any circumstances without written authorization of AJG or his authorized proprietary associates or successors.

By signing this agreement on 1978, DECEMBER 3, at Los Angeles, California, Subscriber(s) acknowledge that the Book Order Form and Price Computation has been filled in prior to the affixing of all signatures.

Print name(s) of Subscriber(s):

Signatures:

FREDERIC G. MARKS

Frederic G. Marks
Subscriber

ula

ula
Subscriber

THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC.

By Paul B. Webb

Witnessed by:

James Spelar

Original received and filed by TUSPCO on 1978, DECEMBER 3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Note: The reverse side of this sheet (which would be Page 22) has been intentionally left blank.

EXHIBIT "A"

ALTERNATE INFLATION INDEX

The prices on this inflation index were determined on 1978, June 14, at the places indicated for each item.

1. One gallon unleaded Mobil brand gasoline at Mobil station, Overland and National Boulevards, Los Angeles, California \$.69-9/10
2. One can Campbell's green pea soup, size 11-1/4 oz. or 319 grams, at Von's Market, Sepulveda Boulevard at National Boulevard, Los Angeles, California \$.26
3. One 60-watt General Electric light bulb, regular, frosted, at Von's Market, Sepulveda Boulevard at National Boulevard, Los Angeles, California \$.60-1/2
4. One roll Kodachrome II 35 mm. 36 exposure color film at Sav-On Drugs, Sepulveda Boulevard at National Boulevard, Los Angeles, California \$ 3.19
5. One box 5,000 Bostitch B-8 staples at Sentry Stationers, 2314 Santa Monica Boulevard, Santa Monica, California \$ 2.00

See reverse side for additional terms governing the use of this alternative inflation index.

ADDITIONAL TERMS GOVERNING THE USE OF THE ALTERNATE INFLATION INDEX
ON PAGE 23

Any commodity listed on Exhibit "A" shall be removed from this index if, at the time of the annual determination of the inflation adjustment, such commodity is subject to price control or regulation by any organization which has compulsory power to enforce or regulate prices, including, but not limited to, the federal government, the state of California, or any subdivision thereof, or any state agency whatsoever. The commodity shall also be removed from the index if it is no longer on the market and thus not available for purchase at the time of application of the inflation index. If the commodity is available, but not available at the same location where its price was originally determined, then the price of the commodity at the time of the application of the inflation index shall be ascertained by pricing the commodity at a comparable store in the Greater Los Angeles area. If a commodity which appears on Exhibit "A" is unavailable in the same size or quantity package as originally determined, but is available in a different size or quantity, then the price as per such different size or quantity shall be determined and a pro-rata adjustment will be made to such price to adjust for such change in size or quantity. For example, with reference to the Kodachrome film on Exhibit "A", the price of which was determined from a roll of 36 exposures, if such film is not available in 36 exposures, but is available in a roll of 48 exposures, upon the date of application of the inflation index, then the price for the 48-exposure roll will be determined and reduced by 25% (the difference between 48 and 36 exposures) and the price as thus reduced shall be used for determining the inflation adjustment.

If all of the commodities on the inflation index have been removed from the index for the reasons stated above, then the inflation adjustment shall be determined as follows: the percentage of change in the inflation adjustment shall be the same as the percentage of change in the offering price of FEI Course V-201T between the time of the Subscriber(s)' signing of this contract and the time of determination of the inflation adjustment (which will be determined annually). The price of V-201T shall never be used to determine the inflation adjustment unless none of the components of the inflation index (Exhibit "A") is available due to the reasons stated above.

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FREDERIC G. MARKS, JOSEPH HENTZ,)
13 STUART SMITH, JEAN MOLLENHAUER,)
14 ROGAN COOMBS, JOSEPH DROLL,)
15 GREGG ROOTEN, THOMAS R. WOOD,)
16 MARILYN WOOD, GREG STAININGER,)
17 and JOHN FOUNTAIN,)

18 Plaintiffs,

19 vs.

20 WAYNE JOYNER and CHARLES W.
21 HAYES, individually and as Trustees of
22 THE UNIVERSAL SCIENTIFIC
23 PUBLICATIONS COMPANY TRUST,
24 THE UNIVERSAL SCIENTIFIC
25 PUBLICATIONS COMPANY, INC., THE
26 NATURAL ESTATE TRUST, and DOES 1
27 through 50, Inclusive,

28 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**DEFENDANT CHARLES W.
HAYES'S REQUESTS FOR
ADMISSION TO PLAINTIFF
FREDERIC G. MARKS [SET ONE]**

23 **PROPOUNDING PARTY: DEFENDANT CHARLES W. HAYES**
24 **RESPONDING PARTY: PLAINTIFF FREDERIC G. MARKS**
25 **SET NUMBER: ONE**

26 Defendant Charles W. Hayes requests that you respond to the following Requests

1 for Admission within thirty (30) days after service thereof pursuant to Section 2033.210 *et*
2 *seq.* of the California Code of Civil Procedure.

3 **REQUESTS FOR ADMISSION**

4 **REQUEST FOR ADMISSION NO. 1:**

5 Admit that HAYES never represented to YOU that he was “working on
6 publication” of Book 1 at any time before 1997. (For purposes of these requests for
7 admission, the term “HAYES” shall mean defendant Charles W. Hayes, an individual. For
8 purposes of these requests for admission, the terms “YOU” and “YOUR” shall mean
9 plaintiff, Frederic G. Marks, his officers, employees, agents and representatives.)

10 **REQUEST FOR ADMISSION NO. 2:**

11 Admit that HAYES never “assured” YOU that “Book 1 would be published” at any
12 time before 1997.

13 **REQUEST FOR ADMISSION NO. 3:**

14 Admit that HAYES never “encouraged” YOU to wait for Book 1's delivery at any
15 time before 1997.

16 **REQUEST FOR ADMISSION NO. 4:**

17 Admit that YOU drafted the TUSPCO TRUST. (For purposes of these requests for
18 admission, the term “TUSPCO TRUST” shall mean The Universal Scientific Publications
19 Company, Inc., Book Subscription Trust.)

20 **REQUEST FOR ADMISSION NO. 5:**

21 Admit that YOU drafted the PPSA. (For purposes of these requests for admission,
22 the term “PPSA” shall mean the Pre-Publication Subscription Agreement.)

23 **REQUEST FOR ADMISSION NO. 6:**

24 Admit that Exhibit “A” attached hereto is a true and correct copy of the complaint in
25 the LANGE ACTION. (For purposes of these requests for admission, the term the
26 “LANGE ACTION” shall mean the action entitled *The Universal XYZ Corporation, et. al.*
27 *v. Mitchell J. Lange, et. al.*, Orange County Superior Court Case No. 44-26-51.)

28

1 REQUEST FOR ADMISSION NO. 7:

2 Admit that YOU drafted the complaint in the LANGE ACTION on behalf of The
3 Universal XYZ Corporation, Andrew J. Galambos, Suzanne J. Galambos, TUSPCO, the
4 TUSPCO TRUST, the FEI Course Subscription Trust and HAYES. (For purposes of
5 these requests for admission, the term "TUSPCO" shall mean The Universal Scientific
6 Publications Company, Inc.)

7 REQUEST FOR ADMISSION NO. 8:

8 Admit YOU filed the LANGE ACTION on October 30, 1984.

9 REQUEST FOR ADMISSION NO. 9:

10 Admit that Jonathan K. Golden, Esq. was YOUR partner in the law firm Marks and
11 Golden, attorneys for The Universal XYZ Corporation, Andrew J. Galambos, Suzanne J.
12 Galambos, TUSPCO, the TUSPCO TRUST, the FEI Course Subscription Trust and
13 HAYES, in the LANGE ACTION.

14 REQUEST FOR ADMISSION NO. 10:

15 Admit that YOU verified the contents of the complaint in the LANGE ACTION as
16 true of YOUR own knowledge "except as to those matters which are therein stated as
17 being alleged upon information or belief, and as to those matters I believe the complaint to
18 be true."

19 REQUEST FOR ADMISSION NO. 11:

20 Admit that during and subsequent to the pendency of the LANGE ACTION YOU
21 never discovered that any of YOUR assertions in the complaint in the LANGE ACTION
22 were false.

23 REQUEST FOR ADMISSION NO. 12:

24 Admit that, pursuant to section 7.1 of the complaint in the LANGE ACTION, on
25 July 11, 1978 Mitchell J. Lange and Jerry A. Miller were appointed co-trustees for the
26 TUSPCO TRUST.

27
28

1 REQUEST FOR ADMISSION NO. 13:

2 Admit that section 7.2 of the complaint in the **LANGE ACTION**, which **YOU**
3 verified, states: "In operation Lange was the sole trustee."

4 REQUEST FOR ADMISSION NO. 14:

5 Admit that section 9 of the complaint in the **LANGE ACTION**, which **YOU**
6 verified, states: "In 1984, beginning on July 9, **AJG** discovered for the first time that **MJL**
7 had taken substantially all of the assets of both the **FEI Trust** and the **TUSPCO TRUST**, as
8 well as considerable amounts of monies of **TUC** and substantially all the monies of
9 **TUSPCO** that were under **MJL**'s control." (For purposes of these requests for admission,
10 the term "**AJG**" shall mean Andrew J. Galambos. For purposes of these requests for
11 admission, the term "**MJL**" shall mean Mitchell J. "Matt" Lange.)

12 REQUEST FOR ADMISSION NO. 15:

13 Admit that section 9.1, lines 14-17, of the complaint in the **LANGE ACTION**,
14 which **YOU** verified, states "beginning in or about 1979 Lange took monies belonging to
15 **TUSPCO** in the total amount of not less than \$126,905.30, without the knowledge, consent
16 or permission of **AJG**, **TUC** or **TUSPCO** and converted all of those monies to his own
17 use."

18 REQUEST FOR ADMISSION NO. 16:

19 Admit that section 9.3 of the complaint in the **LANGE ACTION**, which **YOU**
20 verified, states: "Beginning in or about July 1979 Lange took from the **TUSPCO TRUST**
21 the sum of not less than \$863,267.56 without the knowledge, consent or permission of
22 **AJG** or **TUSPCO**, and converted all of that amount to his own use."

23 REQUEST FOR ADMISSION NO. 17:

24 Admit that, pursuant to sections 9 and 9.3 of the verified complaint in the **LANGE**
25 **ACTION**, **YOU** claimed that the **TUSPCO TRUST** was looted by **MJL** between 1979
26 and July 9, 1984.

27
28

1 REQUEST FOR ADMISSION NO. 18:

2 Admit that YOU purchased 4 copies of Book 1 from TUSPCO.

3 REQUEST FOR ADMISSION NO. 19:

4 Admit that YOU paid \$961.86 for all 4 copies of Book 1 *before* July 1, 1984.

5 REQUEST FOR ADMISSION NO. 20:

6 Admit that YOUR money was stolen by MJL.

7 REQUEST FOR ADMISSION NO. 21:

8 Admit that HAYES was the successor trustee to the TUSPCO TRUST *after* it was
9 looted by MJL.

10 REQUEST FOR ADMISSION NO. 22:

11 Admit that YOU received all copies of Volume 1 of Book 1 that YOU are entitled
12 to pursuant to YOUR PPSA.

13 REQUEST FOR ADMISSION NO. 23:

14 Admit that section 6.5 (5) of the PPSA states: "Notwithstanding anything to the
15 contrary herein, if the assets of the trust fund are seized or made unavailable for the
16 purposes of this agreement by any state, or by any coercive force, the obligation of
17 TUSPCO to make or guarantee any refund to Subscriber shall cease, and shall be null and
18 void."

19 REQUEST FOR ADMISSION NO. 24:

20 Admit that AJG defined "coercive force" as any attempt to interfere with property
21 via force, threat of force, or fraud.

22 REQUEST FOR ADMISSION NO. 25:

23 Admit that MJL was a coercive force as defined by AJG.

24 REQUEST FOR ADMISSION NO. 26:

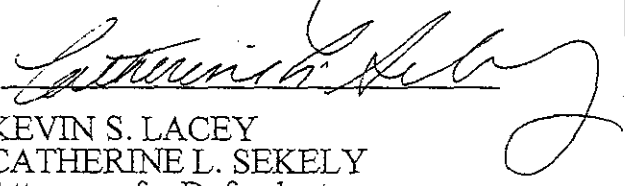
25 Admit that MJL seized the assets of the TUSPCO TRUST.
26
27
28

1 REQUEST FOR ADMISSION NO. 27:

2 Admit that YOU are not entitled to a refund pursuant to section 6.5(5) of the PPSA.

3 DATED: November 17, 2006

LACEY, DUNN & DO
A Professional Corporation

4
5
6 By: 
7 KEVIN S. LACEY
8 CATHERINE L. SEKELY
9 Attorneys for Defendant
10 Charles W. Hayes

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado) Mitchell J. Lange, ict Services Corporation, Andrea Mercantile Company, W/L Publishing Company, a Corporation, Bonnie L. Lance, Michelle Donnelly, Llewelyn Properties, a California Limited Partnership, Montrose Properties Partnership, City Hall Center Properties Partnership, Montana Historic Properties Partnership, and Doe Defendants 1-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

The Universal XYZ Corporation, Andrew J. Galambos, Suzanne J. Galambos, The Universal Scientific Publications Company, Inc., The Universal Scientific Publications Company, Inc. Book Subscription Trust, The FEI Course Subscription Trust, and Charles W. Hayes.

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS.CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)

Orange County Superior Court
700 Civic Center Drive West
Santa Ana, California 92701

CASE NUMBER: (Número del Caso)

44-26-51

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Marks and Golden
Frederic G. Marks, Esq.
1875 Century Park East, 8th Floor
Los Angeles, California 90067
(213) 553-3822

DATE:
(Fecha)

OCT 30 1984

LEE A. BRANCH

Clerk, by
(Actuario)

PAMELA A. MCELROY

Deputy
(Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
 other:

4. by personal delivery on (date): 11-1-84

EX. A ✓

1 FREDERIC G. MARKS, ESQ.
MARKS AND GOLDEN
2 1875 Century Park East, Suite 800
Los Angeles, California 90067
3 (213) 553-3822

FILED

OCT 30 1984

4 Attorneys for Plaintiff

LEE A. BRANCH, County Clerk
By _____ Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10

11 THE UNIVERSAL XYZ CORPORATION,)
ANDREW J. GALAMBOS, SUZANNE J.)
12 GALAMBOS, THE UNIVERSAL SCIENTIFIC)
PUBLICATIONS COMPANY, INC., THE)
13 UNIVERSAL SCIENTIFIC PUBLICATIONS)
COMPANY, INC. BOOK SUBSCRIPTION)
14 TRUST, THE FEI COURSE SUBSCRIPTION)
TRUST, AND CHARLES W. HAYES,)
15)
Plaintiffs,)

CASE NO. 44-2651
COMPLAINT FOR FRAUD AND
DECEIT, ACCOUNTING,
BREACH OF TRUST, BREACH
OF CONTRACT, CONVERSION,
DEFAMATION, EMOTIONAL
DISTRESS, AND CONSTRUCTIVE TRUST

16 v.)
17)

18 MITCHELL J. LANGE, ict SERVICES COR-)
PORATION, ANDREA MERCANTILE COMPANY,)
W/L PUBLISHING COMPANY, A CORPORA-)
19 TION, BONNIE L. LANGE, MICHELLE)
DONNELLY, LLEWELYN PROPERTIES, A)
20 CALIFORNIA LIMITED PARTNERSHIP,)
MONTROSE PROPERTIES PARTNERSHIP, CITY)
21 HALL CENTER PROPERTIES PARTNERSHIP,)
MONTANA HISTORIC PROPERTIES PARTNER-)
22 SHIP, AND DOE DEFENDANTS 1-100,)
23)
Defendants.)

24

25 FIRST CAUSE OF ACTION (Fraud and Deceit)

26

27 Plaintiffs allege for their first cause of action against
28 Mitchell J. Lange only:

1 1. Andrew J. Galambos (described as "AJG" or "Galambos"
2 herein) and Suzanne J. Galambos ("SJG") are individuals who reside
3 in the State of California, County of Orange; AJG and SJG are hus-
4 band and wife respectively of each other. The Universal Corpora-
5 tion is a Delaware corporation authorized to do business in the
6 State of California under the name The Universal XYZ Corporation,
7 and is referred to herein as "TUC". The Universal Scientific
8 Publications Company, Inc. (referred to herein as "TUSPCO") is a
9 California corporation. AJG is the sole shareholder of TUC and
10 TUC is the sole shareholder of TUSPCO, which is a wholly-owned
11 subsidiary of TUC. The Universal Scientific Publications Company,
12 Inc. Book Subscription Trust is a trust established by TUSPCO in
13 the State of California; this trust is referred to herein as the
14 "TUSPCO trust". The FEI Course Subscription Trust is a trust
15 established in the State of California by TUC, and is referred to
16 herein as "the FEI trust". Charles W. Hayes is the current trust-
17 tee of both the TUSPCO trust and the FEI trust. TUC is a benefi-
18 ciary of the FEI trust, and TUSPCO is a beneficiary of the TUSPCO
19 trust. AJG, as owner of TUC and TUSPCO, and SJG as wife of AJG,
20 are indirect beneficiaries of the FEI trust and the TUSPCO trust.

21
22 2. Mitchell J. Lange is referred to herein as "MJL" or
23 "Lange". Bonnie L. Lange is the wife of Mitchell J. Lange.
24 Mitchell J. Lange and Bonnie L. Lange are residents of the County
25 of San Diego, State of California. W/L Services Corporation is a
26 corporation wholly owned and wholly controlled by Lange. W/L Pub-
27 lishing Company is a corporation which plaintiffs are informed,
28 believe and therefore allege is wholly owned and controlled by

1 defendant MJL. Michelle Donnelly is an individual who resides in
2 the County of San Diego, State of California. Plaintiffs are
3 informed, believe, and therefore allege, that Llewelyn Properties,
4 is a California limited partnership in which Mitchell J. Lange and
5 Califia Properties, a California corporation, are the general
6 partners; and that Montrose Properties is a California limited
7 partnership in which Mitchell J. Lange and Califia Properties, a
8 California corporation, are the general partners. Plaintiffs are
9 informed, believe, and therefore allege that Andrea Mercantile
10 Company is either a corporation controlled by MJL, or a fictitious
11 business name used by defendant MJL, or by some other corporation
12 or entity named herein as a defendant which is controlled by MJL.
13 Plaintiffs are informed, believe, and therefore allege that
14 Downtown Press is a fictitious business name used by defendants
15 MJL, W/L Publishing Company, and Michelle Donnelly.

16
17 2.1 Plaintiffs are informed, believe, and therefore
18 allege, that City Hall Center Properties and Montana Historic
19 Properties are each separate partnerships, and that Mitchell J.
20 Lange is a general partner of each partnership, and that each
21 partnership does business in the State of California, and also
22 does business in the State of Montana, and owns real property in
23 the State of Montana.

24
25 2.2 DOES 1-100, inclusive, are individuals, corpora-
26 tions, partnerships, or other entities, whose identities are
27 presently unknown to plaintiffs, who plaintiffs are informed,
28 believe, and therefore allege should be defendants in this action

1 because they are individuals who have aided and abetted the
2 actions of defendant Mitchell J. Lange complained of herein, or
3 business entities, such as corporations, partnerships, etc. under
4 the control of defendant Mitchell J. Lange which have been used by
5 Lange to perpetrate the wrongdoing described herein, or are per-
6 sons, or business entities, such as corporations or partnerships,
7 which are in possession of property belonging to the plaintiffs
8 which should be returned to plaintiffs for the reasons stated and
9 alleged below. Plaintiffs will request leave of court to amend
10 this complaint to allege the true names and identities of the DOE
11 defendants when they have been discovered.

12
13 2.3 Plaintiffs are informed, believe, and therefore
14 allege that at all times material herein defendant M. J. Lange was
15 a controlling shareholder, an officer and a director of each named
16 corporate defendant; that each named corporate defendant is and at
17 all times material herein was substantially owned and controlled
18 by defendant M. J. Lange and is an entity through which defendant
19 M. J. Lange conducts business affairs, including the transaction
20 of business described herein.

21
22 Plaintiff is informed, believes, and therefore
23 alleges that at all times material herein each of the partnerships
24 named as a defendant was a partnership in which defendant M. J.
25 Lange was a general partner, or the sole general partner, and that
26 each of such defendant partnerships is and at all times material
27 herein was substantially owned and controlled by defendant M. J.
28 Lange, and is an entity through which defendant M. J. Lange con-

1 ducts business affairs, including the business transactions de-
2 scribed herein.

3
4 As to any corporation or partnership or other busi-
5 ness entity which is hereafter served with the Summons and Com-
6 plaint in this action as a Doe defendant, plaintiffs are informed,
7 believe and therefore allege that each of such Doe defendant cor-
8 porations, partnerships or other business entities was at all
9 material times herein substantially owned and controlled by defen-
10 dant M. J. Lange, and is an entity through which defendant M. J.
11 Lange conducts business affairs, including the business trans-
12 actions described herein.

13
14 Plaintiffs are informed, believe and therefore
15 allege that each corporation and each partnership named as a
16 defendant herein, including corporations and partnerships here-
17 after served with this complaint as a Doe defendant, is the alter
18 ego of defendant M. J. Lange and the obligations of defendant M.
19 J. Lange are the obligations of such corporations and partnerships
20 and other business entities; furthermore, the obligations of each
21 such corporation, partnership or other business entity named as a
22 defendant, whether named herein or served as a Doe defendant, is
23 the obligation of defendant M. J. Lange, and is the obligation of
24 each other corporation, partnership or business entity named as a
25 defendant, in that:

26
27 (a) there is such a unity of interest and owner-
28 ship between defendant M. J. Lange and each of the named defendant

1 corporations, partnerships and other business entities that the
2 individuality of the defendant corporations, partnerships and
3 other business entities, or their separateness from defendant M.
4 J. Lange has ceased because:

5
6 (i) each of such defendant corporations,
7 partnerships and other business entities is influenced and
8 governed by defendant M. J. Lange;

9
10 (ii) defendant M. J. Lange is the owner and
11 holder of all, or a controlling amount of the outstanding voting
12 shares, or all or a controlling amount of the partnership inter-
13 ests in each such defendant corporation or partnership, and all or
14 a controlling amount of the interest in each such other business
15 entity;

16
17 (iii) the Board of Directors of each of the
18 defendant corporations is now, and at all material times has been,
19 controlled by defendant M. J. Lange, and the business affairs of
20 each of the defendant partnerships is now, and at all times mater-
21 ial herein has been, controlled by defendant M. J. Lange;

22
23 (iv) each of the defendant corporations and
24 each of the defendant partnerships was at all material times here-
25 in a corporate instrumentality or a partnership used for the bene-
26 fit of defendant M. J. Lange;

27
28 (v) each of the defendant corporations and

1 partnerships is, and at all material times herein was, inadequate-
2 ly capitalized for the reasonable needs of their business;

3
4 (vi) the corporate form, entity and struc-
5 ture of the defendant corporations was at all times disregarded by
6 defendant M. J. Lange, and the separateness of each of the defen-
7 dant corporations was at all times disregarded by defendant M. J.
8 Lange;

9
10 (vii) the assets of each of the defendant
11 corporations and the assets of each of the defendant partnerships
12 were intermingled with the assets of each other and with the
13 assets of defendant M. J. Lange, or transferred without considera-
14 tion to defendant M. J. Lange or to one of the other defendant
15 corporations or partnerships in disregard of the purported separ-
16 ate corporate form, entity and structure of the defendant corpora-
17 tions and the purported separate identity of the defendant part-
18 nerships.

19
20 (b) Each of the defendant corporations and each of
21 the defendant partnerships was never intended to have, and never
22 has had, any true separate corporate or partnership existence.
23 The sole purpose for the organization of each of the defendant
24 corporations and partnerships was and is to act as a device by
25 which defendant M. J. Lange could evade his contractual obliga-
26 tions to plaintiffs and to other parties by causing under capital-
27 ized and insolvent corporations and partnerships to enter into
28 contracts through which defendant M. J. Lange could carry on his

1 own business while attempting to evade personal liability, and to
2 act as recipients for property and assets of the plaintiff unlaw-
3 fully and wrongfully taken from the plaintiffs by defendant M. J.
4 Lange as described elsewhere herein.

5
6 (c) Adherence to the fiction of the separate exist-
7 tence as a corporation of any of the defendant corporations or
8 partnerships would sanction a fraud and promote an injustice, in
9 that each of such defendant corporations and partnerships has been
10 used by defendant M. J. Lange as a tool and device to accomplish
11 the perpetration of the fraud and deceit by which defendant M. J.
12 Lange had taken property of the plaintiffs in violation of the
13 rights of the plaintiffs; some, one or all of the defendant cor-
14 porations and partnerships are instrumentalities that defendant M.
15 J. Lange is attempting to hide behind and through which defendant
16 M. J. Lange is attempting to manipulate assets unlawfully taken
17 from plaintiffs, and to avoid liabilities to plaintiffs and to
18 third parties.

19
20 3. Galambos is an astrophysicist and a lecturer by profes-
21 sion. Since 1961 Galambos has used the trade name "The Free
22 Enterprise Institute," referred to herein as "FEI", as the name
23 for the business conducted by Galambos as a lecturer. Since 1965
24 the lecture business of Galambos has been presented through TUC,
25 and TUC has used the name FEI in such business. The business of
26 FEI is to present lecture courses and individual lectures of AJG
27 to adult students (hereinafter referred to as "students"), both in
28 person, and by means of tape recordings (referred to as "tape

1 courses").

2

3 4. TUSPCO publishes and sells books, pamphlets, cachets,
4 commemorative coin medals, and other items primarily to individual
5 customers of FEI and AJG.

6

7 5. Since 1963 AJG has known MJL first as a student of the
8 courses of AJG, then as a potential associate to work with AJG in
9 administering the business of FEI, and subsequently in the rela-
10 tionships described below.

11

12 6. Beginning in 1969 plaintiffs TUC and TUSPCO agreed with
13 Lange in Orange County and Los Angeles County that Lange would
14 become associated with Plaintiffs AJG, TUC and TUSPCO in a number
15 of capacities, including the following. In 1967 Lange became a
16 tape course contractor for recorded lectures of AJG presented by
17 FEI and individually by AJG. Beginning about 1971 or 1972 Lange
18 provided bookkeeping services, and was entrusted with all of the
19 banking business of FEI, which operated as a division of TUC, and
20 part of the banking business of TUSPCO, in that Lange was author-
21 ized to collect monies due from customers of FEI and TUSPCO, and
22 to deposit those monies in bank accounts established for that pur-
23 pose by TUC, FEI and TUSPCO. Lange was entrusted by AJG, TUC and
24 TUSPCO with the privilege of writing checks on such bank accounts
25 in order to assist AJG, TUC and TUSPCO in carrying on their busi-
26 ness by making payments from such bank accounts to suppliers of
27 goods and services to AJG, TUC and TUSPCO. Lange was for many
28 years an officer and director of TUC, and a director of TUSPCO,

1 and a fiduciary as to the TUC and TUSPCO bank accounts as to which
2 he was entrusted with the power to make deposits and withdraw
3 funds by writing checks for the benefit of TUC and TUSPCO, until
4 he was removed from his positions of trust by AJG, TUC and TUSPCO
5 on account of the problems described in this complaint.
6

7 7. In 1978 TUC and FEI established a special trust, known
8 as the FEI Course Subscription Trust ("FEI trust") and TUSPCO
9 established a special trust known as The Universal Scientific
10 Publications Company, Inc. Book Subscription Trust ("the TUSPCO
11 trust"). The purpose of the FEI trust was to hold customers'
12 monies received as advance subscriptions for lecture courses to be
13 given by AJG in the future. The purpose of the TUSPCO trust was
14 to hold monies paid by subscribers in advance for publication of
15 books to be written by AJG, produced, and delivered in the future.
16 Under each trust, the trustee was required to pay the money over
17 to FEI and to TUSPCO under certain conditions, or to refund the
18 money to the subscribers under certain conditions. FEI, AJG and
19 SJG indirectly, and the subscribers were beneficiaries of the FEI
20 trust. TUSPCO, AJG and SJG indirectly, and the subscribers were
21 beneficiaries of the TUSPCO trust.
22

23 7.1 On July 11, 1978 Mitchell J. Lange and Jerry A.
24 Miller were appointed co-trustees of the FEI trust and the TUSPCO
25 trust, and each of them signed trust documents under which they
26 assumed the duties of trustees. Beginning in 1978 the monies
27 received from subscribers of each trust were deposited in separate
28 segregated bank accounts, and subsequently a substantial amount of

1 the monies of each trust was used to purchase as assets of each
2 trust gold coins, pre-1964 U.S. silver coins, marketable securi-
3 ties, money market funds, and bank accounts.
4

5 7.2 In operation Lange was the sole trustee, function-
6 ing as such, and Jerry A. Miller was only a backup trustee who
7 AJG, FEI and TUSPCO asked to be available as successor trustee in
8 the event of the death, incapacity, resignation or removal of
9 Lange as trustee. The allegations of wrongdoing in this complaint
10 against the trustees of the FEI trust and TUSPCO trust are made
11 against Mitchell J. Lange only and not against Jerry A. Miller who
12 plaintiffs acknowledge had no knowledge of, or part in, the wrong-
13 doing of defendant Lange described in this complaint.
14

15 7.3 AJG is a beneficiary of both the FEI trust and the
16 TUSPCO trust in that the revenues derived by FEI from the FEI
17 trust and by TUSPCO from the TUSPCO trust would ultimately be
18 used, in part, to compensate AJG for services rendered in creat-
19 ing and delivering lectures and writing books to be delivered
20 through the FEI trust and the TUSPCO trust. SJG, as wife of AJG,
21 is indirectly a beneficiary of both trusts.
22

23 7.4 The agreements between plaintiffs and defendant
24 Lange as to the FEI trust and the TUSPCO trust were entered into,
25 and the agreements as to TUC and TUSPCO improved and modified, in
26 Orange County and Los Angeles County in 1978.
27

28 8. TUC, TUSPCO and AJG as the controlling person of TUC and

1 TUSPCO reposed trust and confidence in MJL at the time he was
2 named and appointed trustee of the FEI trust and the TUSPCO trust,
3 and continued to repose such trust and confidence in MJL until
4 discovery of the wrong doing of MJL alleged in this complaint.
5

6 9. In 1984, beginning on July 9, AJG discovered for the
7 first time that MJL had taken substantially all of the assets of
8 both the FEI trust and the TUSPCO trust, as well as considerable
9 amounts of monies of TUC and substantially all the monies of
10 TUSPCO that were under MJL's control.
11

12 9.1 As to TUC and TUSPCO, beginning in or about 1979,
13 Lange took monies belonging to TUC in the total amount of not less
14 than \$336,198.72, and beginning in or about 1979 Lange took monies
15 belonging to TUSPCO in the total amount of not less than
16 \$126,905.30, without the knowledge, consent or permission of AJG,
17 TUC or TUSPCO and converted all of those monies to his own use.
18

19 9.2 Beginning in or about 1979 Lange took from the FEI
20 trust the sum of not less than \$208,872.18 without the knowledge,
21 permission or consent of AJG, TUC, FEI, and converted all of that
22 amount to his own use.
23

24 9.3 Beginning in or about July 1979 Lange took from the
25 TUSPCO trust the sum of not less than \$863,267.56 without the
26 knowledge, consent or permission of AJG or TUSPCO, and converted
27 all of that amount to his own use.
28

1 9.4 The total amount taken by MJL from TUC, TUSPCO, the
2 FEI trust and the TUSPCO trust is not less than \$1,535,243.76.

3
4 9.5 On July 9, 1984 Lange informed plaintiffs in writ-
5 ing of his taking of the money and property of the plaintiffs,
6 resigned as trustee of both the FEI trust and the TUSPCO trust,
7 and claimed to be unable to make restitution for a very long
8 time.

9
10 9.6 Plaintiffs are informed, believe, and therefore
11 allege that Lange has hidden and retains a substantial amount of
12 the property and monies taken from plaintiffs, perhaps as much as
13 \$1,000,000, which he is attempting to keep permanently for his own
14 use by representing falsely that he is unable to make restitution;
15 and therefore, that such representation of Lange is untrue, and is
16 a further attempt to defraud and deceive plaintiffs, and to
17 deprive plaintiffs permanently of the monies and properties taken
18 by Lange from plaintiffs.

19
20 10. MJL took the foregoing amount of \$1,535,243.76 in a
21 variety of ways, including direct taking by MJL himself, for his
22 own benefit, payment of funds and assets over to defendant ict
23 Services Corporation, payment of funds or assets to a business
24 that MJL operated with defendant Michelle Donnelly and with defen-
25 dant W/L Publishing Company, under the name "Downtown Press",
26 transfer of gold and silver coins from co-trustee safe deposit
27 boxes in the name of Mitchell J. Lange and Jerry A. Miller, as
28 trustees, to Lange's own personal possession, and fraudulent

1 endorsement and negotiation of marketable securities belonging to
2 the TUSPCO trust and the FEI trust for Lange's own personal use
3 and benefit.
4

5 11. The taking of the \$1,535,243.76 by Lange was a fraud and
6 deceit upon the plaintiffs. Lange used his position as a trustee
7 of the FEI trust, and the TUSPCO trust, and as a fiduciary hand-
8 ling property and bank accounts of TUC and TUSPCO, to deceive
9 plaintiffs, and thereby to convert all of the sum of \$1,535,243.76
10 to Lange's own use as described in this complaint.
11

12 11.1 Lange accomplished his fraud and deceit by means
13 of misrepresentations to AJG, TUC and TUSPCO as follows. Lange
14 presented false reports to plaintiffs' accountant as to the assets
15 held by the FEI trust and the TUSPCO trust in that while Lange was
16 looting these trusts of all of their assets, he consistently con-
17 tinued to represent that the trusts were in possession of cash,
18 gold and silver coins and marketable securities, which he, in
19 fact, had taken from the trusts.
20

21 11.2 Lange concealed from AJG, TUC and TUSPCO, the fact
22 that he was looting TUC and TUSPCO bank accounts, which Lange
23 accomplished by failure to provide an accounting as to such bank
24 accounts, and by making transfers between the various bank
25 accounts under his control in order to cover up the fact of his
26 looting of such bank accounts. Lange deliberately and fraudulent-
27 ly failed to make payments due to third parties entitled to
28 receive payments from the TUC bank accounts, including tape course

1 contractors, and persons who were entitled to receive commissions
2 from FEI. Plaintiff TUC is obligated to such persons, namely tape
3 course contractors and persons entitled to receive commissions
4 from FEI, for the amounts which Lange should have, but failed to
5 pay to those persons on behalf of TUC; accordingly, plaintiff TUC
6 has been damaged further in an amount presently unknown to plain-
7 tiff TUC, which is the amount which is due from TUC to such per-
8 sons to whom Lange deliberately and fraudulently failed to make
9 payments. Plaintiff will seek leave to amend this complaint to
10 allege the amount of such obligation of plaintiff to third parties
11 when the amount is known.

12
13 11.3 Lange knew that he was guilty of misrepresentation
14 to plaintiffs because he never had authority to take monies for
15 his own use and benefit from the FEI trust and the TUSPCO trust at
16 all, under the terms of the trust agreements establishing those
17 trusts, and under the terms of his agreement with AJG. Lange knew
18 he was guilty of misrepresentation to plaintiffs by failure to
19 disclose that he was diverting to his own use and benefit monies
20 from bank accounts of TUC and TUSPCO, because he knew he was obli-
21 gated to hold such monies in the accounts of TUC and TUSPCO for
22 payments due to third parties (see 11.2 above) and for distribu-
23 tion of the monies to, and for the Benefit of TUC and TUSPCO, and
24 despite such knowledge defendant Lange took such monies for his
25 own use and benefit, without disclosing that fact to AJG, TUC and
26 TUSPCO, and without asking consent to take such monies for his own
27 use and benefit (such consent would have been denied by plain-
28 tiffs, and Lange would have been removed immediately from all his

1 associations with plaintiffs for asking for such consent). Fur-
2 thermore, Lange prepared deliberately deceptive accounting state-
3 ments to AJG, TUC, and TUSPCO, and their accountant to conceal the
4 fact of his looting of TUC and TUSPCO bank accounts.

5
6 11.4 The accountings and reports that Lange did provide
7 to AJG, TUC and TUSPCO regarding the trusts and corporate assets
8 of TUC and TUSPCO constituted a deliberate, knowing and intention-
9 al misrepresentation as to the true status of the financial
10 affairs of each of those entities.

11
12 11.5 Due to prior acquaintance by AJG with Lange since
13 1963, and the prior business relationship between AJG, TUC and
14 TUSPCO and Lange since 1969, AJG, TUC and TUSPCO reposed trust and
15 confidence in Lange. Lange's taking of property of the plaintiffs
16 by virtue of the fraud and deceit of Lange has resulted in damages
17 to the plaintiffs in the following amounts which Lange has mis-
18 appropriated:

19	TUC	\$336,198.72 or more;
20	TUSPCO	\$126,905.30 or more;
21	FEI trust	\$208,872.18 or more;
22	TUSPCO trust	\$863,267.56 or more.

23
24 In addition, plaintiffs TUC and TUSPCO are indebted in
25 the amount which they are obligated to pay to third parties on
26 account of commissions which Lange was obligated and failed to pay
27 from the TUC and TUSPCO bank accounts which Lange looted (see
28 11.2). Those amounts are presently unknown to plaintiffs who will

1 seek leave to amend this complaint to allege the true amounts when
2 they are known.

3
4 12. If, as a result of the accounting which is sought by
5 plaintiffs under the second cause of action, or otherwise, plain-
6 tiffs discover that additional amounts have been taken by Lange
7 without consent or permission, and due to his fraud and deceit,
8 plaintiffs will request leave of the court to amend this complaint
9 to allege the additional amounts taken.

10
11 SECOND CAUSE OF ACTION (Accounting)

12
13 Plaintiffs TUC, TUSPCO, FEI trust and TUSPCO trust allege as
14 a second cause of action against defendant Mitchell J. Lange as
15 follows.

16
17 13. Plaintiffs incorporate by reference herein all of the
18 allegations of paragraphs 1-12 above.

19
20 14. Defendant MJL is obligated to provide plaintiffs a full,
21 complete, truthful, and accurate accounting of all properties and
22 monies taken by defendant Lange from TUC, TUSPCO, the FEI trust
23 and the TUSPCO trust. Defendant MJL is obligated to disclose to
24 plaintiffs what has been done with the properties and funds mis-
25 appropriated by Lange, and the amount still in his possession.

26
27 15. AJG, on behalf of himself and all other plaintiffs, has
28 made demand upon defendant MJL for a full, complete, truthful and

1 accurate accounting as to the properties and assets of the plain-
2 tiffs which were under the custody and control of MJL in his
3 capacity as trustee of the FEI trust and the TUSPCO trust, and as
4 a fiduciary authorized to make withdrawals from bank accounts of
5 TUC and TUSPCO. Defendant MJL has failed and refused to provide
6 such an accounting to plaintiffs.

7
8 16. Defendant Lange should be ordered to account fully and
9 completely, truthfully, and accurately, to TUC, TUSPCO the FEI
10 trust, and the TUSPCO trust as to all property and monies of each
11 plaintiff which have ever come into the possession or control of
12 defendant Lange including, but not limited to, the amounts mis-
13 appropriated by MJL.

14
15 THIRD CAUSE OF ACTION (Breach of Trust)

16
17 Plaintiffs FEI trust, TUSPCO trust, TUC and TUSPCO allege as
18 a third cause of action against defendant M. J. Lange as follows.

19
20 17. Plaintiffs incorporate the allegations of paragraphs
21 1-12 and 14-16 above.

22
23 18. The conduct of MJL described above is a breach of trust
24 as to the FEI trust, the TUSPCO trust, TUC and TUSPCO in that
25 defendant misappropriated monies and other properties of the
26 plaintiffs through violation of his fiduciary duties and the trust
27 and confidence imposed in him by each plaintiff.

1 19. Due to the breach of trust by defendant MJL the plain-
2 tiffs have been damaged in the amounts described in paragraph 11
3 above. Furthermore, plaintiffs have also suffered damages from
4 the loss of earnings on, and capital appreciation of, the proper-
5 ties taken by defendant M. J. Lange in violation of his obliga-
6 tions to plaintiffs and the rights of plaintiffs; such assets were
7 invested in gold coins, pre-1964 U.S. silver coins, marketable
8 securities, and money market funds, and plaintiffs FEI trust,
9 TUSPCO trust, TUC and TUSPCO would have had the benefit of inter-
10 est, dividends, earnings and capital appreciation on all of such
11 assets from the time they were taken by M. J. Lange, but for the
12 fact that plaintiffs were deprived of such assets by the wrong-
13 doing of defendant M. J. Lange.

14
15 FOURTH CAUSE OF ACTION (Breach of Contract)

16
17 Plaintiffs FEI Trust, TUSPCO Trust, TUC and TUSPCO allege as
18 a fourth cause of action against defendant M. J. Lange as
19 follows.

20
21 20. Plaintiffs incorporate the allegations of paragraphs
22 1-12, 14-16 and 18-19 above.

23
24 21. The conduct of MJL described above is a breach of con-
25 tract by Lange as to the FEI trust, the TUSPCO trust, TUC and
26 TUSPCO.

27
28 22. Because of the breach of contract of defendant Lange in

1 misappropriating money and other property of plaintiffs FEI Trust,
2 TUSPCO Trust, TUC and TUSPCO, these plaintiffs have been damaged
3 in the amounts described in paragraphs 11 and 19 above.
4

5 22.1 Since 1964 or earlier it has been the business
6 policy of AJG and TUC that persons associated with them should not
7 solicit investment business of any kind from students and custo-
8 mers of AJG, TUC and TUSPCO. MJL specifically agreed, partially
9 orally and partially in writing, to this condition and policy, and
10 explicitly promised and agreed that he would not solicit invest-
11 ments or other types of business for his own benefit from students
12 and customers of AJG, TUC and TUSPCO without the consent of AJG.
13 The reason for this policy of plaintiffs was to avoid loss of good
14 will to plaintiffs AJG, TUC and TUSPCO if students and customers
15 lost money by investing or speculating with each other and with
16 contractual associates of these plaintiffs, such as MJL.
17

18 In violation of this explicit promise and
19 agreement, MJL did solicit investment of customers of plaintiffs
20 AJG, TUC and TUSPCO in the defendant partnerships, and perhaps in
21 other businesses controlled by defendant MJL. One of the
22 defendant partnerships, Llewelyn Properties, has in the summer of
23 1984 filed a petition for bankruptcy reorganization. Plaintiffs
24 are informed, believe and therefore allege that at least one and
25 perhaps more of the other defendant partnerships are insolvent or
26 have filed petitions for bankruptcy reorganization, or both; and
27 that the investors in such defendant partnerships other than MJL
28 include more than twenty (20) customers and students of these

1. plaintiffs.

2
3 As a result of the wrongdoing of defendant MJL described
4 in this complaint, and the apparent business failure of the defen-
5 dant partnerships controlled by the defendant MJL, these students
6 and customers of AJG, TUC and TUSPCO appear to have suffered sub-
7 stantial financial loss, if not the entire loss of their invest-
8 ments with MJL in the defendant partnerships. Furthermore, the
9 financial losses of these customers and students of plaintiffs
10 have become known to a great many other customers and students of
11 plaintiffs. As a result of the losses of some of the customers
12 and students and the knowledge by others of such losses, plain-
13 tiffs AJG, TUC and TUSPCO have been damaged through loss of good
14 will of their customers and students. Plaintiff is uncertain as
15 to the amount of such damages attributable to loss of good will at
16 this time, except that plaintiff believes such losses are enor-
17 mous. Plaintiffs will seek leave of this court to amend this com-
18 plaint to allege the amount of financial damage to these plain-
19 tiffs from such loss of good will when the amount of such loss to
20 good will can be determined.

21
22 22.2 Plaintiff TUC entered into contracts with its
23 customers to sell to the customers commemorative coin medals made
24 from gold, silver and bronze. The policy of plaintiff TUC was to
25 solicit orders for such commemorative coin medals (referred to
26 herein as "(CM)s"), to pay for the manufacture of the (CM)s, and
27 then to deliver the (CM)s to the customers, in that order. Under
28 his contract with plaintiff TUSPCO, defendant MJL agreed to and

1 was required to handle many of the details of these transactions
2 with (CM)s, including the shipment of the (CM)s from the factory
3 where they were made and the delivery of the (CM)s to the custo-
4 mers. Defendant MJL is in default of his contract as to delivery
5 of the (CM)s to many of the customers of plaintiff TUSPCO, with
6 the result that those customers who have paid for their (CM)s have
7 not received them. Defendant MJL left the accounting records as
8 to the (CM)s in shambles so that it is not yet clear to plaintiffs
9 which customers have received their (CM)s and which have not, and
10 how many (CM)s are on hand in inventory, ready for delivery to
11 customers. The delay in delivering the (CM)s to the customers has
12 resulted in loss of good will to TUSPCO, and also to AJG and TUC.
13 The amount of financial damages due to this loss of good will from
14 the default of MJL in delivering the (CM)s has not yet been deter-
15 mined, except that plaintiffs are informed, believe and therefore
16 allege that such damage through loss of good will is enormous.
17 Plaintiffs will seek leave of court to amend this complaint to
18 state the amount of damages from such loss of good will when the
19 amount has been determined.

20
21 In addition, plaintiff TUC has been damaged by the
22 breach of contract of defendant MJL in failure to deliver (CM)s to
23 students who have paid for them because of the need of plaintiff
24 TUC to do a full audit and accounting as to (CM) orders and
25 deliveries to see who has ordered (CM)s, who has received the
26 (CM)s, and who has not received the (CM)s. It will take time and
27 the services of accounting staff to do the bookkeeping work,
28 accounting work and contact with customers to determine who has

1 ordered (CM)s, who has received them, and who has not. As a
2 result of the need to do such accounting plaintiff TUC will incur
3 substantial costs and expense which is a direct result of the
4 breach of contract of defendant MJL. The amount of such cost and
5 expense is unknown to plaintiff TUC at this time, but plaintiff
6 will seek leave of this court to amend this complaint to allege
7 the amount of such cost and expense as an item of damage when such
8 cost and expense is known.

9
10 22.3 Among the responsibilities of defendant MJL in his
11 contracts with plaintiffs AJG, TUC and TUSPCO was the duty to pro-
12 vide prompt, accurate and faithful bookkeeping and accounting ser-
13 vices for the businesses of these plaintiffs. Defendant MJL is in
14 default in his contract to provide prompt, accurate and faithful
15 bookkeeping and accounting as to the business and financial
16 affairs of plaintiffs AJG, TUC and TUSPCO. In fact, an audit of
17 the affairs of TUC and TUSPCO which were under the administration
18 of defendant MJL has revealed that defendant MJL transferred
19 assets back and forth between numerous bank accounts and other
20 financial accounts belonging to TUC and TUSPCO in such fashion as
21 totally to obscure and compromise the separate identity and integ-
22 rity of the various accounts and the two companies involved,
23 namely, plaintiffs TUC and TUSPCO. The bookkeeping and accounting
24 records which were to have been provided by defendant MJL on a
25 prompt, accurate and faithful basis are in a total shambles because
26 of his improper handling of the assets of the separate accounts of
27 these plaintiffs.

1 A substantial part of the confusion and commingling
2 of the separate bank accounts and other financial accounts of the
3 plaintiffs TUC and TUSPCO has resulted from transactions which
4 plaintiffs are informed, believe and therefore allege to have been
5 caused by defendant MJL's looting of these accounts, in violation
6 of his contract, in breach of trust, and for his own benefit and
7 use as more specifically described in section 9 in the first cause
8 of action.

9
10 As a result of the breach of contract by defendant
11 MJL in his obligation to provide prompt, accurate and faithful
12 bookkeeping and accounting services, plaintiffs TUC and TUSPCO
13 will necessarily incur substantial costs for auditing, accounting
14 and reconciliation of their financial affairs which have been
15 deliberately mismanaged by defendant MJL. Therefore, plaintiffs
16 TUC and TUSPCO have incurred financial damages for the cost of
17 auditing and accounting for the mismanaged transactions under the
18 control of defendant MJL in an amount which these plaintiffs have
19 not yet determined, but which they are informed believe and there-
20 fore allege are enormous. Plaintiffs will seek leave of this
21 court to amend this complaint to allege the amount of such damage
22 when it has been determined.

23
24 22.4 Part of the business system of plaintiffs AJG, TUC
25 and TUSPCO was the establishment, maintenance and retention of
26 business records dealing with courses presented by FEI, including
27 documentation as to student registration, enrollment, attendance,
28 contracts, receipts, and execution of proprietary notices. Plain-

1 tiffs AJG, TUC and TUSPCO agreed partially orally and partially in
2 writing with defendant MJL that defendant MJL would be responsible
3 for the maintenance and retention of the above- described records
4 regarding student registration, enrollment, attendance, receipts,
5 contracts, and proprietary notices. Under the agreement of plain-
6 tiffs AJG, TUC and TUSPCO with defendant MJL, it was the duty of
7 defendant MJL to keep all those records in a businesslike, neat
8 and orderly manner so that they would always be available for
9 plaintiffs AJG and TUC as needed in the administration of the
10 lecture course business of these plaintiffs.

11
12 Defendant MJL has violated and breached his con-
13 tract in this regard, in that after his removal from his position
14 of proprietary administrator as to such records he failed to pro-
15 vide plaintiffs AJG and TUC with such records of student registra-
16 tion, enrollment, attendance, receipts, contracts, and proprietary
17 notices. Plaintiffs AJG and TUC have been damaged by defendant
18 MJL's breach of contract in this regard in an amount which is
19 undetermined at this time, but which plaintiffs are informed,
20 believe and therefore allege is substantial. Plaintiffs will seek
21 leave of this court to amend this complaint to allege the full
22 amount of such damage when it has been determined.

23
24 FIFTH CAUSE OF ACTION (Conversion)

25
26 Plaintiffs allege as a fifth cause of action against defen-
27 dant MJL as follows.

28

1 23. Plaintiffs incorporate the allegations of paragraphs
2 1-12, 14-16, 18-19 and 21-22.

3
4 24. As alleged in paragraphs 9.1 through 9.4, TUC is the
5 owner of \$336,198.72 in cash; TUSPCO is the owner of \$126,905.30
6 in cash; the FEI trust is the owner of \$208,872.18 in gold and
7 silver coins and cash; and the TUSPCO trust is the owner of
8 \$863,267.56 in gold and silver coins, marketable securities, and
9 cash.

10
11 24.1 As alleged in the first cause of action, defendant
12 MJL has taken from the plaintiffs the properties and monies de-
13 scribed in sections 9 and 24 above, without the knowledge, permis-
14 sion or consent of the plaintiffs.

15
16 24.2 Plaintiffs have made demand upon MJL for the
17 return of all of the properties and monies taken by defendant MJL
18 as described in sections 9, 24 and 24.1 above. Specifically, TUC
19 has demanded return of \$336,198.72 in cash, TUSPCO has demanded
20 return of \$126,905.30 in cash, the FEI trust has demanded the
21 return of \$208,872.18, in cash and gold and silver coins taken
22 from the FEI trust by defendant Lange, and the TUSPCO trust has
23 demanded the return of the sum of \$863,267.56, being the value of
24 cash, marketable securities, and gold and silver coins taken by
25 the defendant Lange from plaintiff TUSPCO trust.

26
27 24.3 Defendant Lange has failed, refused, and still
28 refuses to return to the plaintiffs the amounts taken, which

1 plaintiffs have demanded be returned.

2

3 24.4 As a result of the misappropriation of plaintiffs'
4 money and other properties by defendant Lange, and his refusal to
5 return same, plaintiffs have been damaged in the amounts described
6 in paragraphs 11, 19 and 22 above.

7

8 SIXTH CAUSE OF ACTION (Defamation)

9

10 Plaintiffs AJG and TUC allege against defendant MJL as a
11 sixth cause of action as follows.

12

13 25. Plaintiffs incorporate by reference the allegations of
14 paragraphs 1-12, 14-16, 18-19, 21-22 and 24 above.

15

16 26. Since the beginning of The Free Enterprise Institute in
17 1961 and throughout its entire existence, plaintiff AJG has taught
18 and advocated that the sanctity of contracts, and the integrity of
19 contracts are of fundamental importance to a free, orderly and
20 moral society; and that the highest form of education is setting a
21 good example.

22

23 26.1 As one application of these concepts, AJG has
24 taught and advocated that contractual sanctity requires the prompt
25 and exact payment of all financial obligations when due. In order
26 to teach by setting a good example, AJG has made it his policy and
27 the policy of all of his companies, including plaintiffs TUC and
28 TUSPCO, to pay promptly all financial obligations of these plain-

1 tiffs, including by way of example but not limitation, obligations
2 due to contractual associates for services rendered.

3
4 Among the payment obligations of plaintiffs AJG
5 and TUC which they delegated to defendant MJL was the duty to make
6 payments due by these plaintiffs to tape course contractors for
7 services rendered in presenting tape recorded lectures of these
8 plaintiffs; and to pay to customers commissions due for referral
9 of other customers. Plaintiffs AJG and TUC agreed explicitly both
10 orally and in writing with defendant MJL that a primary duty of
11 defendant MJL was to make prompt payment to such tape course con-
12 tractors and students for obligations due to them from plain-
13 tiffs.

14
15 26.2 MJL has been in default of his obligation to make
16 prompt payment to contractual associates and customers of plain-
17 tiffs AJG and TUC pursuant to the policies described in sub-sec-
18 tion 26.1 above.

19
20 26.3 Plaintiffs AJG and TUC allege that within one year
21 preceding the filing of this complaint and thereafter, and perhaps
22 before, defendant MJL has made untrue and defamatory verbal publi-
23 cations of and concerning plaintiffs AJG and TUC as alleged
24 below.

25
26 The first untrue defamatory verbal publication
27 made by defendant MJL of and concerning plaintiffs AJG and TUC of
28 which plaintiffs AJG and TUC are presently aware occurred in a

1 telephone conversation with a tape course contractor who was angry
2 with plaintiffs AJG and TUC and with defendant MJL because of
3 delay in receiving payments due to such tape course contractor for
4 services rendered to these plaintiffs. To this tape course con-
5 tractor, in response to his complaint regarding late payment,
6 defendant MJL said that he had been unable to make payment because
7 AJG and TUC handled all of the money, and that MJL had not been
8 able to secure money from plaintiffs AJG and TUC to make such pay-
9 ment to the tape course contractor.
10

11 26.4 This publication by defendant MJL as to plaintiffs
12 AJG and TUC constituted slander, in that it charges these plain-
13 tiffs, namely, AJG individually and TUC as a company, with viola-
14 tion of a company policy which the tape course contractor knew had
15 been taught and advocated by AJG as an essential example of con-
16 tractual sanctity and integrity. Therefore, the false and untrue
17 publication impugned the honesty and integrity of plaintiffs AJG
18 and TUC by imputing to them dishonesty and hypocrisy, by violating
19 a policy which AJG had taught and advocated as being essential to
20 a free and moral society.
21

22 26.5 Plaintiffs AJG and TUC are informed, believe and
23 therefore allege that the incident described in subsection 26.4
24 above is not an isolated incident, but that defendant MJL has made
25 such untrue and defamatory verbal publications and statements of
26 and concerning these plaintiffs to many persons during a period of
27 one year prior to the filing of this complaint, and prior thereto.
28 This publication by defendant MJL of and concerning these plain-

1 tiffs is false because at all material times defendant MJL was in
2 a position of trust and confidence in which he received ample
3 financial resources from business receipts of plaintiffs AJG and
4 TUC with which to pay all business expenses promptly and expedi-
5 tiously as required by the policy of these plaintiffs, and by
6 explicit agreement between these plaintiffs and defendant MJL.

7
8 The reason that defendant MJL was unable (if he
9 was) to make such payments was because he had looted plaintiff TUC
10 of all of its cash assets in the manner described in paragraph 9
11 above in the first cause of action. In order to cover up his
12 looting of the plaintiffs, defendant MJL transferred cash receipts
13 among the various accounts of plaintiffs in the manner described
14 in section 22 above, and the looting by MJL of plaintiffs and the
15 transfer of cash receipts among the various accounts was the
16 reason that defendant MJL was unable to and failed to make prompt
17 and complete payment to persons entitled to receive such payments
18 from MJL acting on behalf of plaintiffs AJG and TUC.

19
20 That is, defendant MJL caused his own inability
21 (if any) to make payments to plaintiffs' customers from plain-
22 tiffs' funds which should have been readily available for such
23 purpose, and instead blamed the late payments on plaintiff AJG and
24 TUC by means of the false and defamatory statement described
25 above. Such statements were slander, in that they tended directly
26 to injure plaintiffs AJG and TUC in respect to their profession,
27 trade and business by asserting that late payments to tape course
28 contractors, customers and others were caused by plaintiffs AJG

1 and TUC; since such late payments would have been a violation of
2 the policy which plaintiffs AJG and TUC taught and advocated as
3 being absolutely necessary to the proper conduct of a business and
4 to the maintenance of a free and moral society, such false and
5 defamatory statements directly injured plaintiffs AJG and TUC in
6 their profession, trade or business by imputing to them hypocrisy
7 and dishonesty.

8
9 Furthermore, the defamatory statements are slan-
10 derous because by their natural consequences they cause actual
11 damage to plaintiffs AJG and TUC through loss of good will of
12 customers and contractual associates in view of the imputation of
13 dishonesty and hypocrisy of such plaintiffs in violating princi-
14 ples which such plaintiffs espouse regarding the sanctity of prop-
15 erty and contracts.

16
17 26.5 Defendant MJL's defamatory publication of and con-
18 cerning plaintiffs AJG and TUC was made with actual malice, as
19 shown by the following, among other factors. Defendant MJL knew
20 absolutely by his full course of dealing with plaintiff AJG that
21 AJG and TUC meticulously and punctually observed their policy of
22 prompt payment of all obligations when due. Knowing this defen-
23 dant MJL nevertheless made a defamatory statement of and concern-
24 ing plaintiffs AJG and TUC which stated, in effect, the opposite,
25 namely, that plaintiffs AJG and TUC deliberately delayed making
26 funds available for MJL to pay obligations of AJG and TUC which
27 were long past due. Defendant MJL's malice is shown by the fact
28 that these false and defamatory statements were used to cover up

1 his own looting and mismanagement of the financial assets of the
2 plaintiffs. That is, defendant MJL was not satisfied to cause
3 financial damage by looting these plaintiffs, but added to that
4 damage to the personal and business reputation of plaintiffs AJG
5 and TUC by blaming them for late payments which he had caused to
6 customers and contractual associates.

7
8 26.6 Plaintiffs AJG and TUC have suffered financial
9 damages through loss of good will with customers and contractual
10 associates by reason of the false and defamatory statements of
11 defendant MJL blaming late payments on plaintiffs AJG and TUC.
12 Plaintiffs are uncertain as to the exact amount of such financial
13 damages due to loss of good will through such defamatory state-
14 ments, and will seek leave of this court to amend the complaint
15 when the amount of such financial damages can be determined.

16
17 26.7 Plaintiffs have also incurred legal fees, expenses
18 and costs in seeking restitution by way of defending themselves
19 against defendant MJL's defamatory statements, and such costs or
20 damages have been incurred by plaintiffs as a direct result of the
21 defamatory publication of defendant MJL.

22
23 SEVENTH CAUSE OF ACTION (Emotional Distress)

24
25 Plaintiffs Andrew J. Galambos and Suzanne J. Galambos allege
26 against defendant MJL a seventh cause of action as follows.

27
28 27. These plaintiffs incorporate by reference the allega-

1 tions of paragraphs 1-12, 14-16, 18-19, 21-22, 24 and 26 above.

2
3 28. Plaintiff Suzanne J. Galambos ("SJG") is the wife of
4 plaintiff Andrew J. Galambos, and has been the wife of plaintiff
5 Andrew J. Galambos for almost 35 years as of the date of filing
6 this complaint. Plaintiff SJG worked closely with plaintiff AJG
7 in the business of AJG, TUC and TUSPCO. Plaintiff SJG has full
8 knowledge of all the business and financial affairs of plaintiffs
9 AJG, TUC and TUSPCO. Plaintiff SJG has been acquainted with
10 defendant MJL throughout the entire time that defendant MJL has
11 been contractually associated with plaintiffs AJG, TUC and
12 TUSPCO.

13
14 29. (a) Defendant MJL knew that his wrongdoing as de-
15 scribed in this complaint would cause severe financial damage to
16 plaintiffs, including the individual plaintiffs AJG and SJG,
17 through business losses incurred by the plaintiff corporations
18 which are wholly owned by the individual plaintiffs.

19
20 (b) Defendant MJL knew that his wrongdoing as de-
21 scribed in this complaint would cause enormous loss of good will
22 to the plaintiffs AJG, TUC and TUSPCO which, in turn, would result
23 in even further severe financial damage to these plaintiffs and to
24 plaintiff SJG. That is, defendant MJL knew that the plaintiffs
25 AJG, TUC and TUSPCO would lose the good will of their customers
26 which would result in future loss of business revenues.

27
28 (c) Plaintiffs AJG and SJG are sensitive individuals

1 who are subject to illness resulting from emotional distress.
2 Defendant MJL knew this and knew that his wrongdoing and its con-
3 sequent financial damage and loss of good will was likely to
4 result in physical and emotional illness of plaintiffs AJG and
5 SJG.

6
7 (d) Beginning in January 1984 plaintiffs were aware of
8 serious irregularities in the accounts that defendant MJL was
9 required to present to plaintiff AJG. From January through July
10 1984 defendant MJL failed to provide proper accounting as to his
11 duties and the financial assets of the plaintiffs under his super-
12 vision and control, with the result that plaintiffs AJG and SJG
13 became increasingly distressed and upset. Beginning July 9, 1984
14 when plaintiff first discovered that defendant MJL had in fact
15 looted the plaintiffs, the emotional distress and consequent
16 physical and emotional illness of plaintiffs has been severe, and
17 has continued on a daily basis throughout the uncovering of the
18 full scope of defendant's wrongdoing, and the likelihood of severe
19 financial loss and loss of good will, and loss of a huge portion
20 of the life's work of plaintiffs Andrew J. Galambos and Suzanne J
21 Galambos.

22
23 EIGHTH CAUSE OF ACTION (Constructive Trust)

24
25 Plaintiffs allege against all defendants, including DOES
26 1-100, as follows:

27
28 30. Plaintiffs incorporate by reference the allegations of

1 paragraphs 1-12, 14-16, 18-19, 21-22 and 24, above.

2
3 31. Plaintiffs are informed, believe, and therefore allege,
4 that the various named defendants and DOE defendants 1-100 inclu-
5 sive have received some of the property and monies misappropriated
6 from plaintiffs by MJL. Plaintiffs do not know how much of the
7 plaintiffs' property has been received by each of the defendants,
8 and will not know that until a complete accounting has been ren-
9 dered by defendant Lange. Plaintiffs will request leave of court
10 to amend the complaint when the amounts received by each of the
11 defendants have been discovered. Plaintiffs are informed,
12 believe, and therefore allege, that the other named defendants
13 have received properties misappropriated by defendant Lange as
14 follows:

15
16 31.1 Defendant Bonnie L. Lange, who, as wife of defen-
17 dant MJL is legally entitled to share in any community property of
18 MJL, and legally entitled to be supported by MJL, has, or may
19 have, received, and may continue to hold property misappropriated
20 from plaintiffs by defendant MJL by virtue of her position as the
21 wife of MJL.

22
23 31.2 Defendant ict Services Corporation has received
24 monies, and may have received, and may continue to hold other
25 properties misappropriated by MJL from plaintiffs.

26
27 31.3 Plaintiffs are informed, believe, and therefore
28 allege that Defendant Michelle Donnelly is or was a co-partner,

1 co-owner with defendant MJL of a business known as "Downtown
2 Press" in San Diego County, California and has received from
3 defendant MJL or from defendant ict Services Corporation, or from
4 both of them, and continues to hold a part of the monies and othe
5 properties misappropriated by defendant MJL from plaintiffs.
6

7 31.4 Defendant Llewelyn Properties, a California limi-
8 ted partnership of which MJL was at all material times herein a
9 general partner, has received from defendant MJL, and continues to
10 hold part of the money and other properties misappropriated by
11 Lange from the plaintiffs.
12

13 31.5 Defendant Montrose Properties, a California limi-
14 ted partnership of which defendant MJL was at all material times
15 herein a general partner, has received from defendant MJL, and
16 continues to hold part of the money and other property misappro-
17 priated by Lange from the plaintiffs.
18

19 31.6 Defendant City Hall Center Properties Partnership
20 of which MJL is a principal general partner, has received from
21 defendant MJL, and continues to hold part of the monies and other
22 properties misappropriated by defendant MJL from plaintiffs.
23

24 31.7 Defendant Montana Historic Properties Partnership
25 of which plaintiffs are informed, believe, and therefore allege
26 defendant Lange was a general partner, has received from MJL, and
27 continues to hold some of the money and other properties misappro-
28 priated by defendant Lange from plaintiffs.

1 31.8 Defendants DOES 1-100 have received from defende
2 Lange, and continue to hold some of the money and other properti
3 misappropriated by defendant Lange from plaintiffs.
4

5 32. Plaintiffs are informed, believe, and therefore allege,
6 that ict Services Corporation, W/L Publishing Company, Bonnie L.
7 Lange, Michelle Donnelly, Llewelyn Properties, Montrose Proper-
8 ties, City Hall Center Properties Partnership, Montana Historic
9 Properties Partnership, and DOES 1-100, knew, or should have know
10 that cash and other property which has been received by them from
11 defendant Lange were misappropriated by Lange from plaintiffs.
12

13 33. Plaintiffs are informed, believe, and therefore allege,
14 that ict Services Corporation, Bonnie L. Lange, Michelle Donnelly
15 Llewelyn Properties, Montrose Properties, City Hall Center Proper
16 ties Partnership, Montana Historic Properties Partnership, and
17 DOES 1-100, knows, or may know, or should know, that monies, prop
18 erties and assets received by each of them from defendant Lange
19 were misappropriated by defendant Lange from plaintiffs as allege
20 in this complaint.
21

22 34. Plaintiffs are informed, believe, and therefore allege
23 that one or more of the defendants hold record title as the owner
24 of real property located in the City of San Diego, commonly known
25 as improved real property located at 715 Fourth Avenue, San Diego
26 California; improved real property commonly known as 722 Fifth
27 Avenue, San Diego, California; unimproved real property serving a
28 a parking lot commonly known as Fourth and "G" Street Parking Lot

1 San Diego, California; improved real property consisting of a co-
2 dominium which is an undivided 1/251 fractional interest as tena-
3 in common in and to Lot 1 of Mission Village Condominiums accord-
4 ing to Map thereof number 8993 in the Office of the County
5 Recorder of San Diego County, California and living unit number
6 B-116, in such condominium, as more fully described in documents
7 of record in the Office of the County Recorder of San Diego
8 County, California.

9
10 Plaintiffs are informed, believe, and therefore allege that
11 record title to each of the above described real properties was
12 acquired by such defendants partly, or completely, with monies and
13 other properties misappropriated by defendant Lange from the
14 plaintiffs.

15
16 35. A constructive trust should, in good conscience and
17 equity, be imposed by this court upon the above described real
18 properties so that each of such defendants should be judged to
19 hold legal title to such properties as a constructive trustee for
20 the benefit of plaintiffs to the extent that it is shown, after a
21 full, truthful, accurate and complete accounting by defendant
22 Lange, that such record title was acquired by some one or all of
23 such defendants with monies and other properties misappropriated
24 by defendant Lange from the plaintiffs.

25
26 Therefore, plaintiffs request judgment against defendants as
27 follows:
28

1 1. Against defendant Mitchell J. Lange on the first cause
2 of action for compensatory damages in the amount of \$1,535,243.76
3 for exemplary damages in the amount of \$5,000,000.00, for costs o
4 suit, and for such other and further relief as the court deems
5 just.

6
7 2. Against defendant Mitchell J. Lange on the second cause
8 of action for an accounting, for costs of suit, and for such othe
9 and further relief as the court deems just.

10
11 3. Against defendant Mitchell J. Lange on the third cause
12 of action for compensatory damages in the amount of \$1,535,243.76
13 exemplary damages in the amount of \$5,000,000.00 costs of suit,
14 and such other and further relief as the court deems just.

15
16 4. Against defendant Mitchell J. Lange on the fourth cause
17 of action the sum of \$1,535,243.76 in compensatory damages, costs
18 of suit, and such other and further relief as the court deems
19 just.

20
21 5. Against defendant Mitchell J. Lange on the fifth cause
22 of action the sum of \$1,535,243.76 compensatory damages, the sum
23 of \$5,000,000.00 in in exemplary damages, costs of suit, and such
24 other and further relief as the court deems just.

25
26 6. On the sixth cause of action against defendant MJL the
27 sum of \$1,000,000.00 in compensatory damages, and the sum of
28 \$10,000,000.00 in exemplary damages, costs of suit, and such othe

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and further relief as the court deems just.

7. On the seventh cause of action against defendant MJL compensatory damages in the sum of \$1,000,000.00, and exemplary damages in the sum of \$10,000,000.00, costs of suit, and such other and further relief as the court deems just.

8. On the eighth cause of action against all defendants named therein, for a judgment of this court imposing a constructive trust upon real properties described in the eighth cause of action, in which record legal title to such properties is in the name of some, one, or all of such defendants to the extent such record legal title is shown to be derived from monies and properties misappropriated from plaintiffs; for costs of suit; and such other and further relief as the court deems just.

DATED: October 24, 1984 MARKS AND GOLDEN

By Frederic G. Marks
Frederic G. Marks
Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Frederic G. Marks, declare that I am a member of the law firm of Marks and Golden, attorneys for the plaintiffs in the complaint entitled The Universal XYZ Corporation, et al. v. Mitchell J. Lange, et al. I maintain my offices for practice of law in the County of Los Angeles. The individual Andrew J. Galambos who is the president of the two corporations which are plaintiffs, and who is an individual plaintiff, ^{the individual Suzanne J. Galambos,} and the individual Charles W. Hayes, who is a successor trustee of the plaintiff trusts, both reside in counties other than the County of Los Angeles.

As authorized by California Code of Civil Procedure §446 I certify that the complaint is true of my own knowledge, except as to those matters which are therein stated as being alleged upon information or belief, and as to those matters I believe the complaint to be true.

EXECUTED on October 24, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

Frederic G. Marks
FREDERIC G. MARKS

1 JONATHAN K. GOLDEN, ESQ. (CSB 49459)
1880 Century Park East, Suite 300
2 Los Angeles, California 90067
Telephone: (310) 553-3830
3 Facsimile: (310) 553-1337

4 Attorneys for Plaintiffs

5
6
7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
10

11 FREDERIC G. MARKS, JOSEPH HENTZ,)
12 STUART SMITH, JEAN MOLLENHAUER,)
13 ROGAN COOMBS, JOSEPH DROLL, GREG)
14 ROOTEN, THOMAS R. WOOD, MARIYLN)
WOOD and GREG STAININGER,

15 Plaintiffs,

16 v.

17 WAYNE JOYNER and CHARLES W.
18 HAYES, individually and as Trustees of the
19 UNIVERSAL SCIENTIFIC PUBLICATIONS
20 COMPANY TRUST, THE UNIVERSAL
SCINTIFIC PUBLICATIONS COMPANY,
21 INC., THE NATURAL ESTATE TRUST and
DOES 1 through 50, inclusive,

22 Defendants.
23
24

Case No.: BC352639

[Honorable Kenneth R. Freeman,
Department 64]

**PLAINTIFF'S RESPONSES TO
DEFENDANT CHARLES W. HAYES,
REQUEST FOR ADMISSIONS**

25 PROPOUNDING PARTY: Defendant CHARLES W. HAYES

26 RESPONDING PARTY: Plaintiff FREDERIC G. MARKS

27 SET ONE: ONE
28

Ex.C /

1 **RESPONSE FOR REQUEST FOR ADMISSION NO. 1:**

2 Admitted.

3 **RESPONSE FOR REQUEST FOR ADMISSION NO. 2:**

4 Admitted.

5 **RESPONSE FOR REQUEST FOR ADMISSION NO. 3:**

6 Admitted.

7 **RESPONSE FOR REQUEST FOR ADMISSION NO. 4:**

8
9 I cannot truthfully admit or deny this request because I do not have a copy of the
10 TUSPCO Trust. I was the attorney for Andrew J. Galambos (AJG) and his companies in
11 1978; therefore if there was a written TUSPCO Trust document, I am probably the person
12 who drafted the document under the direction of AJG.

13 **RESPONSE FOR REQUEST FOR ADMISSION NO. 5:**

14 Admitted; however, I did so following the express instructions and directions of
15 AJG as to the wording of its provisions.

16 **RESPONSE FOR REQUEST FOR ADMISSION NO. 6:**

17 Admitted.

18 **RESPONSE FOR REQUEST FOR ADMISSION NO. 7:**

19 Admitted.

20 **RESPONSE FOR REQUEST FOR ADMISSION NO. 8:**

21 Admitted.

22 **RESPONSE FOR REQUEST FOR ADMISSION NO. 9:**

23 Admitted.

24 **RESPONSE FOR REQUEST FOR ADMISSION NO. 10:**

25 Admitted.
26
27
28

1 **RESPONSE FOR REQUEST FOR ADMISSION NO. 11:**

2 Plaintiff objects to this request upon the grounds that it does not call for an
3 admission of fact, or the truth of specified matters of fact, opinion relating to fact, or
4 application of law to fact, but instead calls for legal conclusions and work product. Further,
5 the request, as framed, is vague, ambiguous and unintelligible.

6
7 **RESPONSE FOR REQUEST FOR ADMISSION NO. 12:**

8 Admitted.

9 **RESPONSE FOR REQUEST FOR ADMISSION NO. 13:**

10 Admitted.

11 **RESPONSE FOR REQUEST FOR ADMISSION NO. 14**

12 Admitted.

13
14 **RESPONSE FOR REQUEST FOR ADMISSION NO. 15**

15 Admitted.

16 **RESPONSE FOR REQUEST FOR ADMISSION NO. 16**

17 Admitted.

18
19 **RESPONSE FOR REQUEST FOR ADMISSION NO. 17**

20 Admitted.

21 **RESPONSE FOR REQUEST FOR ADMISSION NO. 18**

22 Admitted.

23
24 **RESPONSE FOR REQUEST FOR ADMISSION NO. 19**

25 I cannot truthfully admit or deny this request because I do not recall and have no
26 record of the actual amount paid. I am not in possession of my personal copy of the PPSA,
27 although I believe I subscribed prior to 1978 and the price I paid was the price for Course V-
28 201 or V-201T at the time I subscribed. It is my recollection that the price for Course V-201

1 may have been less than \$400.00 when I subscribed; therefore it is possible that the price I
2 paid was as indicated in this Request, but I have no present recollection of paying a sum less
3 than \$400.00 per book..

4 **RESPONSE FOR REQUEST FOR ADMISSION NO. 20**

5 Plaintiff objects to this request on the grounds that it is vague, ambiguous and
6 unintelligible. Notwithstanding the foregoing objections, and without waiving them,
7 Plaintiff lacks sufficient information or knowledge to truthfully admit or deny this request
8 and therefore denies the request on that basis. A reasonable inquiry concerning the matter in
9 this request has been made and, without further discovery, the information known or readily
10 obtainable at this time is insufficient to enable Plaintiff to admit this request.

11 **RESPONSE FOR REQUEST FOR ADMISSION NO. 21**

12 Admitted.

13 **RESPONSE FOR REQUEST FOR ADMISSION NO. 22**

14 Admitted. However, Plaintiff denies that he has received all volumes of Book 1 that
15 he is entitled to pursuant to his PPSA.
16

17 **RESPONSE FOR REQUEST FOR ADMISSION NO. 23**

18 Admitted.

19 **RESPONSE FOR REQUEST FOR ADMISSION NO. 24**

20 Plaintiff objects to this request on the grounds that it does not call for an admission
21 of fact or the truth of specified matters of fact, opinion relating to fact, or application of law
22 to fact, and is vague, ambiguous, and unintelligible because it is based upon false
23 assumptions concerning the philosophy, teachings, and intentions of Andrew J. Galambos.
24

25 **RESPONSE FOR REQUEST FOR ADMISSION NO. 25**

26 Plaintiff objects to this request on the grounds that it does not call for an admission
27 of fact or the truth of specified matters of fact, opinion relating the fact, or application of law
28

1 to fact, and is vague, ambiguous, and unintelligible because it is based upon false
2 assumptions concerning the philosophy, teachings, and intentions of Andrew J. Galambos.

3 **RESPONSE FOR REQUEST FOR ADMISSION NO. 26**

4 Plaintiff objects to this request on the grounds that it is vague, ambiguous, and
5 unintelligible as framed. Notwithstanding the foregoing objections, and without waiving
6 them, Plaintiff lacks sufficient information or knowledge to truthfully respond to this
7 request and the request is therefore denied on that basis. A reasonable inquiry concerning
8 the matter has been made and, without further discovery, the information known ore readily
9 obtainable at this time is insufficient to enable Plaintiff to admit this request.

10 **RESPONSE FOR REQUEST FOR ADMISSION NO. 27**

11 Plaintiff objects to this request on the grounds that it does not call for an admission
12 of fact or the truth of specified matters of fact, opinion relating to fact, or application of law
13 to fact, but instead calls for a legal conclusion and work product. Notwithstanding the
14 foregoing objections, and without waiving them, Plaintiff denies this request because,
15 among other things, it is based upon false assumptions concerning the philosophy, teachings,
16 and intentions of Andrew J. Galambos, as well as the interpretation and application of
17 Section 6.5(5) of PPSA.

18 DATED: December 11, 2006 LAW OFFICES OF JONATHAN K. GOLDEN

19
20 By Jonathan K. Golden
21 Jonathan K. Golden
22 Attorney for Plaintiffs
23
24
25
26
27
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 14, 2006, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Frederic G. Marks
Type or Print Name

Frederic G. Marks
Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____

California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1880 Century Park East, Suite 300, Los
5 Angeles, California 90067-1666.

6 On December 15, 2006, I served the foregoing document described as Response to Request
7 for Admissions on the interested parties in this action

8 by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

9 Kevin Lacey, Esq.
10 Lacey, Dunn & Do
11 315 West Arden Ave.
12 Suite 11
13 Glendale, CA 91203

14 John P. Godsil, Esq.
15 Freeman, Freeman & Smiley
16 3415 Sepulveda Blvd.
17 Suite 1200
18 Los Angeles, CA 90034

19 BY MAIL:

20 I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope
21 was mailed with postage thereon fully prepaid.

22 I am "readily familiar" with the firm's practice of collection and processing correspondence
23 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of
24 business. I am aware that on motion of party served, service is presumed invalid if postal
25 cancellation date or postage meter date is more than 1 day after date of deposit for mailing in
26 affidavit.

27 BY PERSONAL SERVICE

28 I delivered such envelope by hand to the office of the addressee.

Executed on December 15, 2006, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at
whose direction the service was made.

24 
25 Jonathan K. Golden

BOOK SUBSCRIPTION TRUST ("TUSPCO TRUST")

This Trust Agreement is made and entered into by THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC. (the Trustor hereunder, hereinafter referred to as "TUSPCO" or "Trustor") and MITCHELL J. LANGE and JERRY A. MILLER, Trustees, hereinafter jointly referred to as "Trustee").

1. PURPOSE.

1.1 Pre-Publication Subscription Agreement. TUSPCO has entered into a pre-publication subscription agreement with various persons who are subscribing to such agreement for the purpose of purchasing from TUSPCO certain books described in such agreement. Such pre-publication subscription agreement is known to Trustor and Trustee and is incorporated herein by reference.

1.2 Trust Fund. Funds and other assets will from time to time be paid to the Trustee by Subscribers, to be held and disposed of pursuant to this trust agreement (the "trust") for the benefit of such Subscribers and for the benefit of TUSPCO, all of whom are beneficiaries hereunder. The full name of this trust is The Universal Scientific Publications Company, Inc. Book Subscription Trust which may be abbreviated to "TUSPCO Trust".

2. RELATIONSHIP OF TUSPCO AND TRUSTEE.

2.1 Trustee as Custodian. The Trustee shall accept payments made to the Trustee and shall hold, accept and carry out the custodial duties of the Trustee pursuant to the terms of this agreement. The Trustee shall not be responsible for the collection of any payments into the trust or the correctness of any payment or disbursements made from the trust in accordance with the directions of TUSPCO.

2.2 Distribution. The Trustee shall from time to time, on the written direction of Trustor, make distributions from the trust as required by the terms of this trust, in such manner, in such amounts and for such purposes as may be specified in such direction.

2.3 Responsibility for Losses on Investments. In view of the fact that investment of the trust fund shall be directed by Trustor, the Trustee shall not be liable for any losses which may be incurred upon the investments of the trust, except to the extent that such losses shall have been caused by Trustee's violation of trust or negligence.

2.4 Trustee Authority Presumed. All persons dealing with the Trustee are released from inquiring into the decisions or authority of the Trustee and from seeing to the application of any funds paid to the Trustee.

3. INVESTMENT AND HOLDING OF TRUST PROPERTY.

3.1. Trustee Title, Authority and Power. As directed by the Trustor, the Trustee shall have the full power and authority with respect to any and all securities or property at any time received or held in the trust, to do all such acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken or exercised by the absolute owner thereof, including but without in any way limiting the generality of the foregoing, the following powers and authority:

3.1.1 To sell and exchange any and all assets which from time to time comprise the trust, in either public or private sale, at such time or times and on such terms and conditions as to credit or otherwise as the Trustee may deem appropriate.

3.1.2 To invest and reinvest all or any part of the trust in such manner as is directed by Trustor in writing, including savings accounts, common stocks, stocks of investment companies, bonds, notes, securities or obligations of any kind, real property wherever situated, gold, silver, platinum, and other precious commodities, non-precious commodities, and the writing of call options upon securities held by the trust. No investment or speculation of trust funds shall be made, however, without the advance written consent of Trustor.

3.1.3 To vote by proxy and otherwise to represent securities and in that connection to delegate such of its discretionary powers as it deems best; to consent as stockholder to any corporate act it shall deem proper; to participate in any plans or arrangements for the protection or promotion of the interest of security holders; to pay such sums of money as is consented to in writing by Trustor for the protection of the interests of the trust as security holder; and to retain assets received in lieu of or because of any securities held.

3.1.4 With the written consent of Trustor, to extend the time for payment of or hold past due any obligations held or any installment thereof; to consent to the modification thereof or waive any default thereunder; to compromise, arbitrate or otherwise adjust claims in favor of or against the trust; to foreclose upon any security in such manner as it deems proper; to pay such sums of money as it deems expedient for the insurance, protection,

aintenance and repair of property, or to redeem property for non-payment of taxes or any liens; and to lease for such time as the Trustee deems proper, whether within or beyond the termination of the trust and without regard to any statutory restrictions on leasing by a trustee.

3.1.5 To cause investments to be registered in the name of the trust, or in that of the Trustees, as such, or in the name of a nominee for the trust, or the Trustee may retain investments unregistered and in form permitting transfer by delivery, with the written consent of Trustor.

3.1.6 With the written consent of Trustor, to borrow money for any trust purpose, upon such terms and conditions as the Trustee deems proper and to obligate the trust for repayment, and to encumber the trust or any of its property.

3.1.7 With the written consent of Trustor, to purchase life insurance on the life of Andrew J. Galambos or other principals of Trustor, its parent or affiliates, naming this trust as beneficiary and owner thereof, in order to provide for this trust additional security for performance of the obligations assumed hereby.

3.1.8 With the written consent of Trustor, to consult with or employ legal counsel of the Trustee's selection (who may but not need be counsel to Trustor), agents or independent contractors (to whom the Trustee may delegate such ministerial and limited discretionary duties as Trustee sees fit). The compensation and fees of such person(s) shall be chargeable as an expense of the trust, and the Trustee shall be fully protected in acting upon advice of any such legal counsel.

3.2 Directions to Trustee. Trustor shall state to the Trustee in writing from time to time the funding policy and investment policy established for the trust. In investing and reinvesting the trust fund, the Trustee shall follow completely the requirements laid down for investment of the trust fund by Trustor, and in no event shall Trustee have any responsibility for the establishment or the adequacy of such funding policy and method. The Trustor may at any time and from time to time, by written direction to the Trustee, require the Trustee to invest in or retain any security or other form of investment or speculation as may be specified in such direction. The trust fund shall be invested pursuant to such direction. Neither the Trustee nor any other person shall be under any duty to question any such direction of the Trustor, and the Trustee shall promptly comply with any direction given by the Trustor hereunder. However, the Trustee shall not invest in loans to, or stocks issued by, Trustor or any affiliated company or entity of Trustor.

4. ACCOUNTING BY TRUSTEE.

4.1 Records. Trustee shall maintain accurate records and accounts of all investments, receipts, disbursements, and other transactions hereunder, and such records shall be available at all reasonable times to inspection by Trustor or any authorized representative of Trustor. The Trustee, at the direction of Trustor, shall submit to Trustor such valuations of the trust fund, reports or other information as the Trustor may require.

4.2 Annual Accounting. Within sixty (60) days following the close of each fiscal year of the trust, or following the close of any period as may be designated by the Trustor in writing, the Trustee shall file with the Trustor a written account setting forth the description of all securities and other property purchased and sold, all receipts, disbursements and other transactions effected by the trust during such period, and listing the securities and other property held by the trust at the end of such period. The Trustee shall determine the current fair market value of the trust fund assets and of each Subscriber's account balance on the valuation date.

4.3 Approval of Account. The Trustor may approve such account by written notice of approval delivered to the Trustee or by failure to express objections to such account delivered to the Trustee in writing within ninety (90) days from the date upon which the account was delivered to the Trustor.

Upon receipt of a written approval of the account, or upon the passage of the period of time within which objections may be filed by Trustor, without written objections having been delivered to Trustee, such account shall be deemed to be approved, and the Trustee shall be released and discharged as to all items, matters and things set forth in such account.

5. REPLACEMENT OF TRUSTEE.

5.1 Resignation, Removal and Replacement. The Trustee may resign at any time by the giving of one hundred eighty (180) days' written notice. Trustor may remove any Trustee at any time for causes stated in the pre-publication subscription agreement. Trustor may appoint one or more additional Trustees and may appoint any successor trustee at any time, by written designation. On the removal or resignation of the Trustee or any successor trustee, the Trustee or successor trustee as the case may be shall transfer legal title to all trust property to its successor.

5.2 Final Accounting of Replaced Trustee. Within sixty (60) days of such transfer to the successor trustee, the resigning or removed Trustee shall render to Trustor an account in the form and manner prescribed for the annual account, unless such account is waived in writing by Trustor. Unless Trustor shall within sixty (60) days after the rendition of such final account deliver written objections to Trustee, the account shall be deemed to have been approved and the Trustee shall be released and discharged as to all items, matters and things set forth in such account.

6. TRUSTEE'S EXPENSES AND TAXES.

6.1 Compensation and Reimbursement of Expenses. Trustor shall pay to Trustee annually the expenses incurred in administering the trust and such compensation for the services of the Trustee as may be agreed upon by Trustor and Trustee from time to time.

6.2 Taxes. The Trustee shall deduct from and charge against the trust fund any taxes paid by the trust which may be imposed on the trust fund or the income thereof, or which the Trustee is required by law to pay with respect to the interest of any person in the trust fund.

7. MISCELLANEOUS.

7.1 California Situs. This trust has been accepted by the Trustee and will be administered in the State of California.

7.2 Limitation. No part of the trust fund or income (other than such part as is required to pay taxes) shall be used for, or diverted to, purposes other than for the benefit of TUSPCO and the Subscribers hereto, the Subscribers being beneficiaries hereof, and TUSPCO being the Trustor and also a beneficiary hereof.

7.3 Amendment. This agreement, other than paragraph 7.4, and other than the limitations on the use of trust funds stated in the pre-publication subscription agreement and paragraph 7.2, may be amended at any time by written agreement of Trustor and Trustee, provided that no such amendment shall operate to cause the trust fund or any part thereof to be delivered to TUSPCO prior to the time specified in the pre-publication subscription agreement and herein, or to be refunded to the Subscribers prior to the time specified in the pre-publication subscription agreement and herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mitchell J. Lange C-97382
California Institution for Men
Elm Hall #3027
Post Office Box 600
Chino, CA 91708

FILED

SEP 4 - 1985

LEE A. BRANCH, County Clerk
By MJC Deputy

In propria persona:

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Re:

THE UNIVERSAL XYZ CORPORATION, et. al.,)	Case No. <u>44-26-51</u>
Plaintiffs,)	DECLARATION OF DEFENDANT, MITCHELL J.
vs.)	LANGE
MITCHELL J. LANGE, et. al.,)	
Defendants.)	

I, Mitchell J. Lange, defendant in above entitled and numbered cause of action now pending in the within Honorable Court do hereby declare the following information to be supplemental to my Motion for Appointment of Counsel And/Or Postponement of Cause of Action:

1. I am penniless and presently earn 55¢ per hour in the laundry at the California Institution for Men-Chino;
2. I am not a lawyer nor have I been trained in legal matters;
3. I do not have sufficient knowledge, or access to the knowledge, required to adequately respond to the discovery requests being made upon me by plaintiff;
4. If I am not granted this relief, I may be irreparably damaged because a judgment against me could effectively and unfairly destroy any earning capabilities I might enjoy once I am released from prison;

E.E. /

1 5. There will no prejudice to the plaintiff by delaying discovery until
2 after I have completed my sentence;

3 I ask that all discoveries and motions of law be postponed until a time
4 120 days following the completion of my sentence, so that I can secure a job
5 in order to earn enough money to pay an attorney.

6 Respectfully submitted.

7 Verification - Proof of Service by Mail

8 I, Mitchell J. Lange, under penalty of perjury, state that the above and
9 foregoing Declaration is true in its entirety to the best of my knowledge,
10 information, and belief, and that a copy of the same has been placed in the
11 United States Mail, postage prepaid, and addressed to Counsel for Plaintiffs:

12 LAW OFFICES-WAYNE JOYNER
13 PROFESSIONAL CORPORATION
14 Suite 501, Doheny Plaza Towers
15 9100 Wilshire Boulevard
16 Beverly Hills, California 90212

17 Mitchell J. Lange
18 Mitchell J. Lange, Defendant, pro. per.

19 Date: August 28, 1985
20
21
22
23
24
25
26
27
28

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FREDERIC G. MARKS, JOSEPH HENTZ,)
13 STUART SMITH, JEAN MOLLENHAUER,)
14 ROGAN COOMBS, JOSEPH DROLL,)
15 GREGG ROOTEN, THOMAS R. WOOD,)
16 MARILYN WOOD, GREG STAININGER,)
17 and JOHN FOUNTAIN,)

18 Plaintiffs,

19 vs.

20 WAYNE JOYNER and CHARLES W.
21 HAYES, individually and as Trustees of
22 THE UNIVERSAL SCIENTIFIC
23 PUBLICATIONS COMPANY TRUST,
24 THE UNIVERSAL SCIENTIFIC
25 PUBLICATIONS COMPANY, INC., THE
26 NATURAL ESTATE TRUST, and DOES 1
27 through 50, Inclusive,

28 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**DEFENDANT CHARLES W.
HAYES'S REQUESTS FOR
ADMISSION TO PLAINTIFF
JOSEPH HENTZ [SET ONE]**

23 **PROPOUNDING PARTY: DEFENDANT CHARLES W. HAYES**

24 **RESPONDING PARTY: PLAINTIFF JOSEPH HENTZ**

25 **SET NUMBER: ONE**

26 Defendant Charles W. Hayes requests that you respond to the following Requests
27 for Admission within thirty (30) days after service thereof pursuant to Section 2033.210 *et*
28

1 *seq.* of the California Code of Civil Procedure.

2 **REQUESTS FOR ADMISSION**

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that HAYES never represented to YOU that he was "working on
5 publication" of Book 1 at any time before 1997. (For purposes of these requests for
6 admission, the term "HAYES" shall mean defendant Charles W. Hayes, an individual. For
7 purposes of these requests for admission, the terms "YOU" and "YOUR" shall mean
8 plaintiff, Joseph Hentz, his officers, employees, agents and representatives.)

9 **REQUEST FOR ADMISSION NO. 2:**

10 Admit that HAYES never "assured" YOU that "Book 1 would be published" at any
11 time before 1997.

12 **REQUEST FOR ADMISSION NO. 3:**

13 Admit that HAYES never "encouraged" YOU to wait for Book 1's delivery at any
14 time before 1997.

15 **REQUEST FOR ADMISSION NO. 4:**

16 Admit that YOU purchased 16 copies of Book 1 from TUSPCO.

17 **REQUEST FOR ADMISSION NO. 5:**

18 Admit that YOU paid \$4347.00 for all 16 copies of Book 1 *before* July 1, 1984.

19 **REQUEST FOR ADMISSION NO. 6:**

20 Admit that YOU received all copies of Volume 1 of Book 1 that YOU are entitled
21 to pursuant to YOUR PPSA.

22 **REQUEST FOR ADMISSION NO. 7:**

23 Admit that section 6.5 (5) of the PPSA states: "Notwithstanding anything to the
24 contrary herein, if the assets of the trust fund are seized or made unavailable for the
25 purposes of this agreement by any state, or by any coercive force, the obligation of
26 TUSPCO to make or guarantee any refund to Subscriber shall cease, and shall be null and
27 void."

28

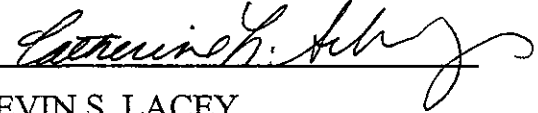
1 REQUEST FOR ADMISSION NO. 8:

2 Admit that if the funds are seized by a "coercive force," YOU are not entitled to a
3 refund pursuant to section 6.5(5) of the PPSA.

4 DATED: November 17, 2006

LACEY, DUNN & DO
A Professional Corporation

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 

KEVIN S. LACEY
CATHERINE L. SEKELY
Attorneys for Defendant
Charles W. Hayes

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JONATHAN K. GOLDEN, ESQ. (CSB #49459)
1880 Century Park East, Suite 300
Los Angeles, CA 90067
Telephone: (310) 553-3830
Facsimile: (310) 553-1337

Attorney for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

FREDERIC G. MARKS, JOSEPH HENTZ, STUART SMITH, JEAN MOLLENHAUER, ROGAN COOMBS, JOSEPH DROLL, GREGG ROOTEN, THOMAS R. WOOD, MARILYN WOOD, GREG STAININGER, and JOHN FOUNTAIN,

Plaintiffs,

v.

WAYNE JOYNER and CHARLES W. HAYES, individually and as Trustees of THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY TRUST, THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC., THE NATURAL ESTATE TRUST and DOES 1 through 50, Inclusive,

Defendants.

CASE NO. BC352639

(Honorable Kenneth R. Freeman,
Department 64)

**PLAINTIFF'S RESPONSES TO
DEFENDANT CHARLES W.
HAYES' REQUESTS FOR
ADMISSION**

PROPOUNDING PARTY: Defendant CHARLES W. HAYES

RESPONDING PARTY: Plaintiffs JOSEPH HENTZ, STUART SMITH, JEAN MOLLENHAUER, ROGAN COOMBS, JOSEPH DROLL, GREGG ROOTEN, THOMAS R. WOOD, MARILYN WOOD, GREG STAININGER

EX.G /

1 SET NUMBER: One (1)

2
3 RESPONSE TO REQUEST FOR ADMISSION NO. 1:

4 Admitted.

5 RESPONSE TO REQUEST FOR ADMISSION NO. 2:

6 Admitted.

7 RESPONSE TO REQUEST FOR ADMISSION NO. 3:

8 Admitted.

9 RESPONSE TO REQUEST FOR ADMISSION NO. 4:

10 Admitted, assuming TUSPCO'S records so show.

11 RESPONSE TO REQUEST FOR ADMISSION NO. 5:

12 Admitted, assuming TUSPCO'S records so show.

13 RESPONSE TO REQUEST FOR ADMISSION NO. 6:

14 Admitted.

15 RESPONSE TO REQUEST FOR ADMISSION NO. 7:

16 Admitted.

17 RESPONSE TO REQUEST FOR ADMISSION NO. 8:


18 Plaintiff objects to this Request on the grounds that it does not call for an admission
19 of fact or the truth of specified matters of facts, opinion relating to fact, or application of
20 law to fact, and is vague, ambiguous and unintelligible as framed. The term "coercive
21 force" has not been defined, nor has the "coercive force" been identified, nor does the law
22 permit a principal or corporation, such as TUSPCO, to avoid liability for the acts of its
23 authorized agents and officers via such a contractual provision. If one assumes that
24 Defendants are contending that embezzlement by M.J. Lange constituted a "coercive force",
25 the Request would be denied because embezzlement is an act of fraud, not "coercive force"
26 as defined by AJG, and in any event, TUSPCO would be liable for such embezzlement by
27 its officer, agent and employee under doctrines of *respondeat superior* and for negligent
28

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

hiring and supervision.

DATED: January 19, 2007


JONATHAN K. GOLDEN
Attorney for Plaintiffs FREDERIC G. MARKS,
JOSEPH HENTZ, STUART SMITH, JEAN
MOLLENHAUER, ROGAN COOMBS,
JOSEPH DROLL, GREGG ROOTEN,
THOMAS R. WOOD, MARILYN WOOD,
GREG STAININGER, and JOHN FOUNTAIN

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 20, 2006, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joseph Hentz

Type or Print Name

Joseph Hentz
Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 28, 2006, at ORANGE, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Stuart Smith

Type or Print Name

Stuart Smith

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

on [] in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at [] California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 [] California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] at [] California.

[] ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] at [] California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on ~~December~~ Jan 8 2006, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jean Mollenhauer

Type or Print Name

Jean Mollenhauer 1-8-07

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

[] on [] in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at [] California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 []

California in the ordinary course of business. I am aware that on motion of the

party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] at [] California.

[] ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] at [] California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Plus

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December / , 2006 , at Orange , California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joseph Droll

Type or Print Name

Joseph Droll

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] , State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

on [] in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at [] , California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 [] California in the ordinary course of business. I am aware that on motion of the

party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] , at [] , California.

[] ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] , at [] , California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at Orange, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Gregg Rooten

Type or Print Name

Gregg Rooten Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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

California in the ordinary course of business. I am aware that on motion of the

party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF ARIZONA

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at State of Arizona, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Thomas R. Wood
Type or Print Name

[Handwritten Signature]
Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF ARIZONA

I have read the foregoing RESPONSES TO FORM INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at State of Arizona, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Marilyn Wood

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF GEORGIA

I have read the foregoing RESPONSES TO REQUEST FOR ADMISSIONS

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 16, 2006 2007, at Savannah Georgia, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Greg Staininger

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 1880 Century Park East, Suite 300, Los Angeles, California 90067.

On January 19, 2007 I served the foregoing document described as **PLAINTIFF'S RESPONSES TO DEFENDANT CHARLES W. HAYES' REQUESTS FOR ADMISSION** on the interested parties in this action

X by placing the original X a true copy thereof in sealed envelopes addressed as follows:

Kevin S. Lacey, Esq.
Lacey, Dunn & Do
315 W. Arden Avenue
Suite 11
Glendale, CA 91203

John P. Godsil, Esq.
Nicolas A. Rozansky, Esq.
Freeman, Freeman & Smiley, LLP
3415 Sepulveda Boulevard, Suite 1200
Los Angeles, CA 90034-6060

X **By mail** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing 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 of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 19, 2007, at Los Angeles, California.

X STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Jonathan K. Golden

Name, Address and Telephone Number

Mitchell J. Lange C-97382
Elm Hall #3027
California Institution for Men
PO Box 600
Chino, CA 91708

Space Below for Use of Court Clerk Only

FILED

SEP 4 - 1985

LEE A. BRANCH, County Clerk
By MJC Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

(TITLE OF CASE)

THE UNIVERSAL XYZ CORPORATION, et. al.,
Plaintiffs
vs.
MITCHELL J. LANGE, et. al.,
Defendants.

Case No. 44-26-51

DEFENDANT'S APPLICATION AND FINANCIAL
STATEMENT OF ELIGIBILITY FOR APPOINTMENT
OF COUNSEL AND ORDER APPOINTING COUNSEL
OF RECORD

1. a. Defendant's name: Mitchell J. Lange
b. Other names used: none
c. Address: Elm Hall #3027, Calif. Institution for Men, PO Box 600, Chino, CA 91708
d. Date of birth: December 3, 1924
e. Telephone number: none
f. Driver's license number: 476-16-7774 Montana

2. am am not married.
3. a. Spouse's name: Bonnie Lange
b. Other names used: none
c. Address: 701 Kettner #1, San Diego, CA 92101
d. Date of birth: April 1, 1931
e. Telephone number: (619) 239-9043
f. Driver's license number: unknown

4. Defendant's Present Employment: presently serving a 4-year sentence in Calif. State prison, Chino
a. Occupation: working as a clerk in prison laundry
b. Name of employer: Prison Industries Authority
c. Address: Calif. Institution for Men, Chino, CA
d. Gross pay per month: \$ 86.00 week: \$ day: \$ 4.13 per day (.55 per hour)
e. Take home pay per month: \$ same week: \$ day: \$
f. Name of union: none
g. Name of credit union: none

5. If you are not now working, state the name and address of your last employer and the last day you were employed.
a. Name:
b. Address:
c. Last date of employment:

6. Spouse's Present Employment:
a. Occupation: Mortgage Loan Officer
b. Name of employer: Westwind Mortgage Co.
c. Address: Bonita, CA
d. Gross pay per month: \$ commission week: \$ day: \$ approx earnings: \$1,000 per month
e. Take home pay per month: \$ unknown week: \$ day: \$
f. Name of union: none
g. Name of credit union: none

7. If spouse is not now working, state the name and address of spouse's last employer and the last day spouse was employed.
a. Name:
b. Address:
c. Last date of employment:

8. DEPENDENTS

Name Address Relationship Age
none

EX. H

OTHER MONTHLY INCOME

9. Defendant

a. Unemployment and disability \$ 0
 b. Social Security \$ 0
 c. Welfare, AFDC \$ 0
 d. Veteran's benefits \$ 0
 e. Workers' Compensation \$ 0
 f. Child support payments \$ 0
 g. Spousal support payments \$ 0
 h. All other income not elsewhere listed \$ 156.00
 Total: \$ 156.00

Spouse

a. Unemployment and disability \$ 0
 b. Social Security \$ 0
 c. Welfare, AFDC \$ 0
 d. Veteran's benefits \$ 0
 e. Workers' Compensation \$ 0
 f. Child support payments \$ 0
 g. Spousal support payments \$ 0
 h. All other income not elsewhere listed \$ 0
 Total: \$ 0

10. Monthly expenses being paid by defendant alone or by defendant and spouse

a. Rent or house payment \$ 700.00
 b. Car Payments \$ 163.00
 c. Transportation payments \$ 0
 d. Medical and dental payments \$ 0
 e. Loan payments \$ 0

f. Clothing and laundry \$ 10.00
 g. Food \$ 150.00
 h. Support payments \$ 0
 i. Insurance payments \$ 25.00
 j. Other payments (tution, taxes, utilities) \$ 35.00
 Total (a-j): \$ 1,083.00

11. Installment Payments, other than listed in item 10.

Name of Creditor

a. ~~None~~ Recently adjudicated bankrupt (spouse)
 b. San Diego County Case #
 c. 950066-1117
 d. _____
 e. _____

Monthly Payment

a. \$ _____
 b. \$ _____
 c. \$ _____
 d. \$ _____
 e. \$ _____
 Total: \$ _____

Balance Owed

a. \$ _____
 b. \$ _____
 c. \$ _____
 d. \$ _____
 e. \$ _____
 Total: \$ _____

ASSETS

12. What do you own? (State value)

a. Cash \$ 71.00
 b. House equity \$ 0
 c. Cars, other vehicles and boat equity: \$ 1,200.00
 (List make, year and license number of each) '80 Pontiac, Montana license number unknown
 d. Checking, savings and credit union accounts: \$ 0
 (List name and account number of each)
 e. Other real estate equity \$ (11,500) minus equity com'l bldg in
 f. Income tax refunds due: \$ 0 Montana
 g. Life Insurance Policies (Ordinary life-face value): \$ 0 Length of ownership
 h. Other personal property (Jewelry, furniture, furs, stocks and bonds, etc) \$ 1,100 furniture (estimate)
 Total: \$ (8,929) minus

13. ELIGIBILITY FOR APPOINTMENT OF COUNSEL AND NOTICE TO DEFENDANT: If an attorney is appointed to represent you the court may at the conclusion of these proceedings, after a hearing, make a determination of your ability to pay all or a portion of the cost of the attorney. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such an order will have the same force and effect as a judgment in a civil action and will be subject to execution.

DECLARATION OF DEFENDANT

I declare under penalty of perjury that the foregoing is true and correct and that I understand the notice contained in item 13, and that this declaration was executed on August 27, 1985 at (County): San Bernardino Orange County California

Michael J. Lange
(Signature of Defendant)

ORDER

The Court finds that based on the defendant's financial information contained above, the defendant is eligible for the appointment of counsel in the above-entitled action.

IT IS SO ORDERED.

Dated August 28, 1985

Courtney A. Beckley
Judge of the Superior Court

, appointed as attorney in fact.

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FREDERIC G. MARKS, JOSEPH HENTZ,)
13 STUART SMITH, JEAN MOLLENHAUER,)
14 ROGAN COOMBS, JOSEPH DROLL,)
15 GREGG ROOTEN, THOMAS R. WOOD,)
16 MARILYN WOOD, GREG STAININGER,)
17 and JOHN FOUNTAIN,)

18 Plaintiffs,

19 vs.

20 WAYNE JOYNER and CHARLES W.
21 HAYES, individually and as Trustees of
22 THE UNIVERSAL SCIENTIFIC
23 PUBLICATIONS COMPANY TRUST,
24 THE UNIVERSAL SCIENTIFIC
25 PUBLICATIONS COMPANY, INC., THE
26 NATURAL ESTATE TRUST, and DOES 1
27 through 50, Inclusive,

28 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**DEFENDANT CHARLES W.
HAYES'S SPECIAL
INTERROGATORIES TO
PLAINTIFF FREDERIC G. MARKS
[SET ONE]; DECLARATION OF
CATHERINE L. SEKELY RE
ADDITIONAL DISCOVERY**

23 **PROPOUNDING PARTY: DEFENDANT CHARLES W. HAYES**

24 **RESPONDING PARTY: PLAINTIFF FREDERIC G. MARKS**

25 **SET NUMBER: ONE**

26 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

1 PLEASE TAKE NOTICE that defendant Charles W. Hayes hereby submits to
2 plaintiff Frederic G. Marks the attached first set of special interrogatories pursuant to Code
3 of Civil Procedure Section 2030.010 *et seq.*

4 **SPECIAL INTERROGATORIES**

5 **SPECIAL INTERROGATORY NO. 1:**

6 If YOU contend in paragraph 2 of the COMPLAINT that HAYES was the duly
7 appointed Trustee of the TUSPCO TRUST prior to the theft of Mitchell J. "Matt" Lange,
8 then state all facts in support of YOUR contention. (For purposes of these interrogatories,
9 the terms "YOU" and "YOUR" shall mean plaintiff, Frederic G. Marks, his officers,
10 employees, agents and representatives. For purposes of these interrogatories, the term
11 "HAYES" shall mean defendant Charles W. Hayes, an individual. For purposes of these
12 interrogatories, the term "TUSPCO TRUST" shall mean The Universal Scientific
13 Publications Company, Inc., Book Subscription Trust. For purposes of these special
14 interrogatories, the term "COMPLAINT" shall mean the complaint for declaratory relief,
15 specific performance, breach of contract, and breach of fiduciary duty *Marks et al. v.*
16 *Joyner, et al.*, Los Angeles Superior Court Case No. BC352639.

17 **SPECIAL INTERROGATORY NO. 2:**

18 If YOU contend in paragraph 2 of the COMPLAINT that HAYES was the duly
19 appointed Trustee of the TUSPCO TRUST prior to the theft of Mitchell J. "Matt" Lange,
20 then identify all DOCUMENTS that refer or relate to YOUR contention. (For purposes of
21 these special interrogatories, the term "DOCUMENT" shall mean any and all "writings,"
22 as that term is defined in California Evidence Code Section 250 and California Code of
23 Civil Procedure Section 231, including but not limited to any tangible items which contain
24 handwriting, type writing, printing, photostatic reproduction, photographic reproduction,
25 electronic reproduction, and any other form of communications or representation whether
26 produced, reproduced or stored on paper, cards, tapes, discs, belts, charts, films (including
27 microfilm or microfiche), computer storage devices or any other medium of recordation.)

1 **SPECIAL INTERROGATORY NO. 3:**

2 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
3 **COMPLAINT** that “**HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
4 Trust to suit [his] own convenience.” (For purposes of these interrogatories, the term
5 “**TUSPCO**” shall mean The Universal Scientific Publications Company, Inc.)

6 **SPECIAL INTERROGATORY NO. 4:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 5 of the **COMPLAINT** that “**HAYES** intermingled the assets of **TUSPCO** and
9 the Natural Estate Trust to suit [his] own convenience.”

10 **SPECIAL INTERROGATORY NO. 5:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that “**HAYES** intermingled the
13 assets of **TUSPCO** and the Natural Estate Trust to suit [his] own convenience.”
14 (For purposes of these interrogatories, the term “**IDENTIFY**” shall mean, when applied to
15 a person, to list the name, title, function and last known telephone number and address.
16 For purposes of these interrogatories, the term “**PERSONS**” shall mean the plural as well
17 as the singular, any natural person or any firm, association, partnership, corporation or
18 other form of legal identity unless the context clearly dictates to the contrary.)

19 **SPECIAL INTERROGATORY NO. 6:**

20 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
21 **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
22 Trust to evade **TUSPCO**’s liability to subscribers to book contracts.

23 **SPECIAL INTERROGATORY NO. 7:**

24 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
25 paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and
26 the Natural Estate Trust to evade **TUSPCO**’s liability to subscribers to book contracts.

27 ///

28

1 **SPECIAL INTERROGATORY NO. 8:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES intermingled the
4 assets of TUSPCO and the Natural Estate Trust to evade TUSPCO's liability to
5 subscribers to book contracts.

6 **SPECIAL INTERROGATORY NO. 9:**

7 State all facts that refer, relate or pertain to YOUR allegation in paragraph 5 of the
8 COMPLAINT that HAYES intermingled the assets of TUSPCO and the Natural Estate
9 Trust to pay substantial sums to [himself] and others.

10 **SPECIAL INTERROGATORY NO. 10:**

11 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
12 paragraph 5 of the COMPLAINT that HAYES intermingled the assets of TUSPCO and
13 the Natural Estate Trust to pay substantial sums to [himself] and others.

14 **SPECIAL INTERROGATORY NO. 11:**

15 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
16 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES intermingled the
17 assets of TUSPCO and the Natural Estate Trust to pay substantial sums to [himself] and
18 others.

19 **SPECIAL INTERROGATORY NO. 12:**

20 State with specificity all facts that refer, relate or pertain to YOUR allegation in
21 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of TUSPCO.

22 **SPECIAL INTERROGATORY NO. 13:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
24 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of TUSPCO.

25 **SPECIAL INTERROGATORY NO. 14:**

26 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
27 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES dissipated the

28

1 assets of TUSPCO.

2 **SPECIAL INTERROGATORY NO. 15:**

3 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
4 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
5 **TRUST**.

6 **SPECIAL INTERROGATORY NO. 16:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
9 **TRUST**.

10 **SPECIAL INTERROGATORY NO. 17:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the
13 assets of the **TUSPCO TRUST**.

14 **SPECIAL INTERROGATORY NO. 18:**

15 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
16 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the Natural Estate
17 Trust.

18 **SPECIAL INTERROGATORY NO. 19:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
20 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the Natural Estate
21 Trust.

22 **SPECIAL INTERROGATORY NO. 20:**

23 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
24 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the
25 assets of the Natural Estate Trust.

26 **SPECIAL INTERROGATORY NO. 21:**

27 State with specificity all facts that refer, relate or pertain to **YOUR** contention in
28

1 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

2 **SPECIAL INTERROGATORY NO. 22:**

3 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention in
4 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

5 **SPECIAL INTERROGATORY NO. 23:**

6 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
7 to YOUR contention in paragraph 5 of the COMPLAINT that HAYES owes YOU a
8 fiduciary duty.

9 **SPECIAL INTERROGATORY NO. 24:**

10 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that the
11 price of Book 1 was \$400.00 per copy as alleged in paragraph 13 of the COMPLAINT.

12 **SPECIAL INTERROGATORY NO. 25:**

13 If YOU contend in paragraph 19 of the COMPLAINT that HAYES made oral
14 representations that he was "working on the publication," state whether the representation
15 was in person or via telephone.

16 **SPECIAL INTERROGATORY NO. 26:**

17 Identify the date(s) that HAYES represented via the telephone that he was "working
18 on the publication."

19 **SPECIAL INTERROGATORY NO. 27:**

20 With respect to the immediately preceding interrogatory, state with specificity
21 HAYES'S oral representation(s) via telephone regarding "working on publication".

22 **SPECIAL INTERROGATORY NO. 28:**

23 Identify all DOCUMENTS that refer, relate or pertain to HAYES'S oral
24 representation(s) via telephone regarding "working on publication".

25 **SPECIAL INTERROGATORY NO. 29:**

26 IDENTIFY all PERSONS to whom HAYES represented via the telephone that he
27 was "working on the publication."

28

1 **SPECIAL INTERROGATORY NO. 30:**

2 Identify the date(s) that HAYES represented orally, in person that he was "working
3 on the publication."

4 **SPECIAL INTERROGATORY NO. 31:**

5 With respect to the immediately preceding interrogatory, state with specificity
6 HAYES'S oral, in person representation(s) regarding "working on publication."

7 **SPECIAL INTERROGATORY NO. 32:**

8 Identify all DOCUMENTS that refer, relate or pertain to HAYES'S oral, in person
9 representation(s) regarding "working on publication."

10 **SPECIAL INTERROGATORY NO. 33:**

11 IDENTIFY all PERSONS to whom HAYES represented orally, in person that he
12 was "working on the publication."

13 **SPECIAL INTERROGATORY NO. 34:**

14 State with specificity all facts that refer, relate or pertain to YOUR allegation in
15 paragraph 19 of the COMPLAINT that HAYES represented in writing that he was
16 "working on the publication."

17 **SPECIAL INTERROGATORY NO. 35:**

18 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
19 to YOUR allegation in paragraph 19 of the COMPLAINT that HAYES represented in
20 writing that he was "working on the publication."

21 **SPECIAL INTERROGATORY NO. 36:**

22 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention
23 HAYES represented in writing that he was "working on the publication."

24 **SPECIAL INTERROGATORY NO. 37:**

25 State the date(s) that HAYES allegedly represented in writing that he was "working
26 on the publication."

27

28

1 **SPECIAL INTERROGATORY NO. 38:**

2 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
3 paragraph 19 of the **COMPLAINT** that **HAYES** “assured Plaintiffs that Book 1 would be
4 published.”

5 **SPECIAL INTERROGATORY NO. 39:**

6 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
7 to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that **HAYES** “assured
8 Plaintiffs that Book 1 would be published.”

9 **SPECIAL INTERROGATORY NO. 40:**

10 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
11 refer, relate or pertain to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that
12 **HAYES** “assured Plaintiffs that Book 1 would be published.”

13 **SPECIAL INTERROGATORY NO. 41:**

14 **IDENTIFY** all **PERSONS** that **HAYES** assured in writing that Book 1 would be
15 published.

16 **SPECIAL INTERROGATORY NO. 42:**

17 State the date(s) of all **DOCUMENTS** where **HAYES** assured in writing that Book
18 1 would be published.

19 **SPECIAL INTERROGATORY NO. 43:**

20 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
21 via the telephone, state the date(s) of all such assurances.

22 **SPECIAL INTERROGATORY NO. 44:**

23 **IDENTIFY** all **PERSONS** that **HAYES** “assured ... that Book 1 would be
24 published” via the telephone.

25 **SPECIAL INTERROGATORY NO. 45:**

26 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
27 in person, state the date(s) of all such assurances.

28

1 **SPECIAL INTERROGATORY NO. 46:**

2 IDENTIFY all PERSONS that HAYES "assured ... that Book 1 would be
3 published" in person.

4 **SPECIAL INTERROGATORY NO. 47:**

5 State with specificity all facts that refer, relate or pertain to YOUR allegation in
6 paragraph 19 of the COMPLAINT that HAYES "encouraged Plaintiffs to wait for its [the
7 Book] delivery."

8 **SPECIAL INTERROGATORY NO. 48:**

9 If YOU contend that HAYES "encouraged Plaintiffs to wait for its [the Book]
10 delivery" in conversations via telephone, then state the date(s) of those conversations.

11 **SPECIAL INTERROGATORY NO. 49:**

12 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
13 to YOUR allegation in paragraph 19 of the COMPLAINT that HAYES "encouraged
14 Plaintiffs to wait for its [the Book] delivery."

15 **SPECIAL INTERROGATORY NO. 50:**

16 If YOU contend that HAYES "encouraged Plaintiffs to wait for its [the Book]
17 delivery" in conversations via telephone, then IDENTIFY all PERSONS that HAYES
18 "encouraged" in these conversations.

19 **SPECIAL INTERROGATORY NO. 51:**

20 If YOU contend that HAYES "encouraged Plaintiffs to wait for its [the Book]
21 delivery" in conversations in person, then state the date(s) of those conversations.

22 **SPECIAL INTERROGATORY NO. 52:**

23 If YOU contend that HAYES "encouraged Plaintiffs to wait for its [the Book]
24 delivery" in conversations in person, then IDENTIFY all PERSONS that HAYES
25 "encouraged" in these conversations.

26 **SPECIAL INTERROGATORY NO. 53:**

27 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that
28

1 refer, relate or pertain to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that
2 **HAYES** “encouraged Plaintiffs to wait for its [the Book] delivery.”

3 **SPECIAL INTERROGATORY NO. 54:**

4 State the dollar amount that **YOU** paid for all **YOUR** copies of Book 1.

5 **SPECIAL INTERROGATORY NO. 55:**

6 If **YOU** contend in paragraph 21 of the **COMPLAINT** that the publication and
7 distribution of Volume 1 was “in partial performance of the contract,” state the dollar
8 amount that **YOU** attribute to Volume 1.

9 **SPECIAL INTERROGATORY NO. 56:**

10 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 22 of the
11 **COMPLAINT** that **HAYES** made representations regarding future publication of the
12 remaining volumes of Book 1 at all times after Volume 1 was published.

13 **SPECIAL INTERROGATORY NO. 57:**

14 If **YOU** contend in paragraph 22 of the **COMPLAINT** that **HAYES** made
15 representations via telephone regarding future publication of the remaining volumes of
16 Book, state the dates of all such conversations.

17 **SPECIAL INTERROGATORY NO. 58:**

18 **IDENTIFY** all **PERSONS** that **HAYES** spoke to via telephone regarding future
19 publication of the remaining volumes of Book 1.

20 **SPECIAL INTERROGATORY NO. 59:**

21 Identify all **DOCUMENTS** that refer, relate or pertain to **HAYES’S** representations
22 regarding future publication of the remaining volumes of Book 1.

23 **SPECIAL INTERROGATORY NO. 60:**

24 State the date(s) of all **DOCUMENTS** that refer, relate or pertain to **HAYES’S**
25 representations regarding future publication of the remaining volumes of Book 1.

26 **SPECIAL INTERROGATORY NO. 61:**

27 State all facts that refer, relate or pertain to **YOUR** allegation that **HAYES**
28

1 represented that the remaining volumes of Book 1 would consist of edited transcripts of
2 AJG's tape recorded lectures of course V-201. (For purposes of these special
3 interrogatories, AJG shall mean Andrew J. Galambos.)

4 **SPECIAL INTERROGATORY NO. 62:**

5 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
6 to YOUR allegation that HAYES represented that the remaining volumes of Book 1 would
7 consist of edited transcripts of AJG's tape recorded lectures of course V-201.

8 **SPECIAL INTERROGATORY NO. 63:**

9 If YOU contend that HAYES represented via telephone that the remaining volumes
10 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
11 201, then state the dates of all such telephone conversations.

12 **SPECIAL INTERROGATORY NO. 64:**

13 If YOU contend that HAYES represented via telephone that the remaining volumes
14 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
15 201, then IDENTIFY all PERSONS that HAYES made such representations to via
16 telephone.

17 **SPECIAL INTERROGATORY NO. 65:**

18 If YOU contend that HAYES represented in person that the remaining volumes of
19 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
20 201, then state the dates of all such in person representations.

21 **SPECIAL INTERROGATORY NO. 66:**

22 If YOU contend that HAYES represented in person that the remaining volumes of
23 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
24 201, then IDENTIFY all PERSONS that HAYES made such representations to in person.

25 **SPECIAL INTERROGATORY NO. 67:**

26 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
27 HAYES represented that the remaining volumes of Book 1 would consist of edited
28

1 transcripts of AJG's tape recorded lectures of course V-201.

2 **SPECIAL INTERROGATORY NO. 68:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
4 TUSPCO's website represents to the public that: "The remaining three or four volumes. . .
5 are in progress and will consist of edited transcripts. . ."

6 **SPECIAL INTERROGATORY NO. 69:**

7 If **YOU** contend that TUSPCO's website represents to the public that: "The
8 remaining three or four volumes. . . are in progress and will consist of edited transcripts. . ."
9 then state the date(s) that TUSPCO's website made such a representation.

10 **SPECIAL INTERROGATORY NO. 70:**

11 **IDENTIFY** all **PERSONS** with knowledge that TUSPCO's website represents to
12 the public that: "The remaining three or four volumes. . . are in progress and will consist of
13 edited transcripts. . ."

14 **SPECIAL INTERROGATORY NO. 71:**

15 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
16 TUSPCO's website offers to sell a first edition, hard cover copy of all volumes, including
17 those yet to be published, for the price of \$2,500.00.

18 **SPECIAL INTERROGATORY NO. 72:**

19 If **YOU** contend that TUSPCO's website offers to sell a first edition, hard cover
20 copy of all volumes, including those yet to be published, for the price of \$2,500.00, then
21 state the date(s) the website made that offer.

22 **SPECIAL INTERROGATORY NO. 73:**

23 **IDENTIFY** all **PERSONS** with knowledge that TUSPCO's website offers to sell a
24 first edition, hard cover copy of all volumes, including those yet to be published, for the
25 price of \$2,500.00.

26 **SPECIAL INTERROGATORY NO. 74:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
28

1 paragraph 25 of the COMPLAINT that YOU were the personal attorney for AJG from
2 1968 through 1989.

3 **SPECIAL INTERROGATORY NO. 75:**

4 State the dates that YOU were an officer of TUSPCO.

5 **SPECIAL INTERROGATORY NO. 76:**

6 Identify all DOCUMENTS that refer, relate or pertain to the dates that YOU were
7 an officer of TUSPCO.

8 **SPECIAL INTERROGATORY NO. 77:**

9 State with specificity YOUR responsibilities as an officer of TUSPCO.

10 **SPECIAL INTERROGATORY NO. 78:**

11 Identify all DOCUMENTS that refer, relate or pertain to YOUR responsibilities as
12 an officer of TUSPCO.

13 **SPECIAL INTERROGATORY NO. 79:**

14 State the dates that YOU were an acting officer of TUSPCO.

15 **SPECIAL INTERROGATORY NO. 80:**

16 Identify all DOCUMENTS that refer, relate or pertain to the dates that YOU were
17 an acting officer of TUSPCO.

18 **SPECIAL INTERROGATORY NO. 81:**

19 State with specificity YOUR responsibilities as an acting officer of TUSPCO.

20 **SPECIAL INTERROGATORY NO. 82:**

21 Identify all DOCUMENTS that refer, relate or pertain to YOUR responsibilities as
22 an acting officer of TUSPCO.

23 **SPECIAL INTERROGATORY NO. 83:**

24 State the dates that YOU were an officer of The Universal Corporation.

25 **SPECIAL INTERROGATORY NO. 84:**

26 Identify all DOCUMENTS that refer, relate or pertain to the dates that YOU were
27 an officer of The Universal Corporation.

28

1 **SPECIAL INTERROGATORY NO. 85:**

2 State with specificity **YOUR** responsibilities as an officer of The Universal
3 Corporation.

4 **SPECIAL INTERROGATORY NO. 86:**

5 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** responsibilities as
6 an officer of The Universal Corporation.

7 **SPECIAL INTERROGATORY NO. 87:**

8 State the dates that **YOU** were an acting officer of The Universal Corporation.

9 **SPECIAL INTERROGATORY NO. 88:**

10 Identify all **DOCUMENTS** that refer, relate or pertain to the dates that **YOU** were
11 an acting officer of The Universal Corporation.

12 **SPECIAL INTERROGATORY NO. 89:**

13 State with specificity **YOUR** responsibilities as an acting officer of The Universal
14 Corporation.

15 **SPECIAL INTERROGATORY NO. 90:**

16 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** responsibilities as
17 an acting officer of The Universal Corporation.

18 **SPECIAL INTERROGATORY NO. 91:**

19 State each and every title that **YOU** ever had as a representative of **TUSPCO**.

20 **SPECIAL INTERROGATORY NO. 92:**

21 With respect to the immediately preceding interrogatory, state the corresponding
22 date(s) of **YOUR** representation of **TUSPCO**.

23 **SPECIAL INTERROGATORY NO. 93:**

24 State each and every title that **YOU** ever had as a representative of the **TUSPCO**
25 **TRUST**.

26 **SPECIAL INTERROGATORY NO. 94:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** capacity as a
28

1 representative of the TUSPCO TRUST.

2 **SPECIAL INTERROGATORY NO. 95:**

3 With respect to the immediately preceding interrogatory, state the corresponding
4 date(s) of YOUR representation of the TUSPCO TRUST.

5 **SPECIAL INTERROGATORY NO. 96:**

6 Identify all DOCUMENTS that refer, relate or pertain to the date(s) of YOUR
7 representation of the TUSPCO TRUST.

8 **SPECIAL INTERROGATORY NO. 97:**

9 State each and every title that YOU ever had as a representative of AJG.

10 **SPECIAL INTERROGATORY NO. 98:**

11 Identify all DOCUMENTS that refer, relate or pertain to each and every title that
12 YOU ever had as a representative of AJG.

13 **SPECIAL INTERROGATORY NO. 99:**

14 With respect to the immediately preceding interrogatory, state the corresponding
15 date(s) of YOUR representation of AJG.

16 **SPECIAL INTERROGATORY NO. 100:**

17 Identify all DOCUMENTS that refer, relate or pertain to the date(s) of YOUR
18 representation of AJG.

19 **SPECIAL INTERROGATORY NO. 101:**

20 State with specificity all facts that refer, relate or pertain to YOUR effort in
21 recovering the funds stolen by Mitchell J. "Matt" Lange from the TUSPCO TRUST.

22 **SPECIAL INTERROGATORY NO. 102:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR effort in
24 recovering the funds stolen by Mitchell J. "Matt" Lange from the TUSPCO TRUST.

25 **SPECIAL INTERROGATORY NO. 103:**

26 IDENTIFY all PERSONS with knowledge of YOUR effort in recovering the
27 funds stolen by Mitchell J. "Matt" Lange from the TUSPCO TRUST.

28

1 **SPECIAL INTERROGATORY NO. 104:**

2 State with specificity all facts that refer, relate or pertain to **YOUR** role in revising
3 the **TUSPCO TRUST** after the funds were stolen by Mitchell J. "Matt" Lange from the
4 **TUSPCO TRUST**.

5 **SPECIAL INTERROGATORY NO. 105:**

6 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** role in revising the
7 **TUSPCO TRUST** after the funds were stolen by Mitchell J. "Matt" Lange from the
8 **TUSPCO TRUST**.

9 **SPECIAL INTERROGATORY NO. 106:**

10 **IDENTIFY** all **PERSONS** with knowledge of **YOUR** role in revising the
11 **TUSPCO TRUST** after the funds were stolen by Mitchell J. "Matt" Lange from the
12 **TUSPCO TRUST**.

13 **SPECIAL INTERROGATORY NO. 107:**

14 State with specificity all facts that refer, relate or pertain to the recovery of any
15 funds stolen by Mitchell J. "Matt" Lange from the **TUSPCO TRUST**.

16 **SPECIAL INTERROGATORY NO. 108:**

17 Identify all **DOCUMENTS** that refer, relate or pertain to the recovery of any funds
18 stolen by Mitchell J. "Matt" Lange from the **TUSPCO TRUST**.

19 **SPECIAL INTERROGATORY NO. 109:**

20 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
21 to the recovery of any funds stolen by Mitchell J. "Matt" Lange from the **TUSPCO**
22 **TRUST**.

23 **SPECIAL INTERROGATORY NO. 110:**

24 If **YOU** contend assets were placed into the **TUSPCO TRUST** after Mitchell J.
25 "Matt" Lange stole the funds, then state all facts that support **YOUR** contention.

26 **SPECIAL INTERROGATORY NO. 111:**

27 If **YOU** contend assets were placed into the **TUSPCO TRUST** after Mitchell J.

28

1 "Matt" Lange stole the funds, then identify all **DOCUMENTS** that refer, relate or pertain
2 to **YOUR** contention.

3 **SPECIAL INTERROGATORY NO. 112:**

4 If **YOU** contend assets were placed into the **TUSPCO TRUST** after Mitchell J.
5 "Matt" Lange stole the funds, then **IDENTIFY** all **PERSONS** with knowledge of the facts
6 that refer, relate or pertain to **YOUR** contention.

7 **SPECIAL INTERROGATORY NO. 113:**

8 State with specificity all facts that refer, relate or pertain to **YOUR** written
9 communications to Subscribers to the **PPSA** from May 1, 2004 to the present. (For
10 purposes of these special interrogatories, the term "**PPSA**" shall mean the Pre-Publication
11 Subscription Agreement.)

12 **SPECIAL INTERROGATORY NO. 114:**

13 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** written
14 communications to Subscribers to the **PPSA** from May 1, 2004 to the present.

15 **SPECIAL INTERROGATORY NO. 115:**

16 State with specificity all facts that refer, relate or pertain to written communications
17 from Subscribers to the **PPSA** to **YOU** from May 1, 2004 to the present.

18 **SPECIAL INTERROGATORY NO. 116:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to written communications
20 from Subscribers to the **PPSA** to **YOU** from May 1, 2004 to the present.

21 **SPECIAL INTERROGATORY NO. 117:**

22 State with specificity all facts that refer, relate or pertain to **YOUR** telephonic
23 communications to Subscribers to the **PPSA** from May 1, 2004 to the present.

24 **SPECIAL INTERROGATORY NO. 118:**

25 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** telephonic
26 communications to Subscribers to the **PPSA** from May 1, 2004 to the present.

27

28

1 **SPECIAL INTERROGATORY NO. 119:**

2 State with specificity all facts that refer, relate or pertain to telephonic
3 communications from Subscribers to the PPSA to YOU from May 1, 2004 to the present.

4 **SPECIAL INTERROGATORY NO. 120:**

5 Identify all DOCUMENTS that refer, relate or pertain to telephonic
6 communications from Subscribers to the PPSA to YOU from May 1, 2004 to the present.

7 **SPECIAL INTERROGATORY NO. 121:**

8 State with specificity all facts that refer, relate or pertain to YOUR in person
9 communications with Subscribers to the PPSA from May 1, 2004 to the present.

10 **SPECIAL INTERROGATORY NO. 122:**

11 Identify all DOCUMENTS that refer, relate or pertain to YOUR in person
12 communications with Subscribers to the PPSA from May 1, 2004 to the present.

13 **SPECIAL INTERROGATORY NO. 123:**

14 If YOU contend that in 2004 and 2005 YOU communicated several times with
15 HAYES, on behalf of yourself and "other subscribers" to determine when the remaining
16 volumes would be published, then IDENTIFY all the "other subscribers" on whose behalf
17 YOU communicated.

18 **SPECIAL INTERROGATORY NO. 124:**

19 State the date of each and every telephone communication YOU had with HAYES
20 in 2004.

21 **SPECIAL INTERROGATORY NO. 125:**

22 With respect to each date in the immediately preceding interrogatory, state with
23 specificity the content of each and every telephonic communication YOU had with
24 HAYES.

25 **SPECIAL INTERROGATORY NO. 126:**

26 Identify all DOCUMENTS that refer, relate or pertain to each and every telephone
27 communication YOU had with HAYES in 2004.

28

1 **SPECIAL INTERROGATORY NO. 127:**

2 State the date of each and every written communication YOU had with HAYES in
3 2004.

4 **SPECIAL INTERROGATORY NO. 128:**

5 With respect to each date in the immediately preceding interrogatory, state with
6 specificity the content of each and every written communication YOU had with HAYES.

7 **SPECIAL INTERROGATORY NO. 129:**

8 Identify all DOCUMENTS that refer, relate or pertain to YOUR written
9 communications with HAYES in 2004.

10 **SPECIAL INTERROGATORY NO. 130:**

11 State the date of each and every in person communication YOU had with HAYES
12 in 2004.

13 **SPECIAL INTERROGATORY NO. 131:**

14 With respect to each date in the immediately preceding interrogatory, state with
15 specificity the content of each and every in person communication YOU had with HAYES.

16 **SPECIAL INTERROGATORY NO. 132:**

17 Identify all DOCUMENTS that refer, relate or pertain to YOUR in person
18 communications with HAYES in 2004.

19 **SPECIAL INTERROGATORY NO. 133:**

20 State the date of each and every telephone communication YOU had with HAYES
21 in 2005.

22 **SPECIAL INTERROGATORY NO. 134:**

23 With respect to each date in the immediately preceding interrogatory, state with
24 specificity the content of each and every telephonic communication YOU had with
25 HAYES.

26 **SPECIAL INTERROGATORY NO. 135:**

27 Identify all DOCUMENTS that refer, relate or pertain to each and every telephone
28

1 communication YOU had with HAYES in 2005.

2 **SPECIAL INTERROGATORY NO. 136:**

3 State the date of each and every written communication YOU had with HAYES in
4 2005.

5 **SPECIAL INTERROGATORY NO. 137:**

6 With respect to each date in the immediately preceding interrogatory, state with
7 specificity the content of each and every written communication YOU had with HAYES.

8 **SPECIAL INTERROGATORY NO. 138:**

9 Identify all DOCUMENTS that refer, relate or pertain to YOUR written
10 communications with HAYES in 2005.

11 **SPECIAL INTERROGATORY NO. 139:**

12 State the date of each and every in person communication YOU had with HAYES
13 in 2005.

14 **SPECIAL INTERROGATORY NO. 140:**

15 With respect to each date in the immediately preceding interrogatory, state with
16 specificity the content of each and every in person communication YOU had with HAYES.

17 **SPECIAL INTERROGATORY NO. 141:**

18 Identify all DOCUMENTS that refer, relate or pertain to YOUR in person
19 communications with HAYES in 2005.

20 **SPECIAL INTERROGATORY NO. 142:**

21 If YOU contend that "other subscribers" contacted HAYES via telephone in 2004
22 to ask when they would receive the rest of Book 1, then state the dates of all such
23 telephone calls.

24 **SPECIAL INTERROGATORY NO. 143:**

25 If YOU contend that "other subscribers" contacted HAYES via telephone in 2004
26 to ask when they would receive the rest of Book 1, then IDENTIFY the "other
27 subscribers."

28 - 20 -

1 **SPECIAL INTERROGATORY NO. 144:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
3 contacting **HAYES** via telephone in 2004 to ask when they would receive the rest of Book
4 1.

5 **SPECIAL INTERROGATORY NO. 145:**

6 If **YOU** contend that “other subscribers” contacted **HAYES** in writing in 2004 to
7 ask when they would receive the rest of Book 1, then **IDENTIFY** the “other subscribers.”

8 **SPECIAL INTERROGATORY NO. 146:**

9 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
10 contacting **HAYES** in writing in 2004 to ask when they would receive the rest of Book 1.

11 **SPECIAL INTERROGATORY NO. 147:**

12 If **YOU** contend that “other subscribers” contacted **HAYES** in person in 2004 to ask
13 when they would receive the rest of Book 1, then **IDENTIFY** the “other subscribers.”

14 **SPECIAL INTERROGATORY NO. 148:**

15 If **YOU** contend that “other subscribers” contacted **HAYES** in person in 2004 to ask
16 when they would receive the rest of Book 1, then state the dates of all such in person
17 contacts.

18 **SPECIAL INTERROGATORY NO. 149:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
20 contacting **HAYES** in person in 2004 to ask when they would receive the rest of Book 1.

21 **SPECIAL INTERROGATORY NO. 150:**

22 If **YOU** contend that “other subscribers” contacted **HAYES** via telephone in 2005
23 to ask when they would receive the rest of Book 1, then state the dates of all such
24 telephone calls.

25 **SPECIAL INTERROGATORY NO. 151:**

26 If **YOU** contend that “other subscribers” contacted **HAYES** via telephone in 2005
27 to ask when they would receive the rest of Book 1, then **IDENTIFY** the “other

28

1 subscribers.”

2 **SPECIAL INTERROGATORY NO. 152:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
4 contacting **HAYES** via telephone in 2005 to ask when they would receive the rest of Book
5 1.

6 **SPECIAL INTERROGATORY NO. 153:**

7 If **YOU** contend that “other subscribers” contacted **HAYES** in writing in 2005 to
8 ask when they would receive the rest of Book 1, then **IDENTIFY** the “other subscribers.”

9 **SPECIAL INTERROGATORY NO. 154:**

10 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
11 contacting **HAYES** in writing in 2005 to ask when they would receive the rest of Book 1.

12 **SPECIAL INTERROGATORY NO. 155:**

13 If **YOU** contend that “other subscribers” contacted **HAYES** in person in 2005 to ask
14 when they would receive the rest of Book 1, then **IDENTIFY** the “other subscribers.”

15 **SPECIAL INTERROGATORY NO. 156:**

16 If **YOU** contend that “other subscribers” contacted **HAYES** in person in 2005 to ask
17 when they would receive the rest of Book 1, then state the dates of all such in person
18 contacts.

19 **SPECIAL INTERROGATORY NO. 157:**

20 Identify all **DOCUMENTS** that refer, relate or pertain to “other subscribers”
21 contacting **HAYES** in person in 2005 to ask when they would receive the rest of Book 1.

22 **SPECIAL INTERROGATORY NO. 158:**

23 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
24 **COMPLAINT** that “[c]ontinuously, since **YOU** first made inquiry about the publication
25 of the Book in 2004, **HAYES** refused to communicate to **YOU**, or to any Subscriber, what
26 efforts he had taken to publish the remaining volumes of Book 1 or to account for the
27 expenditure of trust funds.”

28

1 **SPECIAL INTERROGATORY NO. 159:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 26 of the **COMPLAINT** that “[c]ontinuously, since **YOU** first made inquiry
4 about the publication of the Book in 2004, **HAYES** refused to communicate to **YOU**, or to
5 any Subscriber, what efforts he had taken to publish the remaining volumes of Book 1 or to
6 account for the expenditure of trust funds.”

7 **SPECIAL INTERROGATORY NO. 160:**

8 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
9 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that “[c]ontinuously, since
10 **YOU** first made inquiry about the publication of the Book in 2004, **HAYES** refused to
11 communicate to **YOU**, or to any Subscriber, what efforts he had taken to publish the
12 remaining volumes of Book 1 or to account for the expenditure of trust funds.”

13 **SPECIAL INTERROGATORY NO. 161:**

14 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
15 **COMPLAINT** that **HAYES** denied having any duty or obligation to publish the remaining
16 volumes of Book 1 to Subscribers.

17 **SPECIAL INTERROGATORY NO. 162:**

18 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
19 paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or obligation to
20 publish the remaining volumes of Book 1 to Subscribers.

21 **SPECIAL INTERROGATORY NO. 163:**

22 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
23 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** denied having
24 any duty or obligation to publish the remaining volumes of Book 1 to Subscribers.

25 **SPECIAL INTERROGATORY NO. 164:**

26 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
27 **COMPLAINT** that **HAYES** refused to advise plaintiffs of what steps have been or will be

1 taken "to fulfill the balance of the contract."

2 **SPECIAL INTERROGATORY NO. 165:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
4 paragraph 26 of the **COMPLAINT** that **HAYES** refused to advise plaintiffs of what steps
5 have been or will be taken "to fulfill the balance of the contract."

6 **SPECIAL INTERROGATORY NO. 166:**

7 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
8 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** refused to advise
9 plaintiffs of what steps have been or will be taken "to fulfill the balance of the contract."

10 **SPECIAL INTERROGATORY NO. 167:**

11 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
12 **COMPLAINT** that **HAYES** denied having any duty or obligation to account to Plaintiffs
13 for the assets of the **TUSPCO TRUST**.

14 **SPECIAL INTERROGATORY NO. 168:**

15 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
16 paragraph in paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or
17 obligation to account to Plaintiffs for the assets of the **TUSPCO TRUST**.

18 **SPECIAL INTERROGATORY NO. 169:**

19 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
20 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** denied having
21 any duty or obligation to account to Plaintiffs for the assets of the **TUSPCO TRUST**.

22 **SPECIAL INTERROGATORY NO. 170:**

23 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
24 **COMPLAINT** that **HAYES** denied having any duty or obligation to account to Plaintiffs
25 for the assets of the **TUSPCO**.

26 **SPECIAL INTERROGATORY NO. 171:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
28

1 paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or obligation to
2 account to Plaintiffs for the assets of the **TUSPCO**.

3 **SPECIAL INTERROGATORY NO. 172:**

4 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
5 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** denied having
6 any duty or obligation to account to Plaintiffs for the assets of the **TUSPCO**.

7 **SPECIAL INTERROGATORY NO. 173:**

8 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 27 of the
9 **COMPLAINT** that the lectures of course V-201 are "capable" of being published in the
10 same format as Volume 1 of Book 1 and have been or easily could be transferred to
11 compact disc.

12 **SPECIAL INTERROGATORY NO. 174:**

13 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
14 paragraph 27 of the **COMPLAINT** that the lectures of course V-201 are "capable" of
15 being published in the same format as Volume 1 of Book 1 and have been or easily could
16 be transferred to compact disc.

17 **SPECIAL INTERROGATORY NO. 175:**

18 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
19 to **YOUR** allegation in paragraph 27 of the **COMPLAINT** that the lectures of course V-
20 201 are "capable" of being published in the same format as Volume 1 of Book 1 and have
21 been or easily could be transferred to compact disc.

22 **SPECIAL INTERROGATORY NO. 176:**

23 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 28 of the
24 **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES** account for the
25 assets of the **TUSPCO TRUST**.

26 **SPECIAL INTERROGATORY NO. 177:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
28

1 paragraph 28 of the COMPLAINT that Plaintiffs have repeatedly requested that HAYES
2 account for the assets of the TUSPCO TRUST.

3 **SPECIAL INTERROGATORY NO. 178:**

4 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
5 to YOUR allegation in paragraph 28 of the COMPLAINT that Plaintiffs have repeatedly
6 requested that HAYES account for the assets of the TUSPCO TRUST.

7 **SPECIAL INTERROGATORY NO. 179:**

8 State all facts that refer, relate or pertain to YOUR allegation in paragraph 28 of the
9 COMPLAINT that Plaintiffs have repeatedly requested that HAYES account for the
10 assets of the TUSPCO.

11 **SPECIAL INTERROGATORY NO. 180:**

12 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
13 paragraph 28 of the COMPLAINT that Plaintiffs have repeatedly requested that HAYES
14 account for the assets of the TUSPCO.

15 **SPECIAL INTERROGATORY NO. 181:**

16 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
17 to YOUR allegation in paragraph 28 of the COMPLAINT that Plaintiffs have repeatedly
18 requested that HAYES account for the assets of the TUSPCO.

19 **SPECIAL INTERROGATORY NO. 182:**

20 If YOU contend in paragraph 43 of the COMPLAINT that HAYES "breached" the
21 Subscription Agreement, state with specificity how HAYES breached the agreement.

22 **SPECIAL INTERROGATORY NO. 183:**

23 Identify all DOCUMENTS that refer, relate or pertain to how HAYES "breached"
24 the Subscription Agreement.

25 **SPECIAL INTERROGATORY NO. 184:**

26 IDENTIFY all PERSONS with knowledge of how HAYES "breached" the
27 Subscription Agreement.

28

1 **SPECIAL INTERROGATORY NO. 185:**

2 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
3 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets in the
4 **TUSPCO TRUST**.

5 **SPECIAL INTERROGATORY NO. 186:**

6 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
7 **HAYES** has an obligation to account to plaintiffs for the assets in the **TUSPCO TRUST**.

8 **SPECIAL INTERROGATORY NO. 187:**

9 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
10 to **YOUR** allegation that **HAYES** has an obligation to account to plaintiffs for the assets in
11 the **TUSPCO TRUST**.

12 **SPECIAL INTERROGATORY NO. 188:**

13 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
14 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets of
15 **TUSPCO**.

16 **SPECIAL INTERROGATORY NO. 189:**

17 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
18 **HAYES** has an obligation to account to plaintiffs for the assets fo the **TUSPCO**.

19 **SPECIAL INTERROGATORY NO. 190:**

20 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
21 to **YOUR** allegation that **HAYES** has an obligation to account to plaintiffs for the assets of
22 **TUSPCO**.

23 **SPECIAL INTERROGATORY NO. 191:**

24 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
25 **COMPLAINT** that Defendants have an obligation to advise **YOU** of the progress, if any,
26 of efforts to fulfill **TUSPCO**'s obligations under the agreement.

27
28

1 **SPECIAL INTERROGATORY NO. 192:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 43 of the **COMPLAINT** that Defendants have an obligation to advise **YOU** of
4 the progress, if any, of efforts to fulfill **TUSPCO's** obligations under the agreement.

5 **SPECIAL INTERROGATORY NO. 193:**

6 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
7 to **YOUR** allegation in paragraph 43 of the **COMPLAINT** that Defendants have an
8 obligation to advise **YOU** of the progress, if any, of efforts to fulfill **TUSPCO's**
9 obligations under the agreement.

10 **SPECIAL INTERROGATORY NO. 194:**

11 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
12 **COMPLAINT** that Defendants, or any one of them, have any obligation to plaintiffs to
13 "deliver the balance of Book 1."

14 **SPECIAL INTERROGATORY NO. 195:**

15 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
16 paragraph 43 of the **COMPLAINT** that Defendants, or any one of them, have any
17 obligation to plaintiffs to "deliver the balance of Book 1."

18 **SPECIAL INTERROGATORY NO. 196:**

19 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
20 to **YOUR** allegation in paragraph 43 of the **COMPLAINT** that Defendants, or any one of
21 them, have any obligation to plaintiffs to "deliver the balance of Book 1."

22 **SPECIAL INTERROGATORY NO. 197:**

23 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
24 **COMPLAINT** that Defendants, or any one of them, have any obligation to **YOU** to
25 "refund any amount."

26 **SPECIAL INTERROGATORY NO. 198:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
28

1 paragraph 43 of the **COMPLAINT** that Defendants, or any one of them, have any
2 obligation to **YOU** to “refund any amount.”

3 **SPECIAL INTERROGATORY NO. 199:**

4 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
5 to **YOUR** allegation in paragraph 43 of the **COMPLAINT** that Defendants, or any one of
6 them, have any obligation to **YOU** to “refund any amount.”

7 **SPECIAL INTERROGATORY NO. 200:**

8 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
9 **COMPLAINT** that “[a]t all relevant times, a fiduciary relationship existed between
10 Plaintiffs” and **HAYES**.

11 **SPECIAL INTERROGATORY NO. 201:**

12 State the date(s) that **YOU** contend that a fiduciary relationship existed between
13 **YOU** and **HAYES**.

14 **SPECIAL INTERROGATORY NO. 202:**

15 Identify all **DOCUMENTS** that reflect a fiduciary relationship between **YOU** and
16 **HAYES**.

17 **SPECIAL INTERROGATORY NO. 203:**

18 **IDENTIFY** all **PERSONS** with knowledge of the date(s) that a fiduciary
19 relationship existed between **YOU** and **HAYES**.

20 **SPECIAL INTERROGATORY NO. 204:**

21 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
22 **COMPLAINT** that **HAYES** “voluntarily accepted the Plaintiffs’ trust and confidence.”

23 **SPECIAL INTERROGATORY NO. 205:**

24 State the date that **YOU** contend **HAYES** “voluntarily accepted the Plaintiffs’ trust
25 and confidence.”

26 **SPECIAL INTERROGATORY NO. 206:**

27 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
28

1 paragraph 46 of the COMPLAINT that HAYES “voluntarily accepted the Plaintiffs’ trust
2 and confidence.”

3 **SPECIAL INTERROGATORY NO. 207:**

4 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
5 to YOUR allegation in paragraph 46 of the COMPLAINT that HAYES “voluntarily
6 accepted the Plaintiffs’ trust and confidence.”

7 **SPECIAL INTERROGATORY NO. 208:**

8 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
9 COMPLAINT that HAYES improperly expended funds of the TUSPCO TRUST.

10 **SPECIAL INTERROGATORY NO. 209:**

11 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
12 paragraph 47 of the COMPLAINT that HAYES improperly expended funds of the
13 TUSPCO TRUST.

14 **SPECIAL INTERROGATORY NO. 210:**

15 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
16 to YOUR allegation in paragraph 47 of the COMPLAINT that HAYES improperly
17 expended funds of the TUSPCO TRUST.

18 **SPECIAL INTERROGATORY NO. 211:**

19 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
20 COMPLAINT that HAYES improperly expended funds of TUSPCO.

21 **SPECIAL INTERROGATORY NO. 212:**

22 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
23 paragraph 47 of the COMPLAINT that HAYES improperly expended funds of TUSPCO.

24 **SPECIAL INTERROGATORY NO. 213:**

25 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
26 to YOUR allegation in paragraph 47 of the COMPLAINT that HAYES improperly
27 expended funds of TUSPCO.

28

1 **SPECIAL INTERROGATORY NO. 214:**

2 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 47 of the
3 **COMPLAINT** that **HAYES** improperly expended funds of the Natural Estate Trust.

4 **SPECIAL INTERROGATORY NO. 215:**

5 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
6 paragraph 47 of the **COMPLAINT** that **HAYES** improperly expended funds of the
7 Natural Estate Trust.

8 **SPECIAL INTERROGATORY NO. 216:**

9 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
10 the **TUSPCO TRUST**.

11 **SPECIAL INTERROGATORY NO. 217:**

12 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
13 “unauthorized recipients” received funds from the **TUSPCO TRUST**.

14 **SPECIAL INTERROGATORY NO. 218:**

15 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
16 **TUSPCO**.

17 **SPECIAL INTERROGATORY NO. 219:**

18 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
19 “unauthorized recipients” received funds from **TUSPCO**.

20 **SPECIAL INTERROGATORY NO. 220:**

21 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
22 the Natural Estate Trust.

23 **SPECIAL INTERROGATORY NO. 221:**

24 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
25 “unauthorized recipients” received funds from the Natural Estate Trust.

26 **SPECIAL INTERROGATORY NO. 222:**

27 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 48 of the
28

1 COMPLAINT that HAYES should be adjudged individually liable to Plaintiffs.

2 SPECIAL INTERROGATORY NO. 223:

3 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
4 HAYES should be adjudged individually liable to Plaintiffs.

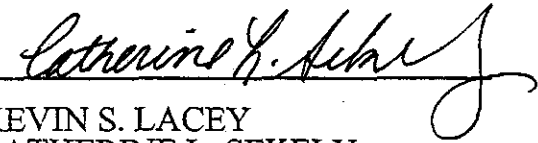
5 SPECIAL INTERROGATORY NO. 224:

6 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
7 to YOUR allegation that HAYES should be adjudged individually liable to Plaintiffs.

8 DATED: November 17, 2006

LACEY, DUNN & DO
A Professional Corporation

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 

KEVIN S. LACEY
CATHERINE L. SEKELY
Attorneys for Defendant
Charles W. Hayes

1 DECLARATION OF CATHERINE L. SEKELY RE ADDITIONAL DISCOVERY

2 I, Catherine L. Sekely, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all the courts in the
4 State of California, and am an associate in the law firm of Lacey, Dunn & Do, A
5 Professional Corporation, attorneys for defendant Charles W. Hayes ("Mr. Hayes").

6 2. I am thoroughly familiar with the content of this file and if called to testify as
7 to the facts contained in this declaration I could, and would, testify to those facts based
8 upon my own personal knowledge.

9 3. This declaration is submitted in support of Mr. Hayes's request for additional
10 discovery.

11 4. I am propounding to plaintiff the attached set of special interrogatories.

12 5. This first set of special interrogatories will cause the total number of
13 specially prepared interrogatories propounded to plaintiff to exceed the number of specially
14 prepared interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil
15 Procedure.

16 6. This first set of specially prepared interrogatories contains a total of 224
17 specially prepared interrogatories. This will cause the total number of specially prepared
18 interrogatories served on plaintiff to exceed the number of specially prepared
19 interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil Procedure
20 by 189 interrogatories.

21 7. I have personally drafted each of the questions in this set of interrogatories.

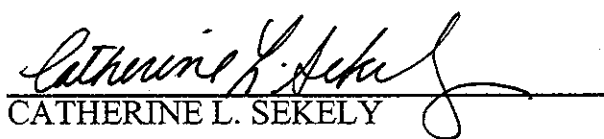
22 8. This number of questions is warranted under Section [1] of section 2030.030
23 of the Code of Civil Procedure because of the complexity of the issues raised in plaintiff's
24 complaint as well as the vast number of existing and potential factual issues in this case.
25 Further, because of the complexity and number of issues in this case, allowing Mr. Hayes
26 to submit additional discovery will greatly reduce the financial burden on all parties which
27 would necessarily result from conducting discovery by other means.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the plaintiff, or the plaintiff's attorney, to whom these specially prepared interrogatories are directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 17th day of November 2006, at Glendale, California.


CATHERINE L. SEKELY

1 JONATHAN K. GOLDEN, ESQ. (CSB 49459)
1880 Century Park East, Suite 300
2 Los Angeles, California 90067
Telephone: (310) 553-3830
3 Facsimile: (310) 553-1337

4 Attorneys for Plaintiff
5 FREDERIC G. MARKS

6
7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10
11 FREDERIC G. MARKS, JOSEPH HENTZ,)
STUART SMITH, JEAN MOLLENHAUER,)
12 ROGAN COOMBS, JOSEPH DROLL, GREG)
ROOTEN, THOMAS R. WOOD, MARIYLN)
13 WOOD and GREG STAININGER,)

14 Plaintiffs,

15 v.

16 WAYNE JOYNER and CHARLES W.
17 HAYES, individually and as Trustees of the
UNIVERSAL SCIENTIFIC PUBLICATIONS)
18 COMPANY TRUST, THE UNIVERSAL)
SCINTIFIC PUBLICATIONS COMPANY,)
19 INC., THE NATURAL ESTATE TRUST and)
20 DOES 1 through 50, inclusive,)

21 Defendants.

Case No.: BC352639

[Honorable Kenneth R. Freeman,
Department 64]

**PLAINTIFF FREDERIC G. MARKS'
RESPONSES TO SPECIAL
INTERROGATORIES**

22
23
24 PROPOUNDING PARTY: Defendant CHARLES H. HAYES

25
26 RESPONDING PARTY: Plaintiff FREDERIC G. MARKS

27 SET ONE: ONE

28 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

EX. J ✓

1 The following objections and statement are incorporated into each of the responses
2 below. Discovery is ongoing in this matter. Each of the responses contained herein is based
3 only upon such information and documents as are presently available and specifically
4 known to Plaintiff. Plaintiff discloses only those contentions which have been presently
5 formulated, and information in his possession which is not privileged.

6 Further discovery, independent investigation, legal research and analysis may reveal
7 additional facts, add meaning to known facts, and establish entirely new factual conclusions
8 and legal contentions, all of which may lead to substantial additions to, changes in and
9 variations from the statement of contentions. The following responses are given without
10 prejudice to Plaintiff's right to produce evidence of any subsequently discovered fact or
11 facts which Plaintiff may discover or recall. Plaintiff reserves the right to change any and all
12 responses set forth herein as additional facts are established, analysis is performed, legal
13 research is completed and contentions are made. The responses set forth below are made in
14 a good faith effort to supply as much factual information and specification of legal
15 contention as is presently known, but are in no way to prejudice Plaintiff in relation to
16 further discovery, research and analysis.

17 Plaintiff further objects to each of the Special Interrogatories (Set One), to the extent
18 that it seeks information protected by the attorney-client privilege or attorney work product
19 rule. Nothing contained in Plaintiff's responses is intended to be nor should be construed to
20 be a waiver of any of these privileges.

21
22
23
24
25
26
27
28

STATEMENT OF FACTS RESPONSIVE TO
MULTIPLE INTERROGATORIES

Set forth below in paragraphs numbered 1 through 14 are statements of facts which
will be referred to in response to the specific interrogatories. The following abbreviations
have the same meaning as in the pleadings on file herein: AJG, TUSPCO, TUSPCO
TRUST, TNET. In addition the following abbreviations are used herein: for plaintiff
Frederic G. Marks (FGM); for Suzanne J. Galambos (SJG); for subscribers under the PPSA
(subscribers); for defendant Joyner (Joyner); for defendant Hayes (Hayes)

1 **INTRODUCTORY PARAGRAPH NO. 1: FGM DEALINGS WITH THE GALAMBOS'**

2 FROM 1968 TO 1989. From late 1968 to around July 5, 1989 FGM served as attorney for
3 The Galambos' and for their companies. During some of that period FGM may have served
4 as an officer and director of some of the Galambos' companies. In or about June of 1989
5 FGM informed the Galambos' that he (FGM) was withdrawing from the practice of law and
6 closing his law office effective July 31, 1989. Consequently AJG requested that FGM
7 deliver to AJG all (100%) of the files, documents and records of AJG, SJG and the
8 Galambos companies that FGM had in his possession, keeping no copies of such files,
9 documents and records. FGM complied with this request by personally delivering all such
10 files, documents and records to the Galambos' at their residence in Orange County on or
11 about July 5, 1989. Inadvertently FGM included in the documents delivered to the
12 Galambos' FGM's personal copy of the PPSA by which FGM had subscribed to four (4) of
13 the Galambos books. Accordingly, FGM believes that his personal copy of the PPSA is in
14 the possession of defendants Joyner and Hayes. The documents and files delivered to AJG
15 included the corporate minute books of the Galambos companies including Articles of
16 Incorporation, Bylaws, Minutes of meetings of shareholders and directors, Governmental
17 filings reporting identity of directors, certain officers, and agent for service of process, etc.

17 **INTRODUCTORY PARAGRAPH NO. 2: LANGE DEFALCATION.** In 1984 AJG

18 informed FGM that AJG had received a letter from Mitchell J. Lange (Lange) admitting to
19 embezzling significant assets from AJG, SJG, their companies and separate accounts (trust
20 funds) set up to hold advance payment by purchasers of books to be published by AJG
21 through TUSPCO and advance payments for courses to be given by AJG through his
22 company The Universal Corporation (TUC) under the business name the Free Enterprise
23 Institute (FEI). At the request of AJG, FGM communicated this information to the District
24 Attorney for the County of San Diego. Subsequently Lange was charged with theft, pled
25 guilty and was sentenced to state prison and ordered to make restitution. Also in 1984, at the
26 request of AJG, FGM filed a civil lawsuit against Lange and various other individuals and
27 entities seeking restitution of the embezzled funds and assets. A copy of the complaint in
28 that civil suit is attached to the Requests for Admissions propounded to FGM by defendant
Hayes. FGM has no knowledge or recollection whether anything was ever recovered from

1 Lange by AJG and his companies before or after termination of his legal services to AJG
2 and his companies. All records and documents regarding the actions taken against Lange
3 were in the files and records FGM delivered to AJG on or about July 5, 1989.

4 **INTRODUCTORY PARAGRAPH NO. 3:** COMMUNICATIONS BETWEEN FGM
5 AND HAYES ABOUT REMOVAL OF WILLIAM MARTIN AS EDITOR AND
6 BACKUP TRUSTEE. In or about 1998 defendant Hayes contacted FGM by telephone
7 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
8 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
9 FGM by reason of Martin's written and verbal statements showing he had beliefs about
10 world history and specifically World War II that were inimical to those of the Galambos and
11 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
12 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
13 Martin from any position of control or authority over the ideas of AJG as set forth in his
14 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
15 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
16 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
17 every intention of publishing the entirety of the AJG book including an edited transcript of
18 course V-201 edited by someone other than Martin.

19 **INTRODUCTORY PARAGRAPH NO. 4:** DEFENDANTS' HIRING OF EDITORS OF
20 AJG BOOK. It is the understanding of Plaintiff that after removal of Martin as editor, Joyner
21 and Hayes retained the services of Peter Sisco as editor of Volume One of the book, and
22 thereafter retained the services of Peter Giansante as editor of the remaining volumes
23 consisting of the V-201 lectures.

24 **INTRODUCTORY PARAGRAPH NO. 5:** 1999 OPEN HOUSE FOR DELIVERY OF
25 VOLUME ONE OF THE AJG BOOK. As recorded in documents previously provided to
26 legal counsel for both individual defendants in response to the request for production of
27 documents by defendant Joyner, on April 17, 1999 Hayes and Joyner held an Open House
28 for subscribers and all FEI graduates at Commerce, California to distribute and celebrate the

1 publication of Book One, Volume One by AJG. In the notices of the Open House dated
2 1999, April 1 and again April 11, defendants Hayes and Joyner stated that the remainder of
3 the volumes (V-201) will be distributed as each volume is completed. FGM attended the
4 Open House of April 17, took delivery of four hard bound copies of Volume One, and
5 bought several additional paper bound copies of Volume One. It appeared that well over
6 fifty and probably as many as one hundred people attended the Open House including the
7 following: Joseph Hentz, Stuart Smith, Richard Curtin, Wayne Joyner, Charles Hayes, Peter
8 Sisco (editor of Volume One) and other FEI graduates and subscribers known to FGM but
9 whose names FGM can not presently recall. At the Open House defendant Joyner reiterated
10 that the remaining volumes of the book were in process of editing for printing and
11 distribution as expeditiously as feasible. Defendant Hayes either joined in such reiteration or
12 at least did not contradict it. According to Stuart Smith, defendant Joyner or perhaps Joyner
13 and Hayes asked Mr. Smith and Mr. Smith agreed to sit at a table and take orders and
14 advance payments for additional copies of the remaining volumes of the Book (V-201).

14 **INTRODUCTORY PARAGRAPH NO. 6:** COMMUNICATIONS BETWEEN FGM
15 AND HAYES ABOUT PUBLICATION OF AJG book. In or about 1999, and after the
16 above-mentioned Open House (item 5 above), defendant Hayes telephoned FGM to inform
17 FGM that Volume 1 of the AJG book was being offered by TUSPCO on Amazon.com, the
18 internet book seller. Hayes suggested that FGM write a book review of Volume 1 to be
19 posted on Amazon.com. In that phone conversation Hayes did not say to FGM anything
20 about any change in the previously announced plans of TUSPCO, Joyner and Hayes to
21 publish V-201.

22 **INTRODUCTORY PARAGRAPH NO. 7:** AJG BOOK OFFERING ON
23 AMAZON.COM. From at least as early as the year 2002 (and presumably since 1999 per
24 statement 6 above) until after the filing of this lawsuit, Volume one of the AJG book was
25 being offered on Amazon.com. In 2006 the Amazon.com website posting for Volume One
26 included a book description entitled "from the publisher" as well several reviews by readers
27 dated between 2002 and 2005 inclusive.
28

1 **INTRODUCTORY PARAGRAPH NO. 8:** COMMUNICATIONS BETWEEN JACK

2 HURWITZ AND HAYES ABOUT PUBLICATION OF V-201. In or about 2004 Jack H.
3 Hurwitz (Hurwitz), another FEI graduate and subscriber informed FGM that he had been in
4 contact with Hayes regarding the publication of the remaining volumes of the book (V-201).
5 Hurwitz told FGM that Hayes said editors were working on an abridged version of the V-
6 201 lectures, but when such abridged version was published Hayes and Joyner would also
7 deliver simultaneously to subscribers a complete transcript of Course V-201.

8 **INTRODUCTORY PARAGRAPH NO. 9:** COMMUNICATIONS BETWEEN FGM

9 AND JOYNER. By mid-2004, having heard nothing more about the efforts of defendants
10 Hayes and Joyner to publish the remaining volumes (V-201), FGM called Joyner on the
11 phone to ask for a status report. Joyner said he was not free to discuss the matter on the
12 phone, but would meet with FGM to discuss the status of publication of V-201 if, and only
13 if, FGM signed an agreement not to disclose the content of the discussions at such meeting.
14 FGM did not so agree at that time, or at any time. On or about July 8, 2004 FGM met with
15 Joyner at his office. In that meeting Joyner stated he could not discuss the status of
16 publication of V-201 because of a non-disclosure agreement to which he was a party.
17 Joyner added, however, that due to the long and special association of FGM with the
18 Galambos' that Joyner would be willing to disclose the status of publication of V-201
19 if two conditions were met: Charles Hayes would attend the meeting and FGM would
20 sign an agreement not to disclose to anyone the information to be imparted by Joyner
21 and Hayes at the meeting. FGM agreed to the participation of Hayes at the meeting,
22 but did not agree to the non-disclosure requirement. Written correspondence between
23 FGM, Joyner and Hayes on these matters followed in 2004 and 2005 has been
24 supplied to defendants' legal counsel.

25 **INTRODUCTORY PARAGRAPH NO. 10:** THE TUSPCO WEBSITE. A TUSPCO

26 website was in existence from at least 2004 onward (and presumably from 1999
27 onward) until after the filing of the complaint in this lawsuit. The TUSPCO website
28

1 included an offering of not only volume 1 (V-50), but also an offer to sell the
2 remaining volumes (V-201) in advance of publication.

3 **INTRODUCTORY PARAGRAPH NO. 11:** FGM COMMUNICATION WITH

4 OTHER SUBSCRIBERS. In 2004 and 2005 FGM wrote to defendant Joyner with
5 copies to defendant Hayes regarding my concerns about the V-201 book. The letters
6 FGM wrote and letters from defendant Joyner have been supplied to counsel for
7 defendants Joyner and Hayes in response to the request of defendant Joyner for
8 production of documents. FGM has received no response to his letters to Joyner and
9 Hayes. Beginning in or around July 2004 FGM spoke to other subscribers about my
10 concerns. FGM sent a letter dated December 1, 2005 about those concerns to other
11 subscribers, and enclosed therein a copy of a letter he had written to defendant Joyner
12 dated September 15, 2005. Those two letters are included in the documents supplied
13 to counsel for defendants in response to the request of defendant Joyner for
14 production of documents. The subscribers to whom FGM spoke or sent the foregoing
15 correspondence include the remaining plaintiffs in this lawsuit, and also Richard
16 Curtin, Brian Gladish, Jack Hurwitz, Franklin Moore, Peter Ronay, James Turner,
17 David L. Wood, MD, and Charles J. Young. FGM has had no response of any kind
18 from defendants Joyner and Hayes to his letters sent to them in 2004 and 2005. Those
19 letters have been supplied to counsel for defendants Joyner and Hayes in response to
20 the request for production of documents from defendant Joyner.

21
22 **INTRODUCTORY PARAGRAPH NO. 12:** DEFENDANTS' HANDLING ASSETS

23 OF AJG, TUSPCO, etc. Plaintiff Frederic G. Marks ("Marks") has yet to obtain
24 discovery from Defendants who are sole possessors of the evidence supporting the
25 contentions in paragraph 5 of the Complaint. The contention was made upon
26 information and belief based upon the following:

- 27 1. The probable size of the assets of the estate of Mr. & Mrs. Galambos,
28 the TUSPCO TRUST, TUSPCO and The Galambos' Natural Estate

1 Trust (TNET) as of July 1989 when Marks last served as attorney for
2 Mr. and Mrs. Galambos and their companies;

- 3 2. Defendants' expenditure of monies of the Galambos' and their
4 companies for attorney's fees in dispute with William Martin;
- 5 3. Defendants' expenditure of \$8,000 per month for several years on the
6 services of an individual or individuals who were hired to edit the
7 transcripts of AJG's course V-201, and who failed to do so, but rather
8 undertook to write a book containing the editor's own version of the
9 teachings of AJG; Defendants' expenditures of monies of the Galambos'
10 and their companies for the personal benefit of Defendant Joyner,
11 specifically expenditures for Mr. Joyner's personal security in regard to
12 possible harm feared by Mr. Joyner in connection with the dispute with
13 Mr. William Martin;
- 14 4. Losses of the Galambos' estate and entity assets due to improvident
15 operations in the stock market and mutual funds by Defendant Hayes
16 with the consent of Defendant Joyner;
- 17 5. The stated intent of Hayes and Joyner to preserve the tape recordings of
18 lectures of AJG, and their failure to spend the funds necessary to
19 preserve the tape recordings;
- 20 6. The stated intent of Defendants Hayes and Joyner to preserve the
21 personal residence of Mr. & Mrs. Galambos as a Galambos museum
22 and their failure to do so as evidenced by the sale of the residence.
- 23 7. The request of defendant Hayes to Franklin Moore to produce a
24 compact disc version of Course V-201T for defendants followed by the
25 refusal of Hayes to pay for the reasonable cost of the compact disc
26 reproduction produced by Mr. Moore.
27
28

1 **INTRODUCTORY PARAGRAPH NO. 13: FORM OF PUBLICATION OF V-201.**

2 During his lifetime AJG caused the production of typewritten transcripts of his V-50
3 and V-201 lectures. From the transcript of V-50 defendants published Volume 1 of
4 the book and stated that they were working on preparation of the additional volumes
5 necessary for publication of V-201. It appears that by means of the technology
6 known as optical scanning the lecture transcripts could for some time have been
7 preserved in digital form and transferred onto a compact disc, or a CD-ROM. And it
8 also appears that in case of a CD-ROM it would be possible to record and publish in
9 digital form a typewritten transcript of the complete text of the V-201 lectures of
10 AJG at low cost.

11 **INTRODUCTORY PARAGRAPH NO. 14: WITNESSES.** Persons who have
12 knowledge of some or all of the facts above stated include defendants Joyner and
13 Hayes, plaintiffs Joe Hentz and Stuart Smith, Steve Gowen, Peter Sisco, James
14 Turner, Franklin Moore and Peter Giansante. Except for Peter Sisco, whose current
15 address is unknown to FGM, the last known address and telephone number for these
16 individuals appears on the list of FEI students and book subscribers provided to
17 defendants in response to the Request for Production of Documents by defendant
18 Joyner, copies of which were supplied to legal counsel for defendant Hayes.

19
20 **SPECIFIC RESPONSES TO SPECIAL INTERROGATORIES**

21 **ONE THROUGH 224**

22 **RESPONSE TO INTERROGATORY NO. 1:** Plaintiff does not so contend.

23
24 **RESPONSE TO INTERROGATORY NO. 2:** Plaintiff does not so contend.

25
26 **RESPONSE TO INTERROGATORY NO. 3:** See Paragraph 12 above.

27
28 **RESPONSE TO INTERROGATORY NO. 4:** See Paragraph 12 above.

1 **RESPONSE TO INTERROGATORY NO. 5:** See Paragraph 12 above.

2
3 **RESPONSE TO INTERROGATORY NO. 6:** See Paragraph 12 above.

4
5 **RESPONSE TO INTERROGATORY NO. 7:** See Paragraph 12 above.

6
7 **RESPONSE TO INTERROGATORY NO. 8:** See Paragraph 12 above.

8
9 **RESPONSE TO INTERROGATORY NO. 9:** See Paragraph 12 above.

10
11 **RESPONSE TO INTERROGATORY NO. 10:** See Paragraph 12 above.

12
13 **RESPONSE TO INTERROGATORY NO. 11:** See Paragraph 12 above.

14
15 **RESPONSE TO INTERROGATORY NO. 12:** See Paragraph 12 above.

16
17 **RESPONSE TO INTERROGATORY NO. 13:** See Paragraph 12 above.

18
19 **RESPONSE TO INTERROGATORY NO. 14:** See Paragraph 12 above.

20
21 **RESPONSE TO INTERROGATORY NO. 15:** See Paragraph 12 above.

22
23 **RESPONSE TO INTERROGATORY NO. 16:** See Paragraph 12 above.

24
25 **RESPONSE TO INTERROGATORY NO. 17:** See Paragraph 12 above.

26
27 **RESPONSE TO INTERROGATORY NO. 18:** See Paragraph 12 above.

28 **RESPONSE TO INTERROGATORY NO. 19:** See Paragraph 12 above.

1 **RESPONSE TO INTERROGATORY NO. 20:** See Paragraph 12 above.

2
3 **RESPONSE TO INTERROGATORY NO. 21:** Plaintiff objects to this
4 Interrogatory on the grounds that it is ambiguous, uncertain, overbroad, burdensome,
5 oppressive and seeks information protected by attorney-work product.
6 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will
7 state that Defendant HAYES, as successor trustee to TUSPCO Trust and Officer of
8 TUSPCO as well as the NET, has assumed responsibility for the acts or omissions of
9 each of those entities and, among other things, has assumed the responsibility for
10 accounting to the beneficiaries for funds delivered to TUSPCO and the TUSPCO
11 Trust. Pursuant to the PPSA.

12 **RESPONSE TO INTERROGATORY NO. 22:** See documents previously
13 provided to defense counsel in response to Document Request by Defendant
14 JOYNER.

15
16 **RESPONSE TO INTERROGATORY NO. 23:** All parties to the PPSA including
17 but not limited to FGM, the other Plaintiffs, and the individual Defendants.

18
19 **RESPONSE TO INTERROGATORY NO. 24:** All parties to the PPSA including
20 but not limited to FGM, the other Plaintiffs, and the individual Defendants.

21
22 **RESPONSE TO INTERROGATORY NO. 25:** See introductory statements,
23 paragraphs 3 through 12, 8, 10, and 13 through 14.

24
25 **RESPONSE TO INTERROGATORY NO. 26:** See introductory statements,
26 paragraphs 3 through 12, 8, 10, and 13 through 14.
27
28

1 **RESPONSE TO INTERROGATORY NO. 27:** See introductory statements,
2 paragraphs 3 through 12, 8, 10, and 13 through 14.

3
4 **RESPONSE TO INTERROGATORY NO. 28:** See introductory statements,
5 paragraphs 3 through 12, 8, 10, and 13 through 14.

6
7 **RESPONSE TO INTERROGATORY NO. 29:** See introductory statements,
8 paragraphs 3 through 12, 8, 10, and 13 through 14.

9
10 **RESPONSE TO INTERROGATORY NO. 30:** See introductory statements,
11 paragraphs 3 through 12, 8, 10, and 13 through 14.

12
13 **RESPONSE TO INTERROGATORY NO. 31:** See introductory statements,
14 paragraphs 3 through 12, 8, 10, and 13 through 14.

15
16 **RESPONSE TO INTERROGATORY NO. 32:** See introductory statements,
17 paragraphs 3 through 12, 8, 10, and 13 through 14.

18
19 **RESPONSE TO INTERROGATORY NO. 33:** See introductory statements,
20 paragraphs 3 through 12, 8, 10, and 13 through 14.

21
22 **RESPONSE TO INTERROGATORY NO. 34:** See introductory statements,
23 paragraphs 3 through 12, 8, 10, and 13 through 14.

24
25 **RESPONSE TO INTERROGATORY NO. 35:** See introductory statements,
26 paragraphs 3 through 12, 8, 10, and 13 through 14.

27
28 **RESPONSE TO INTERROGATORY NO. 36:** See introductory statements,
paragraphs 3 through 12, 8, 10, and 13 through 14.

1 **RESPONSE TO INTERROGATORY NO. 37:** See introductory statements,
2 paragraphs 3 through 12, 8, 10, and 13 through 14.

3
4 **RESPONSE TO INTERROGATORY NO. 38:** See introductory statements,
5 paragraphs 3 through 12, 8, 10, and 13 through 14.

6
7 **RESPONSE TO INTERROGATORY NO. 39:** See introductory statements,
8 paragraphs 3 through 12, 8, 10, and 13 through 14.

9
10 **RESPONSE TO INTERROGATORY NO. 40:** See introductory statements,
11 paragraphs 3 through 12, 8, 10, and 13 through 14.

12
13 **RESPONSE TO INTERROGATORY NO. 41:** See introductory statements,
14 paragraphs 3 through 12, 8, 10, and 13 through 14.

15
16 **RESPONSE TO INTERROGATORY NO. 42:** See introductory statements,
17 paragraphs 3 through 12, 8, 10, and 13 through 14.

18
19 **RESPONSE TO INTERROGATORY NO. 43:** See introductory statements,
20 paragraphs 3 through 12, 8, 10, and 13 through 14.

21
22 **RESPONSE TO INTERROGATORY NO. 44:** See introductory statements,
23 paragraphs 3 through 12, 8, 10, and 13 through 14.

24
25 **RESPONSE TO INTERROGATORY NO. 45:** See introductory statements,
26 paragraphs 3 through 12, 8, 10, and 13 through 14.

27
28 **RESPONSE TO INTERROGATORY NO. 46:** See introductory statements,
paragraphs 3 through 12, 8, 10, and 13 through 14.

1 **RESPONSE TO INTERROGATORY NO. 47:** See introductory statements,
2 paragraphs 3 through 8, 10, and 14.

3
4 **RESPONSE TO INTERROGATORY NO. 48:** See introductory statements,
5 paragraphs 3 through 8, 10, and 14.

6
7 **RESPONSE TO INTERROGATORY NO. 49:** See introductory statements,
8 paragraphs 3 through 8, 10, and 14.

9
10 **RESPONSE TO INTERROGATORY NO. 50:** See introductory statements,
11 paragraphs 3 through 8, 10, and 14.

12
13 **RESPONSE TO INTERROGATORY NO. 51:** See introductory statements,
14 paragraphs 3 through 8, 10, and 14.

15
16 **RESPONSE TO INTERROGATORY NO. 52:** See introductory statements,
17 paragraphs 3 through 8, 10, and 14.

18
19 **RESPONSE TO INTERROGATORY NO. 53:** See introductory statements,
20 paragraphs 3 through 8, 10, and 14.

21 **RESPONSE TO INTERROGATORY NO. 54:** Because Frederic G. Marks is not
22 in possession of his personal copy of the PPSA (see introductory statement 1) he does
23 not have any document regarding the price paid. AJG and TUSPCO set the price for
24 the book as the same as the price for Course V-201 which was raised occasionally
25 over the years from the time he bought 4 books until 1978. It is Frederic G. Marks'
26 recollection that the tuition for Course V-201 was \$400.00 when most subscribers
27 entered into the PPSA in 1978 and thereafter. Since he paid for the four books before
28 1978 it is possible that the price he paid was less than \$400.00 per book.

1 **RESPONSE TO INTERROGATORY NO. 55:** Plaintiff objects to this
2 Interrogatory on the grounds that is it vague, ambiguous and falsely assumes that a
3 dollar amount could be attributed to Volume I.

4 **RESPONSE TO INTERROGATORY NO. 56:** See introductory statements,
5 paragraphs 3 through 8, 13, and 14.
6

7 **RESPONSE TO INTERROGATORY NO. 57:** See introductory statements,
8 paragraphs 3 through 8, 13, and 14.
9

10 **RESPONSE TO INTERROGATORY NO. 58:** See introductory statements,
11 paragraphs 3 through 8, 13, and 14.
12

13 **RESPONSE TO INTERROGATORY NO. 59:** See introductory statements,
14 paragraphs 3 through 8, 13, and 14.
15

16 **RESPONSE TO INTERROGATORY NO. 60:** See introductory statements,
17 paragraphs 3 through 8, 13, and 14.
18

19 **RESPONSE TO INTERROGATORY NO. 61:** See introductory statements,
20 paragraphs 3 through 8, 13, and 14.
21

22 **RESPONSE TO INTERROGATORY NO. 62:** See introductory statements,
23 paragraphs 3 through 8, 13, and 14.
24

25 **RESPONSE TO INTERROGATORY NO. 63:** See introductory statements,
26 paragraphs 3 through 8, 13, and 14.
27
28

1 **RESPONSE TO INTERROGATORY NO. 64:** See introductory statements,
2 paragraphs 3 through 8, 13, and 14.

3
4 **RESPONSE TO INTERROGATORY NO. 65:** See introductory statements,
5 paragraphs 3 through 8, 13, and 14.

6
7 **RESPONSE TO INTERROGATORY NO. 66:** See introductory statements,
8 paragraphs 3 through 8, 13, and 14.

9
10 **RESPONSE TO INTERROGATORY NO. 67:** See introductory statements,
11 paragraphs 3 through 8, 13, and 14.

12
13 **RESPONSE TO INTERROGATORY NO. 68:** See introductory statements,
14 paragraphs 3 through 8, 13, and 14.

15 **RESPONSE TO INTERROGATORY NO. 69:** See introductory statement 10.

16 The persons with knowledge of the representations on the website include those
17 individuals (unknown to FGM) who constructed it (presumably under the direction of
18 defendants Joyner and Hayes), defendants Joyner and Hayes, and everyone who
19 examined the website which was available for the public to find via an Internet
20 search engine.

21
22 **RESPONSE TO INTERROGATORY NO. 70:** See introductory statement 10.

23 The persons with knowledge of the representations on the website include those
24 individuals (unknown to FGM) who constructed it (presumably under the direction of
25 defendants Joyner and Hayes), defendants Joyner and Hayes, and everyone who
26 examined the website which was available for the public to find via an Internet
27 search engine.
28

1 **RESPONSE TO INTERROGATORY NO. 71:** See introductory statement 10.

2 The persons with knowledge of the representations on the website include those
3 individuals (unknown to FGM) who constructed it (presumably under the direction of
4 defendants Joyner and Hayes), defendants Joyner and Hayes, and everyone who
5 examined the website which was available for the public to find via an Internet
6 search engine.

7
8 **RESPONSE TO INTERROGATORY NO. 72:** See introductory statement 10.

9 The persons with knowledge of the representations on the website include those
10 individuals (unknown to FGM) who constructed it (presumably under the direction of
11 defendants Joyner and Hayes), defendants Joyner and Hayes, and everyone who
12 examined the website which was available for the public to find via an Internet
13 search engine.

14
15 **RESPONSE TO INTERROGATORY NO. 73:** See introductory statement 10.

16 The persons with knowledge of the representations on the website include those
17 individuals (unknown to FGM) who constructed it (presumably under the direction of
18 defendants Joyner and Hayes), defendants Joyner and Hayes, and everyone who
19 examined the website which was available for the public to find via an Internet
20 search engine.

21
22 **RESPONSE TO INTERROGATORY NO. 74:** See introductory statements,
23 paragraph 1.

24
25 **RESPONSE TO INTERROGATORY NO. 75:** See introductory statements,
26 paragraph 1.
27
28

1 **RESPONSE TO INTERROGATORY NO. 76:** See introductory statements,
2 paragraph 1.

3
4 **RESPONSE TO INTERROGATORY NO. 77:** See introductory statements,
5 paragraph 1.

6
7 **RESPONSE TO INTERROGATORY NO. 78:** See introductory statements,
8 paragraph 1.

9
10 **RESPONSE TO INTERROGATORY NO. 79:** See introductory statements,
11 paragraph 1.

12
13 **RESPONSE TO INTERROGATORY NO. 80:** See introductory statements,
14 paragraph 1.

15
16 **RESPONSE TO INTERROGATORY NO. 81:** See introductory statements,
17 paragraph 1.

18
19 **RESPONSE TO INTERROGATORY NO. 82:** See introductory statements,
20 paragraph 1.

21
22 **RESPONSE TO INTERROGATORY NO. 83:** See introductory statements,
23 paragraph 1.

24
25 **RESPONSE TO INTERROGATORY NO. 84:** See introductory statements,
26 paragraph 1.

27
28 **RESPONSE TO INTERROGATORY NO. 85:** See introductory statements,
paragraph 1.

1 **RESPONSE TO INTERROGATORY NO. 86:** See introductory statements,
2 paragraph 1.

3
4 **RESPONSE TO INTERROGATORY NO. 87:** See introductory statements,
5 paragraph 1.

6
7 **RESPONSE TO INTERROGATORY NO. 88:** See introductory statements,
8 paragraph 1.

9
10 **RESPONSE TO INTERROGATORY NO. 89:** See introductory statements,
11 paragraph 1.

12
13 **RESPONSE TO INTERROGATORY NO. 90:** See introductory statements,
14 paragraph 1.

15
16 **RESPONSE TO INTERROGATORY NO. 91:** See introductory statements,
17 paragraph 1.

18
19 **RESPONSE TO INTERROGATORY NO. 92:** See introductory statements,
20 paragraph 1.

21
22 **RESPONSE TO INTERROGATORY NO. 93:** See introductory statements,
23 paragraph 1.

24
25 **RESPONSE TO INTERROGATORY NO. 94:** See introductory statements,
26 paragraph 1.

27
28 **RESPONSE TO INTERROGATORY NO. 95:** See introductory statements,
paragraph 1.

1 **RESPONSE TO INTERROGATORY NO. 96:** See introductory statements,
2 paragraph 1.

3
4 **RESPONSE TO INTERROGATORY NO. 97:** See introductory statements,
5 paragraph 1.

6
7 **RESPONSE TO INTERROGATORY NO. 98:** See introductory statements,
8 paragraph 1.

9
10 **RESPONSE TO INTERROGATORY NO. 99:** See introductory statements;
11 paragraph 1.

12
13 **RESPONSE TO INTERROGATORY NO. 100:** See introductory statements,
14 paragraph 1.

15 **RESPONSE TO INTERROGATORY NO. 101:** See introductory statement 2.
16 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO
17 TRUST after the embezzlement of Lange and no recollection of anything else
18 involving any revision of that trust. Frederic G. Marks has no knowledge of whether
19 assets remained in the TUSPCO TRUST after Lange's embezzlement or if funds
20 were deposited therein subsequently.

21
22 **RESPONSE TO INTERROGATORY NO. 102:** See introductory statement 2.
23 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
24 after the embezzlement of Lange and no recollection of anything else involving any
25 revision of that trust. Frederic G. Marks has no knowledge of whether assets
26 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
27 deposited therein subsequently.
28

1 **RESPONSE TO INTERROGATORY NO. 103:** See introductory statement 2.

2 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
3 after the embezzlement of Lange and no recollection of anything else involving any
4 revision of that trust. Frederic G. Marks has no knowledge of whether assets
5 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
6 deposited therein subsequently.

7
8 **RESPONSE TO INTERROGATORY NO. 104:** See introductory statement 2.

9 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
10 after the embezzlement of Lange and no recollection of anything else involving any
11 revision of that trust. Frederic G. Marks has no knowledge of whether assets
12 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
13 deposited therein subsequently.

14
15 **RESPONSE TO INTERROGATORY NO. 105:** See introductory statement 2.

16 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
17 after the embezzlement of Lange and no recollection of anything else involving any
18 revision of that trust. Frederic G. Marks has no knowledge of whether assets
19 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
20 deposited therein subsequently.

21
22 **RESPONSE TO INTERROGATORY NO. 106:** See introductory statement 2.

23 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
24 after the embezzlement of Lange and no recollection of anything else involving any
25 revision of that trust. Frederic G. Marks has no knowledge of whether assets
26 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
27 deposited therein subsequently.

1 **RESPONSE TO INTERROGATORY NO. 107:** See introductory statement 2.

2 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
3 after the embezzlement of Lange and no recollection of anything else involving any
4 revision of that trust. Frederic G. Marks has no knowledge of whether assets
5 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
6 deposited therein subsequently.

7
8 **RESPONSE TO INTERROGATORY NO. 108:** See introductory statement 2.

9 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
10 after the embezzlement of Lange and no recollection of anything else involving any
11 revision of that trust. Frederic G. Marks has no knowledge of whether assets
12 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
13 deposited therein subsequently.

14
15 **RESPONSE TO INTERROGATORY NO. 109:** See introductory statement 2.

16 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
17 after the embezzlement of Lange and no recollection of anything else involving any
18 revision of that trust. Frederic G. Marks has no knowledge of whether assets
19 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
20 deposited therein subsequently.

21
22 **RESPONSE TO INTERROGATORY NO. 110:** See introductory statement 2.

23 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
24 after the embezzlement of Lange and no recollection of anything else involving any
25 revision of that trust. Frederic G. Marks has no knowledge of whether assets
26 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
27 deposited therein subsequently.

1 **RESPONSE TO INTERROGATORY NO. 111:** See introductory statement 2.

2 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
3 after the embezzlement of Lange and no recollection of anything else involving any
4 revision of that trust. Frederic G. Marks has no knowledge of whether assets
5 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
6 deposited therein subsequently.

7
8 **RESPONSE TO INTERROGATORY NO. 112:** See introductory statement 2.

9 Additionally, Frederic G. Marks has no recollection of revising the TUSPCO TRUST
10 after the embezzlement of Lange and no recollection of anything else involving any
11 revision of that trust. Frederic G. Marks has no knowledge of whether assets
12 remained in the TUSPCO TRUST after Lange's embezzlement or if funds were
13 deposited therein subsequently.

14
15 **RESPONSE TO INTERROGATORY NO. 113:** See introductory statements,
16 paragraph 11.

17
18 **RESPONSE TO INTERROGATORY NO. 114:** See introductory statements,
19 paragraph 11.

20
21 **RESPONSE TO INTERROGATORY NO. 115:** See introductory statements,
22 paragraph 11.

23
24 **RESPONSE TO INTERROGATORY NO. 116:** See introductory statements,
25 paragraph 11.

26
27 **RESPONSE TO INTERROGATORY NO. 117:** See introductory statements,
28 paragraph 11.

1 **RESPONSE TO INTERROGATORY NO. 118:** See introductory statements,
2 paragraph 11.

3
4 **RESPONSE TO INTERROGATORY NO. 119:** See introductory statements,
5 paragraph 11.

6
7 **RESPONSE TO INTERROGATORY NO. 120:** See introductory statements,
8 paragraph 11.

9
10 **RESPONSE TO INTERROGATORY NO. 121:** See introductory statements,
11 paragraph 11.

12
13 **RESPONSE TO INTERROGATORY NO. 122:** See introductory statements,
14 paragraph 11.

15 **RESPONSE TO INTERROGATORY NO. 123:** Frederic G. Marks did not
16 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
17 defendant Joyner. Those letters have been supplied to counsel for defendants in
18 response to the request of defendant Joyner for production of documents.

19
20 **RESPONSE TO INTERROGATORY NO. 124:**

21 Frederic G. Marks did not communicate with defendant Hayes in 2004 or 2005
22 except via copies of letters to defendant Joyner. Those letters have been supplied to
23 counsel for defendants in response to the request of defendant Joyner for production
24 of documents.

25
26 **RESPONSE TO INTERROGATORY NO. 125:** Frederic G. Marks did not
27 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
28

1 defendant Joyner. Those letters have been supplied to counsel for defendants in
2 response to the request of defendant Joyner for production of documents.

3
4 **RESPONSE TO INTERROGATORY NO. 126:** Frederic G. Marks did not
5 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
6 defendant Joyner. Those letters have been supplied to counsel for defendants in
7 response to the request of defendant Joyner for production of documents.

8
9 **RESPONSE TO INTERROGATORY NO. 127:** Frederic G. Marks did not
10 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
11 defendant Joyner. Those letters have been supplied to counsel for defendants in
12 response to the request of defendant Joyner for production of documents.

13
14 **RESPONSE TO INTERROGATORY NO. 128:** Frederic G. Marks did not
15 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
16 defendant Joyner. Those letters have been supplied to counsel for defendants in
17 response to the request of defendant Joyner for production of documents.

18
19 **RESPONSE TO INTERROGATORY NO. 129:** Frederic G. Marks did not
20 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
21 defendant Joyner. Those letters have been supplied to counsel for defendants in
22 response to the request of defendant Joyner for production of documents.

23
24 **RESPONSE TO INTERROGATORY NO. 130:** Frederic G. Marks did not
25 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
26 defendant Joyner. Those letters have been supplied to counsel for defendants in
27 response to the request of defendant Joyner for production of documents.
28

1 **RESPONSE TO INTERROGATORY NO. 131:** Frederic G. Marks did not
2 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
3 defendant Joyner. Those letters have been supplied to counsel for defendants in
4 response to the request of defendant Joyner for production of documents.
5

6 **RESPONSE TO INTERROGATORY NO. 132:** Frederic G. Marks did not
7 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
8 defendant Joyner. Those letters have been supplied to counsel for defendants in
9 response to the request of defendant Joyner for production of documents.
10

11 **RESPONSE TO INTERROGATORY NO. 133:** Frederic G. Marks did not
12 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
13 defendant Joyner. Those letters have been supplied to counsel for defendants in
14 response to the request of defendant Joyner for production of documents.
15

16 **RESPONSE TO INTERROGATORY NO. 134:** Frederic G. Marks did not
17 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
18 defendant Joyner. Those letters have been supplied to counsel for defendants in
19 response to the request of defendant Joyner for production of documents.
20

21 **RESPONSE TO INTERROGATORY NO. 135:** Frederic G. Marks did not
22 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
23 defendant Joyner. Those letters have been supplied to counsel for defendants in
24 response to the request of defendant Joyner for production of documents.
25

26 **RESPONSE TO INTERROGATORY NO. 136:** Frederic G. Marks did not
27 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
28

1 defendant Joyner. Those letters have been supplied to counsel for defendants in
2 response to the request of defendant Joyner for production of documents.

3
4 **RESPONSE TO INTERROGATORY NO. 137:** Frederic G. Marks did not
5 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
6 defendant Joyner. Those letters have been supplied to counsel for defendants in
7 response to the request of defendant Joyner for production of documents.

8
9 **RESPONSE TO INTERROGATORY NO. 138:** Frederic G. Marks did not
10 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
11 defendant Joyner. Those letters have been supplied to counsel for defendants in
12 response to the request of defendant Joyner for production of documents.

13
14 **RESPONSE TO INTERROGATORY NO. 139:** Frederic G. Marks did not
15 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
16 defendant Joyner. Those letters have been supplied to counsel for defendants in
17 response to the request of defendant Joyner for production of documents.

18
19 **RESPONSE TO INTERROGATORY NO. 140:** Frederic G. Marks did not
20 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
21 defendant Joyner. Those letters have been supplied to counsel for defendants in
22 response to the request of defendant Joyner for production of documents.

23
24 **RESPONSE TO INTERROGATORY NO. 141:** Frederic G. Marks did not
25 communicate with defendant Hayes in 2004 or 2005 except via copies of letters to
26 defendant Joyner. Those letters have been supplied to counsel for defendants in
27 response to the request of defendant Joyner for production of documents.

1 **RESPONSE TO INTERROGATORY NO. 142:** Frederic G. Marks does not
2 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
3 in 2004 and 2005.

4
5 **RESPONSE TO INTERROGATORY NO. 143:** Frederic G. Marks does not
6 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
7 in 2004 and 2005.

8
9 **RESPONSE TO INTERROGATORY NO. 144:** Frederic G. Marks does not
10 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
11 in 2004 and 2005.

12
13 **RESPONSE TO INTERROGATORY NO. 145:** Frederic G. Marks does not
14 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
15 in 2004 and 2005.

16 **RESPONSE TO INTERROGATORY NO. 146:** Frederic G. Marks does not
17 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
18 in 2004 and 2005.

19
20 **RESPONSE TO INTERROGATORY NO. 147:** Frederic G. Marks does not
21 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
22 in 2004 and 2005.

23
24 **RESPONSE TO INTERROGATORY NO. 148:** Frederic G. Marks does not
25 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
26 in 2004 and 2005.

1 **RESPONSE TO INTERROGATORY NO. 149:** Frederic G. Marks does not
2 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
3 in 2004 and 2005.

4
5 **RESPONSE TO INTERROGATORY NO. 150:** Frederic G. Marks does not
6 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
7 in 2004 and 2005.

8
9 **RESPONSE TO INTERROGATORY NO. 151:** Frederic G. Marks does not
10 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
11 in 2004 and 2005.

12
13 **RESPONSE TO INTERROGATORY NO. 152:** Frederic G. Marks does not
14 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
15 in 2004 and 2005.

16
17 **RESPONSE TO INTERROGATORY NO. 153:** Frederic G. Marks does not
18 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
19 in 2004 and 2005.

20 **RESPONSE TO INTERROGATORY NO. 154:** Frederic G. Marks does not
21 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
22 in 2004 and 2005.

23
24 **RESPONSE TO INTERROGATORY NO. 155:** Frederic G. Marks does not
25 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
26 in 2004 and 2005.

1 **RESPONSE TO INTERROGATORY NO. 156:** Frederic G. Marks does not
2 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
3 in 2004 and 2005.

4
5 **RESPONSE TO INTERROGATORY NO. 157:** Frederic G. Marks does not
6 contend, or know if, other subscribers contacted HAYES via telephone or otherwise
7 in 2004 and 2005.

8 **RESPONSE TO INTERROGATORY NO. 158:** See introductory statements,
9 paragraph 11.

10
11 **RESPONSE TO INTERROGATORY NO. 159:** See introductory statements,
12 paragraph 11.

13
14 **RESPONSE TO INTERROGATORY NO. 160:** See introductory statements,
15 paragraph 11.

16
17 **RESPONSE TO INTERROGATORY NO. 161:** See introductory statement 11.
18 The allegations of the complaint referred to in interrogatories 161 through 172
19 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
20 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
21 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
22 comment, rebut, or dispute the requests and contentions in those letters, it appears to
23 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
24 he has done or failed to do in the portions of the complaint referred to in
25 interrogatories 161 through 172.

26
27 **RESPONSE TO INTERROGATORY NO. 162:** See introductory statement 11.
28 The allegations of the complaint referred to in interrogatories 161 through 172

1 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
2 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
3 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
4 comment, rebut, or dispute the requests and contentions in those letters, it appears to
5 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
6 he has done or failed to do in the portions of the complaint referred to in
7 interrogatories 161 through 172.

8
9 **RESPONSE TO INTERROGATORY NO. 163:** See introductory statement 11.

10 The allegations of the complaint referred to in interrogatories 161 through 172
11 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
12 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
13 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
14 comment, rebut, or dispute the requests and contentions in those letters, it appears to
15 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
16 he has done or failed to do in the portions of the complaint referred to in
17 interrogatories 161 through 172.

18
19 **RESPONSE TO INTERROGATORY NO. 164:** See introductory statement 11.

20 The allegations of the complaint referred to in interrogatories 161 through 172
21 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
22 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
23 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
24 comment, rebut, or dispute the requests and contentions in those letters, it appears to
25 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
26 he has done or failed to do in the portions of the complaint referred to in
27 interrogatories 161 through 172.

1 **RESPONSE TO INTERROGATORY NO. 165:** See introductory statement 11.

2 The allegations of the complaint referred to in interrogatories 161 through 172
3 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
4 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
5 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
6 comment, rebut, or dispute the requests and contentions in those letters, it appears to
7 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
8 he has done or failed to do in the portions of the complaint referred to in
9 interrogatories 161 through 172.

10
11 **RESPONSE TO INTERROGATORY NO. 166:** See introductory statement 11.

12 The allegations of the complaint referred to in interrogatories 161 through 172
13 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
14 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
15 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
16 comment, rebut, or dispute the requests and contentions in those letters, it appears to
17 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
18 he has done or failed to do in the portions of the complaint referred to in
19 interrogatories 161 through 172.

20
21 **RESPONSE TO INTERROGATORY NO. 167:** See introductory statement 11.

22 The allegations of the complaint referred to in interrogatories 161 through 172
23 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
24 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
25 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
26 comment, rebut, or dispute the requests and contentions in those letters, it appears to
27 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that

1 he has done or failed to do in the portions of the complaint referred to in
2 interrogatories 161 through 172.

3
4 **RESPONSE TO INTERROGATORY NO. 168:** See introductory statement 11.

5 The allegations of the complaint referred to in interrogatories 161 through 172
6 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
7 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
8 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
9 comment, rebut, or dispute the requests and contentions in those letters, it appears to
10 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
11 he has done or failed to do in the portions of the complaint referred to in
12 interrogatories 161 through 172.

13
14 **RESPONSE TO INTERROGATORY NO. 169:** See introductory statement 11.

15 The allegations of the complaint referred to in interrogatories 161 through 172
16 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
17 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
18 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
19 comment, rebut, or dispute the requests and contentions in those letters, it appears to
20 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
21 he has done or failed to do in the portions of the complaint referred to in
22 interrogatories 161 through 172.

23
24 **RESPONSE TO INTERROGATORY NO. 170:** See introductory statement 11.

25 The allegations of the complaint referred to in interrogatories 161 through 172
26 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
27 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
28 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,

1 comment, rebut, or dispute the requests and contentions in those letters, it appears to
2 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
3 he has done or failed to do in the portions of the complaint referred to in
4 interrogatories 161 through 172.

5
6 **RESPONSE TO INTERROGATORY NO. 171:** See introductory statement 11.

7 The allegations of the complaint referred to in interrogatories 161 through 172
8 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
9 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
10 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
11 comment, rebut, or dispute the requests and contentions in those letters, it appears to
12 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
13 he has done or failed to do in the portions of the complaint referred to in
14 interrogatories 161 through 172.

15
16 **RESPONSE TO INTERROGATORY NO. 172:** See introductory statement 11.

17 The allegations of the complaint referred to in interrogatories 161 through 172
18 inclusive are a restatement of the contents of Frederic G. Marks' letters sent to
19 defendants Joyner and Hayes in 2004 and 2005 (already supplied to defendants as
20 mentioned hereinabove). By reason of the failure of defendant Hayes to reply to,
21 comment, rebut, or dispute the requests and contentions in those letters, it appears to
22 Frederic G. Marks that defendant Hayes has done or failed to do what is alleged that
23 he has done or failed to do in the portions of the complaint referred to in
24 interrogatories 161 through 172.

25
26 **RESPONSE TO INTERROGATORY NO. 173:** See introductory statements,
27 paragraphs 13 and 14.

28

1 **RESPONSE TO INTERROGATORY NO. 174:** See introductory statements,
2 paragraph 13 and 14.

3
4 **RESPONSE TO INTERROGATORY NO. 175:** See introductory statements,
5 paragraph 13 and 14.

6
7 **RESPONSE TO INTERROGATORY NO. 176:** See introductory statements,
8 paragraph 11.

9
10 **RESPONSE TO INTERROGATORY NO. 177:** See introductory statements,
11 paragraph 11.

12
13 **RESPONSE TO INTERROGATORY NO. 178:** See introductory statements,
14 paragraph 11.

15
16 **RESPONSE TO INTERROGATORY NO. 179:** See introductory statements,
17 paragraph 11.

18
19 **RESPONSE TO INTERROGATORY NO. 180:** See introductory statements,
20 paragraph 11.

21
22 **RESPONSE TO INTERROGATORY NO. 181:** See introductory statements,
23 paragraph 11.

24
25 **RESPONSE TO INTERROGATORY NO. 182:** See introductory statements,
26 paragraphs 1, and 3 through 14.

27
28 **RESPONSE TO INTERROGATORY NO. 183:** See introductory statements,
29 paragraphs 1, and 3 through 14.

1 **RESPONSE TO INTERROGATORY NO. 184:** See introductory statements,
2 paragraph 1, and 3 through 14.

3
4 **RESPONSE TO INTERROGATORY NO. 185:** See introductory statements,
5 paragraphs 1, and 3 through and 14.

6
7 **RESPONSE TO INTERROGATORY NO. 186:** See introductory statements,
8 paragraphs 1, and 3 through 14.

9
10 **RESPONSE TO INTERROGATORY NO. 187:** See introductory statements,
11 paragraph 1, and 3 through 14.

12
13 **RESPONSE TO INTERROGATORY NO. 188:** See introductory statements,
14 paragraphs 1, and 3 through 14.

15
16 **RESPONSE TO INTERROGATORY NO. 189:** See introductory statements,
17 paragraphs 1, and 3 through 14.

18
19 **RESPONSE TO INTERROGATORY NO. 190:** See introductory statements,
20 paragraph 1, and 3 through 14.

21
22 **RESPONSE TO INTERROGATORY NO. 191:** See introductory statements,
23 paragraphs 1, and 3 through 14.

24
25 **RESPONSE TO INTERROGATORY NO. 192:** See introductory statements,
26 paragraphs 1, and 3 through 14.

27
28 **RESPONSE TO INTERROGATORY NO. 193:** See introductory statements,
29 paragraph 1, and 3 through 14.

1 **RESPONSE TO INTERROGATORY NO. 194:** See introductory statements,
2 paragraph 1, and 3 through 14.

3
4 **RESPONSE TO INTERROGATORY NO. 195:** See introductory statements,
5 paragraphs 1, and 3 through 14.

6
7 **RESPONSE TO INTERROGATORY NO. 196:** See introductory statements,
8 paragraphs 1, and 3 through 14.

9
10 **RESPONSE TO INTERROGATORY NO. 197:** See introductory statements,
11 paragraph 1, and 3 through 14.

12
13 **RESPONSE TO INTERROGATORY NO. 198:** See introductory statements,
14 paragraph 1, and 3 through 14.

15
16 **RESPONSE TO INTERROGATORY NO. 199:** See introductory statements,
17 paragraphs 1, and 3 through 14.

18
19 **RESPONSE TO INTERROGATORY NO. 200:** See introductory statements,
20 paragraphs 1, and 3 through 14.

21
22 **RESPONSE TO INTERROGATORY NO. 201:** See introductory statements,
23 paragraph 1, and 3 through 14.

24
25 **RESPONSE TO INTERROGATORY NO. 202:** See introductory statements,
26 paragraph 1, 3 and 14.

27
28 **RESPONSE TO INTERROGATORY NO. 203:** See introductory statements,
paragraphs 1, and 3 through 14.

1 **RESPONSE TO INTERROGATORY NO. 204:** See introductory statements,
2 paragraphs 1, and 3 through 14.

3
4 **RESPONSE TO INTERROGATORY NO. 205:** See introductory statements,
5 paragraph 1, and 3 through 14.

6
7 **RESPONSE TO INTERROGATORY NO. 206:** See introductory statements,
8 paragraphs 1, and 3 through 14.

9
10 **RESPONSE TO INTERROGATORY NO. 207:** See introductory statements,
11 paragraph 1, and 3 through 14.

12
13 **RESPONSE TO INTERROGATORY NO. 208:** See introductory statements,
14 paragraph 1, and 3 through 14 inclusive.

15
16 **RESPONSE TO INTERROGATORY NO. 209:** See introductory statements,
17 paragraph 1, and 3 through 14 inclusive.

18
19 **RESPONSE TO INTERROGATORY NO. 210:** See introductory statements,
20 paragraph 1, and 3 through 14 inclusive.

21
22 **RESPONSE TO INTERROGATORY NO. 211:** See introductory statements,
23 paragraph 1, and 3 through 14 inclusive.

24
25 **RESPONSE TO INTERROGATORY NO. 212:** See introductory statements,
26 paragraph 1, and 3 through 14 inclusive.

27
28 **RESPONSE TO INTERROGATORY NO. 213:** See introductory statements,
paragraph 1, and 3 through 14 inclusive.

1 **RESPONSE TO INTERROGATORY NO. 214:** See introductory statements,
2 paragraph 1, and 3 through 14 inclusive.

3
4 **RESPONSE TO INTERROGATORY NO. 215:** See introductory statements,
5 paragraph 1, and 3 through 14 inclusive.

6
7 **RESPONSE TO INTERROGATORY NO. 216:** See introductory statements,
8 paragraph 1, and 3 through 14 inclusive.

9
10 **RESPONSE TO INTERROGATORY NO. 217:** See introductory statements,
11 paragraph 1, and 3 through 14 inclusive.

12
13 **RESPONSE TO INTERROGATORY NO. 218:** See introductory statements,
14 paragraph 1, and 3 through 14 inclusive.

15
16 **RESPONSE TO INTERROGATORY NO. 219:** See introductory statements,
17 paragraph 1, and 3 through 14 inclusive.

18
19 **RESPONSE TO INTERROGATORY NO. 220:** See introductory statements,
20 paragraph 1, and 3 through 14 inclusive.

21
22 **RESPONSE TO INTERROGATORY NO. 221:** See introductory statements,
23 paragraph 1, and 3 through 14 inclusive.

24
25 **RESPONSE TO INTERROGATORY NO. 222:** See introductory statements,
26 paragraph 1, and 3 through 14 inclusive.

27
28 **RESPONSE TO INTERROGATORY NO. 223:** See introductory statements,
29 paragraph 1, and 3 through 14 inclusive.

1 **RESPONSE TO INTERROGATORY NO. 224:** See introductory statements,
2 paragraph 1, and 3 through 14 inclusive.

3
4 DATED: December 18, 2006 LAW OFFICES OF JONATHAN K. GOLDEN

5 By Jonathan K. Golden
6 Jonathan K. Golden
7 Attorneys for Plaintiff
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 14, 2006, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Frederic G. Marks
Type or Print Name

Frederic G. Marks
Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co. Plus

Rev. 7/99

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1880 Century Park East, Suite 300, Los
5 Angeles, California 90067-1666.

6 On December 15, 2006, I served the foregoing document described as Response to Special
7 Interrogatories on the interested parties in this action

8 by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

9 Kevin Lacey, Esq.
10 Lacey, Dunn & Do
11 315 West Arden Ave.
12 Suite 11
13 Glendale, CA 91203

14 John P. Godsil, Esq.
15 Freeman, Freeman & Smiley
16 3415 Sepulveda Blvd.
17 Suite 1200
18 Los Angeles, CA 90034

19 BY MAIL:

20 I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope
21 was mailed with postage thereon fully prepaid.

22 I am "readily familiar" with the firm's practice of collection and processing correspondence
23 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of
24 business. I am aware that on motion of party served, service is presumed invalid if postal
25 cancellation date or postage meter date is more than 1 day after date of deposit for mailing in
26 affidavit.


27 BY PERSONAL SERVICE

28 I delivered such envelope by hand to the office of the addressee.

Executed on December 15, 2006, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at
whose direction the service was made.

24 
25 Jonathan K. Golden

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FREDERIC G. MARKS, JOSEPH HENTZ,)
13 STUART SMITH, JEAN MOLLENHAUER,)
14 ROGAN COOMBS, JOSEPH DROLL,)
15 GREGG ROOTEN, THOMAS R. WOOD,)
16 MARILYN WOOD, GREG STAININGER,)
17 and JOHN FOUNTAIN,)

18 Plaintiffs,

19 vs.

20 WAYNE JOYNER and CHARLES W.
21 HAYES, individually and as Trustees of
22 THE UNIVERSAL SCIENTIFIC
23 PUBLICATIONS COMPANY TRUST,
24 THE UNIVERSAL SCIENTIFIC
25 PUBLICATIONS COMPANY, INC., THE
26 NATURAL ESTATE TRUST, and DOES 1
27 through 50, Inclusive,

28 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**DEFENDANT CHARLES W.
HAYES'S SPECIAL
INTERROGATORIES TO
PLAINTIFF JOSEPH HENTZ [SET
ONE]; DECLARATION OF
CATHERINE L. SEKELY RE
ADDITIONAL DISCOVERY**

23 **PROPOUNDING PARTY: DEFENDANT CHARLES W. HAYES**
24 **RESPONDING PARTY: PLAINTIFF JOSEPH HENTZ**
25 **SET NUMBER: ONE**

26 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

EX.K ✓

1 PLEASE TAKE NOTICE that defendant Charles W. Hayes hereby submits to
2 plaintiff Joseph Hentz the attached first set of special interrogatories pursuant to Code of
3 Civil Procedure Section 2030.010 *et seq.*

4 SPECIAL INTERROGATORIES

5 SPECIAL INTERROGATORY NO. 1:

6 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
7 **COMPLAINT** that "**HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
8 Trust to suit [his] own convenience." (For purposes of these interrogatories, the terms
9 "**YOU**" and "**YOUR**" shall mean plaintiff, Joseph Hentz, his officers, employees, agents
10 and representatives. For purposes of these special interrogatories, the term
11 "**COMPLAINT**" shall mean the complaint for declaratory relief, specific performance,
12 breach of contract, and breach of fiduciary duty *Marks et al. v. Joyner, et al.*, Los Angeles
13 Superior Court Case No. BC352639. For purposes of these interrogatories, the term
14 "**HAYES**" shall mean defendant Charles W. Hayes, an individual. For purposes of these
15 interrogatories, the term "**TUSPCO**" shall mean The Universal Scientific Publications
16 Company, Inc.)

17 SPECIAL INTERROGATORY NO. 2:

18 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
19 paragraph 5 of the **COMPLAINT** that "**HAYES** intermingled the assets of **TUSPCO** and
20 the Natural Estate Trust to suit [his] own convenience." (For purposes of these special
21 interrogatories, the term "**DOCUMENT**" shall mean any and all "writings," as that term is
22 defined in California Evidence Code Section 250 and California Code of Civil Procedure
23 Section 231, including but not limited to any tangible items which contain handwriting,
24 type writing, printing, photostatic reproduction, photographic reproduction, electronic
25 reproduction, and any other form of communications or representation whether produced,
26 reproduced or stored on paper, cards, tapes, discs, belts, charts, films (including microfilm
27 or microfiche), computer storage devices or any other medium of recordation.)

1 **SPECIAL INTERROGATORY NO. 3:**

2 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
3 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that "**HAYES** intermingled the
4 assets of **TUSPCO** and the Natural Estate Trust to suit [his] own convenience."

5 (For purposes of these interrogatories, the term "**IDENTIFY**" shall mean, when applied to
6 a person, to list the name, title, function and last known telephone number and address.

7 For purposes of these interrogatories, the term "**PERSONS**" shall mean the plural as well
8 as the singular, any natural person or any firm, association, partnership, corporation or
9 other form of legal identity unless the context clearly dictates to the contrary.)

10 **SPECIAL INTERROGATORY NO. 4:**

11 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
12 **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
13 Trust to evade **TUSPCO**'s liability to subscribers to book contracts.

14 **SPECIAL INTERROGATORY NO. 5:**

15 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
16 paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and
17 the Natural Estate Trust to evade **TUSPCO**'s liability to subscribers to book contracts.

18 **SPECIAL INTERROGATORY NO. 6:**

19 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
20 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the
21 assets of **TUSPCO** and the Natural Estate Trust to evade **TUSPCO**'s liability to
22 subscribers to book contracts.

23 **SPECIAL INTERROGATORY NO. 7:**

24 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
25 **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
26 Trust to pay substantial sums to [himself] and others.

27

28

1 **SPECIAL INTERROGATORY NO. 8:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and
4 the Natural Estate Trust to pay substantial sums to [himself] and others.

5 **SPECIAL INTERROGATORY NO. 9:**

6 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
7 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the
8 assets of **TUSPCO** and the Natural Estate Trust to pay substantial sums to [himself] and
9 others.

10 **SPECIAL INTERROGATORY NO. 10:**

11 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
12 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of **TUSPCO**.

13 **SPECIAL INTERROGATORY NO. 11:**

14 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
15 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of **TUSPCO**.

16 **SPECIAL INTERROGATORY NO. 12:**

17 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
18 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the
19 assets of **TUSPCO**.

20 **SPECIAL INTERROGATORY NO. 13:**

21 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
22 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
23 **TRUST**.

24 **SPECIAL INTERROGATORY NO. 14:**

25 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
26 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
27 **TRUST**.

28

1 **SPECIAL INTERROGATORY NO. 15:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES dissipated the
4 assets of the TUSPCO TRUST. (For purposes of these interrogatories, the term
5 "TUSPCO TRUST" shall mean The Universal Scientific Publications Company, Inc.,
6 Book Subscription Trust.)

7 **SPECIAL INTERROGATORY NO. 16:**

8 State with specificity all facts that refer, relate or pertain to YOUR allegation in
9 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of the Natural Estate
10 Trust.

11 **SPECIAL INTERROGATORY NO. 17:**

12 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
13 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of the Natural Estate
14 Trust.

15 **SPECIAL INTERROGATORY NO. 18:**

16 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
17 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES dissipated the
18 assets of the Natural Estate Trust.

19 **SPECIAL INTERROGATORY NO. 19:**

20 State with specificity all facts that refer, relate or pertain to YOUR contention in
21 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

22 **SPECIAL INTERROGATORY NO. 20:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention in
24 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

25 **SPECIAL INTERROGATORY NO. 21:**

26 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
27 to YOUR contention in paragraph 5 of the COMPLAINT that HAYES owes YOU a
28

1 fiduciary duty.

2 **SPECIAL INTERROGATORY NO. 22:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that the
4 price of Book 1 was \$400.00 per copy as alleged in paragraph 13 of the **COMPLAINT**.

5 **SPECIAL INTERROGATORY NO. 23:**

6 If **YOU** contend in paragraph 19 of the **COMPLAINT** that **HAYES** made oral
7 representations that he was "working on the publication," state whether the representation
8 was in person or via telephone.

9 **SPECIAL INTERROGATORY NO. 24:**

10 Identify the date(s) that **HAYES** represented via the telephone that he was "working
11 on the publication."

12 **SPECIAL INTERROGATORY NO. 25:**

13 With respect to the immediately preceding interrogatory, state with specificity
14 **HAYES'S** oral representation(s) via telephone regarding "working on publication".

15 **SPECIAL INTERROGATORY NO. 26:**

16 Identify all **DOCUMENTS** that refer, relate or pertain to **HAYES'S** oral
17 representation(s) via telephone regarding "working on publication".

18 **SPECIAL INTERROGATORY NO. 27:**

19 **IDENTIFY** all **PERSONS** to whom **HAYES** represented via the telephone that he
20 was "working on the publication."

21 **SPECIAL INTERROGATORY NO. 28:**

22 Identify the date(s) that **HAYES** represented orally, in person that he was "working
23 on the publication."

24 **SPECIAL INTERROGATORY NO. 29:**

25 With respect to the immediately preceding interrogatory, state with specificity
26 **HAYES'S** oral, in person representation(s) regarding "working on publication."

27

28

1 **SPECIAL INTERROGATORY NO. 30:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **HAYES'S** oral, in person
3 representation(s) regarding "working on publication."

4 **SPECIAL INTERROGATORY NO. 31:**

5 **IDENTIFY** all **PERSONS** to whom **HAYES** represented orally, in person that he
6 was "working on the publication."

7 **SPECIAL INTERROGATORY NO. 32:**

8 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
9 paragraph 19 of the **COMPLAINT** that **HAYES** represented in writing that he was
10 "working on the publication."

11 **SPECIAL INTERROGATORY NO. 33:**

12 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
13 to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that **HAYES** represented in
14 writing that he was "working on the publication."

15 **SPECIAL INTERROGATORY NO. 34:**

16 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention
17 **HAYES** represented in writing that he was "working on the publication."

18 **SPECIAL INTERROGATORY NO. 35:**

19 State the date(s) that **HAYES** allegedly represented in writing that he was "working
20 on the publication."

21 **SPECIAL INTERROGATORY NO. 36:**

22 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
23 paragraph 19 of the **COMPLAINT** that **HAYES** "assured Plaintiffs that Book 1 would be
24 published."

25 **SPECIAL INTERROGATORY NO. 37:**

26 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
27 to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that **HAYES** "assured
28

1 Plaintiffs that Book 1 would be published.”

2 **SPECIAL INTERROGATORY NO. 38:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
4 refer, relate or pertain to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that
5 **HAYES** “assured Plaintiffs that Book 1 would be published.”

6 **SPECIAL INTERROGATORY NO. 39:**

7 **IDENTIFY** all **PERSONS** that **HAYES** assured in writing that Book 1 would be
8 published.

9 **SPECIAL INTERROGATORY NO. 40:**

10 State the date(s) of all **DOCUMENTS** where **HAYES** assured in writing that Book
11 1 would be published.

12 **SPECIAL INTERROGATORY NO. 41:**

13 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
14 via the telephone, state the date(s) of all such assurances.

15 **SPECIAL INTERROGATORY NO. 42:**

16 **IDENTIFY** all **PERSONS** that **HAYES** “assured ... that Book 1 would be
17 published” via the telephone.

18 **SPECIAL INTERROGATORY NO. 43:**

19 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
20 in person, state the date(s) of all such assurances.

21 **SPECIAL INTERROGATORY NO. 44:**

22 **IDENTIFY** all **PERSONS** that **HAYES** “assured ... that Book 1 would be
23 published” in person.

24 **SPECIAL INTERROGATORY NO. 45:**

25 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
26 paragraph 19 of the **COMPLAINT** that **HAYES** “encouraged Plaintiffs to wait for its [the
27 Book] delivery.”

28

1 **SPECIAL INTERROGATORY NO. 46:**

2 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
3 delivery” in conversations via telephone, then state the date(s) of those conversations.

4 **SPECIAL INTERROGATORY NO. 47:**

5 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
6 to YOUR allegation in paragraph 19 of the COMPLAINT that HAYES “encouraged
7 Plaintiffs to wait for its [the Book] delivery.”

8 **SPECIAL INTERROGATORY NO. 48:**

9 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
10 delivery” in conversations via telephone, then IDENTIFY all PERSONS that HAYES
11 “encouraged” in these conversations.

12 **SPECIAL INTERROGATORY NO. 49:**

13 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
14 delivery” in conversations in person, then state the date(s) of those conversations.

15 **SPECIAL INTERROGATORY NO. 50:**

16 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
17 delivery” in conversations in person, then IDENTIFY all PERSONS that HAYES
18 “encouraged” in these conversations.

19 **SPECIAL INTERROGATORY NO. 51:**

20 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that
21 refer, relate or pertain to YOUR allegation in paragraph 19 of the COMPLAINT that
22 HAYES “encouraged Plaintiffs to wait for its [the Book] delivery.”

23 **SPECIAL INTERROGATORY NO. 52:**

24 State the dollar amount that YOU paid for all YOUR copies of Book 1.

25 **SPECIAL INTERROGATORY NO. 53:**

26 If YOU contend in paragraph 21 of the COMPLAINT that the publication and
27 distribution of Volume 1 was “in partial performance of the contract,” state the dollar
28

1 amount that YOU attribute to Volume 1.

2 **SPECIAL INTERROGATORY NO. 54:**

3 State all facts that refer, relate or pertain to YOUR allegation in paragraph 22 of the
4 COMPLAINT that HAYES made representations regarding future publication of the
5 remaining volumes of Book 1 at all times after Volume 1 was published.

6 **SPECIAL INTERROGATORY NO. 55:**

7 If YOU contend in paragraph 22 of the COMPLAINT that HAYES made
8 representations via telephone regarding future publication of the remaining volumes of
9 Book, state the dates of all such conversations.

10 **SPECIAL INTERROGATORY NO. 56:**

11 IDENTIFY all PERSONS that HAYES spoke to via telephone regarding future
12 publication of the remaining volumes of Book 1.

13 **SPECIAL INTERROGATORY NO. 57:**

14 Identify all DOCUMENTS that refer, relate or pertain to HAYES'S representations
15 regarding future publication of the remaining volumes of Book 1.

16 **SPECIAL INTERROGATORY NO. 58:**

17 State the date(s) of all DOCUMENTS that refer, relate or pertain to HAYES'S
18 representations regarding future publication of the remaining volumes of Book 1.

19 **SPECIAL INTERROGATORY NO. 59:**

20 State all facts that refer, relate or pertain to YOUR allegation that HAYES
21 represented that the remaining volumes of Book 1 would consist of edited transcripts of
22 AJG's tape recorded lectures of course V-201. (For purposes of these special
23 interrogatories, AJG shall mean Andrew J. Galambos.)

24 **SPECIAL INTERROGATORY NO. 60:**

25 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
26 to YOUR allegation that HAYES represented that the remaining volumes of Book 1 would
27 consist of edited transcripts of AJG's tape recorded lectures of course V-201.

28

1 **SPECIAL INTERROGATORY NO. 61:**

2 If YOU contend that HAYES represented via telephone that the remaining volumes
3 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
4 201, then state the dates of all such telephone conversations.

5 **SPECIAL INTERROGATORY NO. 62:**

6 If YOU contend that HAYES represented via telephone that the remaining volumes
7 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
8 201, then IDENTIFY all PERSONS that HAYES made such representations to via
9 telephone.

10 **SPECIAL INTERROGATORY NO. 63:**

11 If YOU contend that HAYES represented in person that the remaining volumes of
12 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
13 201, then state the dates of all such in person representations.

14 **SPECIAL INTERROGATORY NO. 64:**

15 If YOU contend that HAYES represented in person that the remaining volumes of
16 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
17 201, then IDENTIFY all PERSONS that HAYES made such representations to in person.

18 **SPECIAL INTERROGATORY NO. 65:**

19 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
20 HAYES represented that the remaining volumes of Book 1 would consist of edited
21 transcripts of AJG's tape recorded lectures of course V-201.

22 **SPECIAL INTERROGATORY NO. 66:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
24 TUSPCO's website represents to the public that: "The remaining three or four volumes. . .
25 are in progress and will consist of edited transcripts. . ."

26 **SPECIAL INTERROGATORY NO. 67:**

27 If YOU contend that TUSPCO's website represents to the public that: "The
28

1 remaining three or four volumes. . . are in progress and will consist of edited transcripts. .”
2 then state the date(s) that TUSPCO’s website made such a representation.

3 **SPECIAL INTERROGATORY NO. 68:**

4 IDENTIFY all PERSONS with knowledge that TUSPCO’s website represents to
5 the public that: “The remaining three or four volumes. . . are in progress and will consist of
6 edited transcripts. .”.

7 **SPECIAL INTERROGATORY NO. 69:**

8 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
9 TUSPCO’s website offers to sell a first edition, hard cover copy of all volumes, including
10 those yet to be published, for the price of \$2,500.00.

11 **SPECIAL INTERROGATORY NO. 70:**

12 If YOU contend that TUSPCO’s website offers to sell a first edition, hard cover
13 copy of all volumes, including those yet to be published, for the price of \$2,500.00, then
14 state the date(s) the website made that offer.

15 **SPECIAL INTERROGATORY NO. 71:**

16 IDENTIFY all PERSONS with knowledge that TUSPCO’s website offers to sell a
17 first edition, hard cover copy of all volumes, including those yet to be published, for the
18 price of \$2,500.00.

19 **SPECIAL INTERROGATORY NO. 72:**

20 State all facts that refer, relate or pertain to YOUR allegation in paragraph 26 of the
21 COMPLAINT that HAYES denied having any duty or obligation to publish the remaining
22 volumes of Book 1 to Subscribers.

23 **SPECIAL INTERROGATORY NO. 73:**

24 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
25 paragraph 26 of the COMPLAINT that HAYES denied having any duty or obligation to
26 publish the remaining volumes of Book 1 to Subscribers.

27

28

1 **SPECIAL INTERROGATORY NO. 74:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES denied having
4 any duty or obligation to publish the remaining volumes of Book 1 to Subscribers.

5 **SPECIAL INTERROGATORY NO. 75:**

6 State all facts that refer, relate or pertain to YOUR allegation in paragraph 26 of the
7 COMPLAINT that HAYES refused to advise plaintiffs of what steps have been or will be
8 taken "to fulfill the balance of the contract."

9 **SPECIAL INTERROGATORY NO. 76:**

10 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
11 paragraph 26 of the COMPLAINT that HAYES refused to advise plaintiffs of what steps
12 have been or will be taken "to fulfill the balance of the contract."

13 **SPECIAL INTERROGATORY NO. 77:**

14 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
15 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES refused to advise
16 plaintiffs of what steps have been or will be taken "to fulfill the balance of the contract."

17 **SPECIAL INTERROGATORY NO. 78:**

18 State all facts that refer, relate or pertain to YOUR allegation in paragraph 26 of the
19 COMPLAINT that HAYES denied having any duty or obligation to account to Plaintiffs
20 for the assets of the TUSPCO TRUST.

21 **SPECIAL INTERROGATORY NO. 79:**

22 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
23 paragraph in paragraph 26 of the COMPLAINT that HAYES denied having any duty or
24 obligation to account to Plaintiffs for the assets of the TUSPCO TRUST.

25 **SPECIAL INTERROGATORY NO. 80:**

26 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
27 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES denied having

28

1 any duty or obligation to account to Plaintiffs for the assets of the TUSPCO TRUST.

2 **SPECIAL INTERROGATORY NO. 81:**

3 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
4 **COMPLAINT** that **HAYES** denied having any duty or obligation to account to Plaintiffs
5 for the assets of the TUSPCO.

6 **SPECIAL INTERROGATORY NO. 82:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or obligation to
9 account to Plaintiffs for the assets of the TUSPCO.

10 **SPECIAL INTERROGATORY NO. 83:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** denied having
13 any duty or obligation to account to Plaintiffs for the assets of the TUSPCO.

14 **SPECIAL INTERROGATORY NO. 84:**

15 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 27 of the
16 **COMPLAINT** that the lectures of course V-201 are "capable" of being published in the
17 same format as Volume 1 of Book 1 and have been or easily could be transferred to
18 compact disc.

19 **SPECIAL INTERROGATORY NO. 85:**

20 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
21 paragraph 27 of the **COMPLAINT** that the lectures of course V-201 are "capable" of
22 being published in the same format as Volume 1 of Book 1 and have been or easily could
23 be transferred to compact disc.

24 **SPECIAL INTERROGATORY NO. 86:**

25 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
26 to **YOUR** allegation in paragraph 27 of the **COMPLAINT** that the lectures of course V-
27 201 are "capable" of being published in the same format as Volume 1 of Book 1 and have

28

1 been or easily could be transferred to compact disc.

2 **SPECIAL INTERROGATORY NO. 87:**

3 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 28 of the
4 **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES** account for the
5 assets of the **TUSPCO TRUST**.

6 **SPECIAL INTERROGATORY NO. 88:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES**
9 account for the assets of the **TUSPCO TRUST**.

10 **SPECIAL INTERROGATORY NO. 89:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly
13 requested that **HAYES** account for the assets of the **TUSPCO TRUST**.

14 **SPECIAL INTERROGATORY NO. 90:**

15 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 28 of the
16 **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES** account for the
17 assets of the **TUSPCO**.

18 **SPECIAL INTERROGATORY NO. 91:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
20 paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES**
21 account for the assets of the **TUSPCO**.

22 **SPECIAL INTERROGATORY NO. 92:**

23 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
24 to **YOUR** allegation in paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly
25 requested that **HAYES** account for the assets of the **TUSPCO**.

26 **SPECIAL INTERROGATORY NO. 93:**

27 If **YOU** contend in paragraph 43 of the **COMPLAINT** that **HAYES** "breached" the
28

1 Subscription Agreement, state with specificity how **HAYES** breached the agreement.

2 **SPECIAL INTERROGATORY NO. 94:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to how **HAYES** "breached"
4 the Subscription Agreement.

5 **SPECIAL INTERROGATORY NO. 95:**

6 **IDENTIFY** all **PERSONS** with knowledge of how **HAYES** "breached" the
7 Subscription Agreement.

8 **SPECIAL INTERROGATORY NO. 96:**

9 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
10 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets in the
11 **TUSPCO TRUST**.

12 **SPECIAL INTERROGATORY NO. 97:**

13 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
14 **HAYES** has an obligation to account to plaintiffs for the assets in the **TUSPCO TRUST**.

15 **SPECIAL INTERROGATORY NO. 98:**

16 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
17 to **YOUR** allegation that **HAYES** has an obligation to account to plaintiffs for the assets in
18 the **TUSPCO TRUST**.

19 **SPECIAL INTERROGATORY NO. 99:**

20 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
21 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets of
22 **TUSPCO**.

23 **SPECIAL INTERROGATORY NO. 100:**

24 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
25 **HAYES** has an obligation to account to plaintiffs for the assets fo the **TUSPCO**.

26 **SPECIAL INTERROGATORY NO. 101:**

27 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
28

1 to YOUR allegation that HAYES has an obligation to account to plaintiffs for the assets of
2 TUSPCO.

3 **SPECIAL INTERROGATORY NO. 102:**

4 State all facts that refer, relate or pertain to YOUR allegation in paragraph 43 of the
5 COMPLAINT that Defendants have an obligation to advise YOU of the progress, if any,
6 of efforts to fulfill TUSPCO's obligations under the agreement.

7 **SPECIAL INTERROGATORY NO. 103:**

8 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
9 paragraph 43 of the COMPLAINT that Defendants have an obligation to advise YOU of
10 the progress, if any, of efforts to fulfill TUSPCO's obligations under the agreement.

11 **SPECIAL INTERROGATORY NO. 104:**

12 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
13 to YOUR allegation in paragraph 43 of the COMPLAINT that Defendants have an
14 obligation to advise YOU of the progress, if any, of efforts to fulfill TUSPCO's
15 obligations under the agreement.

16 **SPECIAL INTERROGATORY NO. 105:**

17 State all facts that refer, relate or pertain to YOUR allegation in paragraph 43 of the
18 COMPLAINT that Defendants, or any one of them, have any obligation to plaintiffs to
19 "deliver the balance of Book 1."

20 **SPECIAL INTERROGATORY NO. 106:**

21 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
22 paragraph 43 of the COMPLAINT that Defendants, or any one of them, have any
23 obligation to plaintiffs to "deliver the balance of Book 1."

24 **SPECIAL INTERROGATORY NO. 107:**

25 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
26 to YOUR allegation in paragraph 43 of the COMPLAINT that Defendants, or any one of
27 them, have any obligation to plaintiffs to "deliver the balance of Book 1."

28

1 **SPECIAL INTERROGATORY NO. 108:**

2 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
3 **COMPLAINT** that Defendants, or any one of them, have any obligation to **YOU** to
4 “refund any amount.”

5 **SPECIAL INTERROGATORY NO. 109:**

6 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
7 paragraph 43 of the **COMPLAINT** that Defendants, or any one of them, have any
8 obligation to **YOU** to “refund any amount.”

9 **SPECIAL INTERROGATORY NO. 110:**

10 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
11 to **YOUR** allegation in paragraph 43 of the **COMPLAINT** that Defendants, or any one of
12 them, have any obligation to **YOU** to “refund any amount.”

13 **SPECIAL INTERROGATORY NO. 111:**

14 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
15 **COMPLAINT** that “[a]t all relevant times, a fiduciary relationship existed between
16 Plaintiffs” and HAYES.

17 **SPECIAL INTERROGATORY NO. 112:**

18 State the date(s) that **YOU** contend that a fiduciary relationship existed between
19 **YOU** and HAYES.

20 **SPECIAL INTERROGATORY NO. 113:**

21 Identify all **DOCUMENTS** that reflect a fiduciary relationship between **YOU** and
22 HAYES.

23 **SPECIAL INTERROGATORY NO. 114:**

24 **IDENTIFY** all **PERSONS** with knowledge of the date(s) that a fiduciary
25 relationship existed between **YOU** and HAYES.

26 **SPECIAL INTERROGATORY NO. 115:**

27 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
28

1 COMPLAINT that HAYES “voluntarily accepted the Plaintiffs’ trust and confidence.”

2 **SPECIAL INTERROGATORY NO. 116:**

3 State the date that YOU contend HAYES “voluntarily accepted the Plaintiffs’ trust
4 and confidence.”

5 **SPECIAL INTERROGATORY NO. 117:**

6 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
7 paragraph 46 of the COMPLAINT that HAYES “voluntarily accepted the Plaintiffs’ trust
8 and confidence.”

9 **SPECIAL INTERROGATORY NO. 118:**

10 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
11 to YOUR allegation in paragraph 46 of the COMPLAINT that HAYES “voluntarily
12 accepted the Plaintiffs’ trust and confidence.”

13 **SPECIAL INTERROGATORY NO. 119:**

14 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
15 COMPLAINT that HAYES improperly expended funds of the TUSPCO TRUST.

16 **SPECIAL INTERROGATORY NO. 120:**

17 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
18 paragraph 47 of the COMPLAINT that HAYES improperly expended funds of the
19 TUSPCO TRUST.

20 **SPECIAL INTERROGATORY NO. 121:**

21 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
22 to YOUR allegation in paragraph 47 of the COMPLAINT that HAYES improperly
23 expended funds of the TUSPCO TRUST.

24 **SPECIAL INTERROGATORY NO. 122:**

25 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
26 COMPLAINT that HAYES improperly expended funds of TUSPCO.

27

28

1 **SPECIAL INTERROGATORY NO. 123:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 47 of the **COMPLAINT** that **HAYES** improperly expended funds of **TUSPCO**.

4 **SPECIAL INTERROGATORY NO. 124:**

5 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
6 to **YOUR** allegation in paragraph 47 of the **COMPLAINT** that **HAYES** improperly
7 expended funds of **TUSPCO**.

8 **SPECIAL INTERROGATORY NO. 125:**

9 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 47 of the
10 **COMPLAINT** that **HAYES** improperly expended funds of the Natural Estate Trust.

11 **SPECIAL INTERROGATORY NO. 126:**

12 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
13 paragraph 47 of the **COMPLAINT** that **HAYES** improperly expended funds of the
14 Natural Estate Trust.

15 **SPECIAL INTERROGATORY NO. 127:**

16 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
17 the **TUSPCO TRUST**.

18 **SPECIAL INTERROGATORY NO. 128:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
20 “unauthorized recipients” received funds from the **TUSPCO TRUST**.

21 **SPECIAL INTERROGATORY NO. 129:**

22 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
23 **TUSPCO**.

24 **SPECIAL INTERROGATORY NO. 130:**

25 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
26 “unauthorized recipients” received funds from **TUSPCO**.

27

28

1 **SPECIAL INTERROGATORY NO. 131:**

2 IDENTIFY all PERSONS YOU claim are "unauthorized recipients" of funds from
3 the Natural Estate Trust.

4 **SPECIAL INTERROGATORY NO. 132:**

5 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that
6 "unauthorized recipients" received funds from the Natural Estate Trust.

7 **SPECIAL INTERROGATORY NO. 133:**

8 State all facts that refer, relate or pertain to YOUR allegation in paragraph 48 of the
9 COMPLAINT that HAYES should be adjudged individually liable to Plaintiffs.

10 **SPECIAL INTERROGATORY NO. 134:**

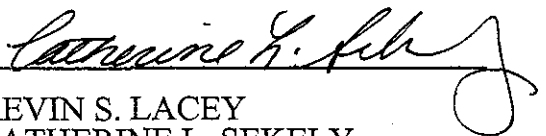
11 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
12 HAYES should be adjudged individually liable to Plaintiffs.

13 **SPECIAL INTERROGATORY NO. 135:**

14 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
15 to YOUR allegation that HAYES should be adjudged individually liable to Plaintiffs.

16 DATED: November 17, 2006

LACEY, DUNN & DO
A Professional Corporation

17
18
19 By: 

20 KEVIN S. LACEY
21 CATHERINE L. SEKELY
22 Attorneys for Defendant
23 Charles W. Hayes

24

25

26

27

28

29

1 DECLARATION OF CATHERINE L. SEKELY RE ADDITIONAL DISCOVERY

2 I, Catherine L. Sekely, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all the courts in the
4 State of California, and am an associate in the law firm of Lacey, Dunn & Do, A
5 Professional Corporation, attorneys for defendant Charles W. Hayes ("Mr. Hayes").

6 2. I am thoroughly familiar with the content of this file and if called to testify as
7 to the facts contained in this declaration I could, and would, testify to those facts based
8 upon my own personal knowledge.

9 3. This declaration is submitted in support of Mr. Hayes's request for additional
10 discovery.

11 4. I am propounding to plaintiff the attached set of special interrogatories.

12 5. This first set of special interrogatories will cause the total number of
13 specially prepared interrogatories propounded to plaintiff to exceed the number of specially
14 prepared interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil
15 Procedure.

16 6. This first set of specially prepared interrogatories contains a total of 135
17 specially prepared interrogatories. This will cause the total number of specially prepared
18 interrogatories served on plaintiff to exceed the number of specially prepared
19 interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil Procedure
20 by 100 interrogatories.

21 7. I have personally drafted each of the questions in this set of interrogatories.

22 8. This number of questions is warranted under Section [1] of section 2030.030
23 of the Code of Civil Procedure because of the complexity of the issues raised in plaintiff's
24 complaint as well as the vast number of existing and potential factual issues in this case.

25 Further, because of the complexity and number of issues in this case, allowing Mr. Hayes
26 to submit additional discovery will greatly reduce the financial burden on all parties which
27 would necessarily result from conducting discovery by other means.

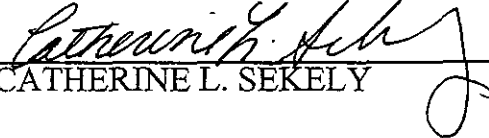
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the plaintiff, or the plaintiff's attorney, to whom these specially prepared interrogatories are directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 17th day of November 2006, at Glendale, California.


CATHERINE L. SEKELY

1 KEVIN S. LACEY, State Bar #140918
2 CATHERINE L. SEKELY, State Bar #229095
3 LACEY, DUNN & DO
4 A Professional Corporation
5 315 W. Arden Avenue, Suite 11
6 Glendale, California 91203
7 (818) 291-9858

8 Attorney for Defendant Charles W. Hayes

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FREDERIC G. MARKS, JOSEPH HENTZ,)
13 STUART SMITH, JEAN MOLLENHAUER,)
14 ROGAN COOMBS, JOSEPH DROLL,)
15 GREGG ROOTEN, THOMAS R. WOOD,)
16 MARILYN WOOD, GREG STAININGER,)
17 and JOHN FOUNTAIN,)

18 Plaintiffs,

19 vs.

20 WAYNE JOYNER and CHARLES W.
21 HAYES, individually and as Trustees of
22 THE UNIVERSAL SCIENTIFIC
23 PUBLICATIONS COMPANY TRUST,
24 THE UNIVERSAL SCIENTIFIC
25 PUBLICATIONS COMPANY, INC., THE
26 NATURAL ESTATE TRUST, and DOES 1
27 through 50, Inclusive,

28 Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

**DEFENDANT CHARLES W.
HAYES'S SPECIAL
INTERROGATORIES TO
PLAINTIFF JOSEPH HENTZ [SET
ONE]; DECLARATION OF
CATHERINE L. SEKELY RE
ADDITIONAL DISCOVERY**

23 PROPOUNDING PARTY: DEFENDANT CHARLES W. HAYES

24 RESPONDING PARTY: PLAINTIFF JOSEPH HENTZ

25 SET NUMBER: ONE

26 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

1 PLEASE TAKE NOTICE that defendant Charles W. Hayes hereby submits to
2 plaintiff Joseph Hentz the attached first set of special interrogatories pursuant to Code of
3 Civil Procedure Section 2030.010 *et seq.*

4 SPECIAL INTERROGATORIES

5 SPECIAL INTERROGATORY NO. 1:

6 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 5 of the
7 **COMPLAINT** that “**HAYES** intermingled the assets of **TUSPCO** and the Natural Estate
8 Trust to suit [his] own convenience.” (For purposes of these interrogatories, the terms
9 “**YOU**” and “**YOUR**” shall mean plaintiff, Joseph Hentz, his officers, employees, agents
10 and representatives. For purposes of these special interrogatories, the term
11 “**COMPLAINT**” shall mean the complaint for declaratory relief, specific performance,
12 breach of contract, and breach of fiduciary duty *Marks et al. v. Joyner, et al.*, Los Angeles
13 Superior Court Case No. BC352639. For purposes of these interrogatories, the term
14 “**HAYES**” shall mean defendant Charles W. Hayes, an individual. For purposes of these
15 interrogatories, the term “**TUSPCO**” shall mean The Universal Scientific Publications
16 Company, Inc.)

17 SPECIAL INTERROGATORY NO. 2:

18 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
19 paragraph 5 of the **COMPLAINT** that “**HAYES** intermingled the assets of **TUSPCO** and
20 the Natural Estate Trust to suit [his] own convenience.” (For purposes of these special
21 interrogatories, the term “**DOCUMENT**” shall mean any and all “writings,” as that term is
22 defined in California Evidence Code Section 250 and California Code of Civil Procedure
23 Section 231, including but not limited to any tangible items which contain handwriting,
24 type writing, printing, photostatic reproduction, photographic reproduction, electronic
25 reproduction, and any other form of communications or representation whether produced,
26 reproduced or stored on paper, cards, tapes, discs, belts, charts, films (including microfilm
27 or microfiche), computer storage devices or any other medium of recordation.)

1 **SPECIAL INTERROGATORY NO. 3:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 5 of the COMPLAINT that "HAYES intermingled the
4 assets of TUSPCO and the Natural Estate Trust to suit [his] own convenience."

5 (For purposes of these interrogatories, the term "IDENTIFY" shall mean, when applied to
6 a person, to list the name, title, function and last known telephone number and address.

7 For purposes of these interrogatories, the term "PERSONS" shall mean the plural as well
8 as the singular, any natural person or any firm, association, partnership, corporation or
9 other form of legal identity unless the context clearly dictates to the contrary.)

10 **SPECIAL INTERROGATORY NO. 4:**

11 State all facts that refer, relate or pertain to YOUR allegation in paragraph 5 of the
12 COMPLAINT that HAYES intermingled the assets of TUSPCO and the Natural Estate
13 Trust to evade TUSPCO's liability to subscribers to book contracts.

14 **SPECIAL INTERROGATORY NO. 5:**

15 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
16 paragraph 5 of the COMPLAINT that HAYES intermingled the assets of TUSPCO and
17 the Natural Estate Trust to evade TUSPCO's liability to subscribers to book contracts.

18 **SPECIAL INTERROGATORY NO. 6:**

19 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
20 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES intermingled the
21 assets of TUSPCO and the Natural Estate Trust to evade TUSPCO's liability to
22 subscribers to book contracts.

23 **SPECIAL INTERROGATORY NO. 7:**

24 State all facts that refer, relate or pertain to YOUR allegation in paragraph 5 of the
25 COMPLAINT that HAYES intermingled the assets of TUSPCO and the Natural Estate
26 Trust to pay substantial sums to [himself] and others.

27
28

1 **SPECIAL INTERROGATORY NO. 8:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the assets of **TUSPCO** and
4 the Natural Estate Trust to pay substantial sums to [himself] and others.

5 **SPECIAL INTERROGATORY NO. 9:**

6 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
7 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** intermingled the
8 assets of **TUSPCO** and the Natural Estate Trust to pay substantial sums to [himself] and
9 others.

10 **SPECIAL INTERROGATORY NO. 10:**

11 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
12 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of **TUSPCO**.

13 **SPECIAL INTERROGATORY NO. 11:**

14 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
15 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of **TUSPCO**.

16 **SPECIAL INTERROGATORY NO. 12:**

17 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
18 to **YOUR** allegation in paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the
19 assets of **TUSPCO**.

20 **SPECIAL INTERROGATORY NO. 13:**

21 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
22 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
23 **TRUST**.

24 **SPECIAL INTERROGATORY NO. 14:**

25 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
26 paragraph 5 of the **COMPLAINT** that **HAYES** dissipated the assets of the **TUSPCO**
27 **TRUST**.

28

1 **SPECIAL INTERROGATORY NO. 15:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES dissipated the
4 assets of the TUSPCO TRUST. (For purposes of these interrogatories, the term
5 "TUSPCO TRUST" shall mean The Universal Scientific Publications Company, Inc.,
6 Book Subscription Trust.)

7 **SPECIAL INTERROGATORY NO. 16:**

8 State with specificity all facts that refer, relate or pertain to YOUR allegation in
9 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of the Natural Estate
10 Trust.

11 **SPECIAL INTERROGATORY NO. 17:**

12 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
13 paragraph 5 of the COMPLAINT that HAYES dissipated the assets of the Natural Estate
14 Trust.

15 **SPECIAL INTERROGATORY NO. 18:**

16 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
17 to YOUR allegation in paragraph 5 of the COMPLAINT that HAYES dissipated the
18 assets of the Natural Estate Trust.

19 **SPECIAL INTERROGATORY NO. 19:**

20 State with specificity all facts that refer, relate or pertain to YOUR contention in
21 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

22 **SPECIAL INTERROGATORY NO. 20:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention in
24 paragraph 5 of the COMPLAINT that HAYES owes YOU a fiduciary duty.

25 **SPECIAL INTERROGATORY NO. 21:**

26 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
27 to YOUR contention in paragraph 5 of the COMPLAINT that HAYES owes YOU a

28

1 fiduciary duty.

2 **SPECIAL INTERROGATORY NO. 22:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that the
4 price of Book 1 was \$400.00 per copy as alleged in paragraph 13 of the **COMPLAINT**.

5 **SPECIAL INTERROGATORY NO. 23:**

6 If **YOU** contend in paragraph 19 of the **COMPLAINT** that **HAYES** made oral
7 representations that he was "working on the publication," state whether the representation
8 was in person or via telephone.

9 **SPECIAL INTERROGATORY NO. 24:**

10 Identify the date(s) that **HAYES** represented via the telephone that he was "working
11 on the publication."

12 **SPECIAL INTERROGATORY NO. 25:**

13 With respect to the immediately preceding interrogatory, state with specificity
14 **HAYES'S** oral representation(s) via telephone regarding "working on publication".

15 **SPECIAL INTERROGATORY NO. 26:**

16 Identify all **DOCUMENTS** that refer, relate or pertain to **HAYES'S** oral
17 representation(s) via telephone regarding "working on publication".

18 **SPECIAL INTERROGATORY NO. 27:**

19 **IDENTIFY** all **PERSONS** to whom **HAYES** represented via the telephone that he
20 was "working on the publication."

21 **SPECIAL INTERROGATORY NO. 28:**

22 Identify the date(s) that **HAYES** represented orally, in person that he was "working
23 on the publication."

24 **SPECIAL INTERROGATORY NO. 29:**

25 With respect to the immediately preceding interrogatory, state with specificity
26 **HAYES'S** oral, in person representation(s) regarding "working on publication."

27

28

1 **SPECIAL INTERROGATORY NO. 30:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **HAYES'S** oral, in person
3 representation(s) regarding "working on publication."

4 **SPECIAL INTERROGATORY NO. 31:**

5 **IDENTIFY** all **PERSONS** to whom **HAYES** represented orally, in person that he
6 was "working on the publication."

7 **SPECIAL INTERROGATORY NO. 32:**

8 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
9 paragraph 19 of the **COMPLAINT** that **HAYES** represented in writing that he was
10 "working on the publication."

11 **SPECIAL INTERROGATORY NO. 33:**

12 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
13 to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that **HAYES** represented in
14 writing that he was "working on the publication."

15 **SPECIAL INTERROGATORY NO. 34:**

16 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention
17 **HAYES** represented in writing that he was "working on the publication."

18 **SPECIAL INTERROGATORY NO. 35:**

19 State the date(s) that **HAYES** allegedly represented in writing that he was "working
20 on the publication."

21 **SPECIAL INTERROGATORY NO. 36:**

22 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
23 paragraph 19 of the **COMPLAINT** that **HAYES** "assured Plaintiffs that Book 1 would be
24 published."

25 **SPECIAL INTERROGATORY NO. 37:**

26 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
27 to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that **HAYES** "assured
28

1 Plaintiffs that Book 1 would be published.”

2 **SPECIAL INTERROGATORY NO. 38:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
4 refer, relate or pertain to **YOUR** allegation in paragraph 19 of the **COMPLAINT** that
5 **HAYES** “assured Plaintiffs that Book 1 would be published.”

6 **SPECIAL INTERROGATORY NO. 39:**

7 **IDENTIFY** all **PERSONS** that **HAYES** assured in writing that Book 1 would be
8 published.

9 **SPECIAL INTERROGATORY NO. 40:**

10 State the date(s) of all **DOCUMENTS** where **HAYES** assured in writing that Book
11 1 would be published.

12 **SPECIAL INTERROGATORY NO. 41:**

13 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
14 via the telephone, state the date(s) of all such assurances.

15 **SPECIAL INTERROGATORY NO. 42:**

16 **IDENTIFY** all **PERSONS** that **HAYES** “assured ... that Book 1 would be
17 published” via the telephone.

18 **SPECIAL INTERROGATORY NO. 43:**

19 If **YOU** contend that **HAYES** “assured Plaintiffs that Book 1 would be published”
20 in person, state the date(s) of all such assurances.

21 **SPECIAL INTERROGATORY NO. 44:**

22 **IDENTIFY** all **PERSONS** that **HAYES** “assured ... that Book 1 would be
23 published” in person.

24 **SPECIAL INTERROGATORY NO. 45:**

25 State with specificity all facts that refer, relate or pertain to **YOUR** allegation in
26 paragraph 19 of the **COMPLAINT** that **HAYES** “encouraged Plaintiffs to wait for its [the
27 Book] delivery.”

28

1 **SPECIAL INTERROGATORY NO. 46:**

2 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
3 delivery” in conversations via telephone, then state the date(s) of those conversations.

4 **SPECIAL INTERROGATORY NO. 47:**

5 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
6 to YOUR allegation in paragraph 19 of the COMPLAINT that HAYES “encouraged
7 Plaintiffs to wait for its [the Book] delivery.”

8 **SPECIAL INTERROGATORY NO. 48:**

9 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
10 delivery” in conversations via telephone, then IDENTIFY all PERSONS that HAYES
11 “encouraged” in these conversations.

12 **SPECIAL INTERROGATORY NO. 49:**

13 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
14 delivery” in conversations in person, then state the date(s) of those conversations.

15 **SPECIAL INTERROGATORY NO. 50:**

16 If YOU contend that HAYES “encouraged Plaintiffs to wait for its [the Book]
17 delivery” in conversations in person, then IDENTIFY all PERSONS that HAYES
18 “encouraged” in these conversations.

19 **SPECIAL INTERROGATORY NO. 51:**

20 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that
21 refer, relate or pertain to YOUR allegation in paragraph 19 of the COMPLAINT that
22 HAYES “encouraged Plaintiffs to wait for its [the Book] delivery.”

23 **SPECIAL INTERROGATORY NO. 52:**

24 State the dollar amount that YOU paid for all YOUR copies of Book 1.

25 **SPECIAL INTERROGATORY NO. 53:**

26 If YOU contend in paragraph 21 of the COMPLAINT that the publication and
27 distribution of Volume 1 was “in partial performance of the contract,” state the dollar
28

1 amount that YOU attribute to Volume 1.

2 **SPECIAL INTERROGATORY NO. 54:**

3 State all facts that refer, relate or pertain to YOUR allegation in paragraph 22 of the
4 COMPLAINT that HAYES made representations regarding future publication of the
5 remaining volumes of Book 1 at all times after Volume 1 was published.

6 **SPECIAL INTERROGATORY NO. 55:**

7 If YOU contend in paragraph 22 of the COMPLAINT that HAYES made
8 representations via telephone regarding future publication of the remaining volumes of
9 Book, state the dates of all such conversations.

10 **SPECIAL INTERROGATORY NO. 56:**

11 IDENTIFY all PERSONS that HAYES spoke to via telephone regarding future
12 publication of the remaining volumes of Book 1.

13 **SPECIAL INTERROGATORY NO. 57:**

14 Identify all DOCUMENTS that refer, relate or pertain to HAYES'S representations
15 regarding future publication of the remaining volumes of Book 1.

16 **SPECIAL INTERROGATORY NO. 58:**

17 State the date(s) of all DOCUMENTS that refer, relate or pertain to HAYES'S
18 representations regarding future publication of the remaining volumes of Book 1.

19 **SPECIAL INTERROGATORY NO. 59:**

20 State all facts that refer, relate or pertain to YOUR allegation that HAYES
21 represented that the remaining volumes of Book 1 would consist of edited transcripts of
22 AJG's tape recorded lectures of course V-201. (For purposes of these special
23 interrogatories, AJG shall mean Andrew J. Galambos.)

24 **SPECIAL INTERROGATORY NO. 60:**

25 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
26 to YOUR allegation that HAYES represented that the remaining volumes of Book 1 would
27 consist of edited transcripts of AJG's tape recorded lectures of course V-201.

28

1 **SPECIAL INTERROGATORY NO. 61:**

2 If YOU contend that HAYES represented via telephone that the remaining volumes
3 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
4 201, then state the dates of all such telephone conversations.

5 **SPECIAL INTERROGATORY NO. 62:**

6 If YOU contend that HAYES represented via telephone that the remaining volumes
7 of Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
8 201, then IDENTIFY all PERSONS that HAYES made such representations to via
9 telephone.

10 **SPECIAL INTERROGATORY NO. 63:**

11 If YOU contend that HAYES represented in person that the remaining volumes of
12 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
13 201, then state the dates of all such in person representations.

14 **SPECIAL INTERROGATORY NO. 64:**

15 If YOU contend that HAYES represented in person that the remaining volumes of
16 Book 1 would consist of edited transcripts of AJG's tape recorded lectures of course V-
17 201, then IDENTIFY all PERSONS that HAYES made such representations to in person.

18 **SPECIAL INTERROGATORY NO. 65:**

19 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
20 HAYES represented that the remaining volumes of Book 1 would consist of edited
21 transcripts of AJG's tape recorded lectures of course V-201.

22 **SPECIAL INTERROGATORY NO. 66:**

23 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
24 TUSPCO's website represents to the public that: "The remaining three or four volumes. . .
25 are in progress and will consist of edited transcripts. . ."

26 **SPECIAL INTERROGATORY NO. 67:**

27 If YOU contend that TUSPCO's website represents to the public that: "The
28

1 remaining three or four volumes. . . are in progress and will consist of edited transcripts. .”
2 then state the date(s) that TUSPCO’s website made such a representation.

3 **SPECIAL INTERROGATORY NO. 68:**

4 **IDENTIFY** all **PERSONS** with knowledge that TUSPCO’s website represents to
5 the public that: “The remaining three or four volumes. . . are in progress and will consist of
6 edited transcripts. .”.

7 **SPECIAL INTERROGATORY NO. 69:**

8 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
9 TUSPCO’s website offers to sell a first edition, hard cover copy of all volumes, including
10 those yet to be published, for the price of \$2,500.00.

11 **SPECIAL INTERROGATORY NO. 70:**

12 If **YOU** contend that TUSPCO’s website offers to sell a first edition, hard cover
13 copy of all volumes, including those yet to be published, for the price of \$2,500.00, then
14 state the date(s) the website made that offer.

15 **SPECIAL INTERROGATORY NO. 71:**

16 **IDENTIFY** all **PERSONS** with knowledge that TUSPCO’s website offers to sell a
17 first edition, hard cover copy of all volumes, including those yet to be published, for the
18 price of \$2,500.00.

19 **SPECIAL INTERROGATORY NO. 72:**

20 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
21 **COMPLAINT** that **HAYES** denied having any duty or obligation to publish the remaining
22 volumes of Book 1 to Subscribers.

23 **SPECIAL INTERROGATORY NO. 73:**

24 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
25 paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or obligation to
26 publish the remaining volumes of Book 1 to Subscribers.

27

28

1 **SPECIAL INTERROGATORY NO. 74:**

2 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
3 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES denied having
4 any duty or obligation to publish the remaining volumes of Book 1 to Subscribers.

5 **SPECIAL INTERROGATORY NO. 75:**

6 State all facts that refer, relate or pertain to YOUR allegation in paragraph 26 of the
7 COMPLAINT that HAYES refused to advise plaintiffs of what steps have been or will be
8 taken "to fulfill the balance of the contract."

9 **SPECIAL INTERROGATORY NO. 76:**

10 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
11 paragraph 26 of the COMPLAINT that HAYES refused to advise plaintiffs of what steps
12 have been or will be taken "to fulfill the balance of the contract."

13 **SPECIAL INTERROGATORY NO. 77:**

14 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
15 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES refused to advise
16 plaintiffs of what steps have been or will be taken "to fulfill the balance of the contract."

17 **SPECIAL INTERROGATORY NO. 78:**

18 State all facts that refer, relate or pertain to YOUR allegation in paragraph 26 of the
19 COMPLAINT that HAYES denied having any duty or obligation to account to Plaintiffs
20 for the assets of the TUSPCO TRUST.

21 **SPECIAL INTERROGATORY NO. 79:**

22 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
23 paragraph in paragraph 26 of the COMPLAINT that HAYES denied having any duty or
24 obligation to account to Plaintiffs for the assets of the TUSPCO TRUST.

25 **SPECIAL INTERROGATORY NO. 80:**

26 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
27 to YOUR allegation in paragraph 26 of the COMPLAINT that HAYES denied having

28

1 any duty or obligation to account to Plaintiffs for the assets of the TUSPCO TRUST.

2 **SPECIAL INTERROGATORY NO. 81:**

3 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 26 of the
4 **COMPLAINT** that **HAYES** denied having any duty or obligation to account to Plaintiffs
5 for the assets of the TUSPCO.

6 **SPECIAL INTERROGATORY NO. 82:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 26 of the **COMPLAINT** that **HAYES** denied having any duty or obligation to
9 account to Plaintiffs for the assets of the TUSPCO.

10 **SPECIAL INTERROGATORY NO. 83:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 26 of the **COMPLAINT** that **HAYES** denied having
13 any duty or obligation to account to Plaintiffs for the assets of the TUSPCO.

14 **SPECIAL INTERROGATORY NO. 84:**

15 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 27 of the
16 **COMPLAINT** that the lectures of course V-201 are "capable" of being published in the
17 same format as Volume 1 of Book 1 and have been or easily could be transferred to
18 compact disc.

19 **SPECIAL INTERROGATORY NO. 85:**

20 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
21 paragraph 27 of the **COMPLAINT** that the lectures of course V-201 are "capable" of
22 being published in the same format as Volume 1 of Book 1 and have been or easily could
23 be transferred to compact disc.

24 **SPECIAL INTERROGATORY NO. 86:**

25 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
26 to **YOUR** allegation in paragraph 27 of the **COMPLAINT** that the lectures of course V-
27 201 are "capable" of being published in the same format as Volume 1 of Book 1 and have

28

1 been or easily could be transferred to compact disc.

2 **SPECIAL INTERROGATORY NO. 87:**

3 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 28 of the
4 **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES** account for the
5 assets of the **TUSPCO TRUST**.

6 **SPECIAL INTERROGATORY NO. 88:**

7 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
8 paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES**
9 account for the assets of the **TUSPCO TRUST**.

10 **SPECIAL INTERROGATORY NO. 89:**

11 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
12 to **YOUR** allegation in paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly
13 requested that **HAYES** account for the assets of the **TUSPCO TRUST**.

14 **SPECIAL INTERROGATORY NO. 90:**

15 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 28 of the
16 **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES** account for the
17 assets of the **TUSPCO**.

18 **SPECIAL INTERROGATORY NO. 91:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
20 paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly requested that **HAYES**
21 account for the assets of the **TUSPCO**.

22 **SPECIAL INTERROGATORY NO. 92:**

23 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
24 to **YOUR** allegation in paragraph 28 of the **COMPLAINT** that Plaintiffs have repeatedly
25 requested that **HAYES** account for the assets of the **TUSPCO**.

26 **SPECIAL INTERROGATORY NO. 93:**

27 If **YOU** contend in paragraph 43 of the **COMPLAINT** that **HAYES** "breached" the
28

1 Subscription Agreement, state with specificity how **HAYES** breached the agreement.

2 **SPECIAL INTERROGATORY NO. 94:**

3 Identify all **DOCUMENTS** that refer, relate or pertain to how **HAYES** "breached"
4 the Subscription Agreement.

5 **SPECIAL INTERROGATORY NO. 95:**

6 **IDENTIFY** all **PERSONS** with knowledge of how **HAYES** "breached" the
7 Subscription Agreement.

8 **SPECIAL INTERROGATORY NO. 96:**

9 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
10 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets in the
11 **TUSPCO TRUST**.

12 **SPECIAL INTERROGATORY NO. 97:**

13 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
14 **HAYES** has an obligation to account to plaintiffs for the assets in the **TUSPCO TRUST**.

15 **SPECIAL INTERROGATORY NO. 98:**

16 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
17 to **YOUR** allegation that **HAYES** has an obligation to account to plaintiffs for the assets in
18 the **TUSPCO TRUST**.

19 **SPECIAL INTERROGATORY NO. 99:**

20 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
21 **COMPLAINT** that **HAYES** has an obligation to account to plaintiffs for the assets of
22 **TUSPCO**.

23 **SPECIAL INTERROGATORY NO. 100:**

24 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation that
25 **HAYES** has an obligation to account to plaintiffs for the assets fo the **TUSPCO**.

26 **SPECIAL INTERROGATORY NO. 101:**

27 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain

28

1 to YOUR allegation that HAYES has an obligation to account to plaintiffs for the assets of
2 TUSPCO.

3 **SPECIAL INTERROGATORY NO. 102:**

4 State all facts that refer, relate or pertain to YOUR allegation in paragraph 43 of the
5 COMPLAINT that Defendants have an obligation to advise YOU of the progress, if any,
6 of efforts to fulfill TUSPCO's obligations under the agreement.

7 **SPECIAL INTERROGATORY NO. 103:**

8 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
9 paragraph 43 of the COMPLAINT that Defendants have an obligation to advise YOU of
10 the progress, if any, of efforts to fulfill TUSPCO's obligations under the agreement.

11 **SPECIAL INTERROGATORY NO. 104:**

12 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
13 to YOUR allegation in paragraph 43 of the COMPLAINT that Defendants have an
14 obligation to advise YOU of the progress, if any, of efforts to fulfill TUSPCO's
15 obligations under the agreement.

16 **SPECIAL INTERROGATORY NO. 105:**

17 State all facts that refer, relate or pertain to YOUR allegation in paragraph 43 of the
18 COMPLAINT that Defendants, or any one of them, have any obligation to plaintiffs to
19 "deliver the balance of Book 1."

20 **SPECIAL INTERROGATORY NO. 106:**

21 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
22 paragraph 43 of the COMPLAINT that Defendants, or any one of them, have any
23 obligation to plaintiffs to "deliver the balance of Book 1."

24 **SPECIAL INTERROGATORY NO. 107:**

25 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
26 to YOUR allegation in paragraph 43 of the COMPLAINT that Defendants, or any one of
27 them, have any obligation to plaintiffs to "deliver the balance of Book 1."

28

1 **SPECIAL INTERROGATORY NO. 108:**

2 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 43 of the
3 **COMPLAINT** that Defendants, or any one of them, have any obligation to **YOU** to
4 “refund any amount.”

5 **SPECIAL INTERROGATORY NO. 109:**

6 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
7 paragraph 43 of the **COMPLAINT** that Defendants, or any one of them, have any
8 obligation to **YOU** to “refund any amount.”

9 **SPECIAL INTERROGATORY NO. 110:**

10 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
11 to **YOUR** allegation in paragraph 43 of the **COMPLAINT** that Defendants, or any one of
12 them, have any obligation to **YOU** to “refund any amount.”

13 **SPECIAL INTERROGATORY NO. 111:**

14 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
15 **COMPLAINT** that “[a]t all relevant times, a fiduciary relationship existed between
16 Plaintiffs” and **HAYES**.

17 **SPECIAL INTERROGATORY NO. 112:**

18 State the date(s) that **YOU** contend that a fiduciary relationship existed between
19 **YOU** and **HAYES**.

20 **SPECIAL INTERROGATORY NO. 113:**

21 Identify all **DOCUMENTS** that reflect a fiduciary relationship between **YOU** and
22 **HAYES**.

23 **SPECIAL INTERROGATORY NO. 114:**

24 **IDENTIFY** all **PERSONS** with knowledge of the date(s) that a fiduciary
25 relationship existed between **YOU** and **HAYES**.

26 **SPECIAL INTERROGATORY NO. 115:**

27 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 46 of the
28

1 COMPLAINT that HAYES “voluntarily accepted the Plaintiffs’ trust and confidence.”

2 **SPECIAL INTERROGATORY NO. 116:**

3 State the date that YOU contend HAYES “voluntarily accepted the Plaintiffs’ trust
4 and confidence.”

5 **SPECIAL INTERROGATORY NO. 117:**

6 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
7 paragraph 46 of the COMPLAINT that HAYES “voluntarily accepted the Plaintiffs’ trust
8 and confidence.”

9 **SPECIAL INTERROGATORY NO. 118:**

10 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
11 to YOUR allegation in paragraph 46 of the COMPLAINT that HAYES “voluntarily
12 accepted the Plaintiffs’ trust and confidence.”

13 **SPECIAL INTERROGATORY NO. 119:**

14 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
15 COMPLAINT that HAYES improperly expended funds of the TUSPCO TRUST.

16 **SPECIAL INTERROGATORY NO. 120:**

17 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation in
18 paragraph 47 of the COMPLAINT that HAYES improperly expended funds of the
19 TUSPCO TRUST.

20 **SPECIAL INTERROGATORY NO. 121:**

21 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
22 to YOUR allegation in paragraph 47 of the COMPLAINT that HAYES improperly
23 expended funds of the TUSPCO TRUST.

24 **SPECIAL INTERROGATORY NO. 122:**

25 State all facts that refer, relate or pertain to YOUR allegation in paragraph 47 of the
26 COMPLAINT that HAYES improperly expended funds of TUSPCO.

27
28

1 **SPECIAL INTERROGATORY NO. 123:**

2 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
3 paragraph 47 of the **COMPLAINT** that **HAYES** improperly expended funds of **TUSPCO**.

4 **SPECIAL INTERROGATORY NO. 124:**

5 **IDENTIFY** all **PERSONS** with knowledge of the facts that refer, relate or pertain
6 to **YOUR** allegation in paragraph 47 of the **COMPLAINT** that **HAYES** improperly
7 expended funds of **TUSPCO**.

8 **SPECIAL INTERROGATORY NO. 125:**

9 State all facts that refer, relate or pertain to **YOUR** allegation in paragraph 47 of the
10 **COMPLAINT** that **HAYES** improperly expended funds of the Natural Estate Trust.

11 **SPECIAL INTERROGATORY NO. 126:**

12 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** allegation in
13 paragraph 47 of the **COMPLAINT** that **HAYES** improperly expended funds of the
14 Natural Estate Trust.

15 **SPECIAL INTERROGATORY NO. 127:**

16 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
17 the **TUSPCO TRUST**.

18 **SPECIAL INTERROGATORY NO. 128:**

19 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
20 “unauthorized recipients” received funds from the **TUSPCO TRUST**.

21 **SPECIAL INTERROGATORY NO. 129:**

22 **IDENTIFY** all **PERSONS YOU** claim are “unauthorized recipients” of funds from
23 **TUSPCO**.

24 **SPECIAL INTERROGATORY NO. 130:**

25 Identify all **DOCUMENTS** that refer, relate or pertain to **YOUR** contention that
26 “unauthorized recipients” received funds from **TUSPCO**.

27

28

1 **SPECIAL INTERROGATORY NO. 131:**

2 IDENTIFY all PERSONS YOU claim are "unauthorized recipients" of funds from
3 the Natural Estate Trust.

4 **SPECIAL INTERROGATORY NO. 132:**

5 Identify all DOCUMENTS that refer, relate or pertain to YOUR contention that
6 "unauthorized recipients" received funds from the Natural Estate Trust.

7 **SPECIAL INTERROGATORY NO. 133:**

8 State all facts that refer, relate or pertain to YOUR allegation in paragraph 48 of the
9 COMPLAINT that HAYES should be adjudged individually liable to Plaintiffs.

10 **SPECIAL INTERROGATORY NO. 134:**

11 Identify all DOCUMENTS that refer, relate or pertain to YOUR allegation that
12 HAYES should be adjudged individually liable to Plaintiffs.

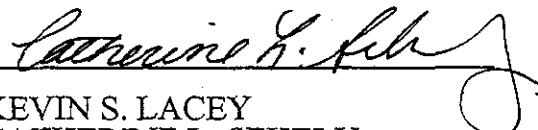
13 **SPECIAL INTERROGATORY NO. 135:**

14 IDENTIFY all PERSONS with knowledge of the facts that refer, relate or pertain
15 to YOUR allegation that HAYES should be adjudged individually liable to Plaintiffs.

16 DATED: November 17, 2006

LACEY, DUNN & DO
A Professional Corporation

17
18
19
20
21
22
23
24
25
26
27
28

By: 
KEVIN S. LACEY
CATHERINE L. SEKELY
Attorneys for Defendant
Charles W. Hayes

1 **DECLARATION OF CATHERINE L. SEKELY RE ADDITIONAL DISCOVERY**

2 I, Catherine L. Sekely, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all the courts in the
4 State of California, and am an associate in the law firm of Lacey, Dunn & Do, A
5 Professional Corporation, attorneys for defendant Charles W. Hayes ("Mr. Hayes").

6 2. I am thoroughly familiar with the content of this file and if called to testify as
7 to the facts contained in this declaration I could, and would, testify to those facts based
8 upon my own personal knowledge.

9 3. This declaration is submitted in support of Mr. Hayes's request for additional
10 discovery.

11 4. I am propounding to plaintiff the attached set of special interrogatories.

12 5. This first set of special interrogatories will cause the total number of
13 specially prepared interrogatories propounded to plaintiff to exceed the number of specially
14 prepared interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil
15 Procedure.

16 6. This first set of specially prepared interrogatories contains a total of 135
17 specially prepared interrogatories. This will cause the total number of specially prepared
18 interrogatories served on plaintiff to exceed the number of specially prepared
19 interrogatories permitted by Section [1] of section 2030.030 of the Code of Civil Procedure
20 by 100 interrogatories.

21 7. I have personally drafted each of the questions in this set of interrogatories.


22 8. This number of questions is warranted under Section [1] of section 2030.030
23 of the Code of Civil Procedure because of the complexity of the issues raised in plaintiff's
24 complaint as well as the vast number of existing and potential factual issues in this case.
25 Further, because of the complexity and number of issues in this case, allowing Mr. Hayes
26 to submit additional discovery will greatly reduce the financial burden on all parties which
27 would necessarily result from conducting discovery by other means.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the plaintiff, or the plaintiff's attorney, to whom these specially prepared interrogatories are directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 17th day of November 2006, at Glendale, California.


CATHERINE L. SEKELY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JONATHAN K. GOLDEN, ESQ. (CSB #49459)
1880 Century Park East, Suite 300
Los Angeles, CA 90067
Telephone: (310) 553-3830
Facsimile: (310) 553-1337

Attorney for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

FREDERIC G. MARKS, JOSEPH HENTZ,
STUART SMITH, JEAN MOLLENHAUER,
ROGAN COOMBS, JOSEPH DROLL,
GREGG ROOTEN, THOMAS R. WOOD,
MARILYN WOOD, GREG STAININGER,
and JOHN FOUNTAIN,

Plaintiffs,

v.

WAYNE JOYNER and CHARLES W.
HAYES, individually and as Trustees of THE
UNIVERSAL SCIENTIFIC PUBLICATIONS
COMPANY TRUST, THE UNIVERSAL
SCIENTIFIC PUBLICATIONS COMPANY,
INC., THE NATURAL ESTATE TRUST and
DOES 1 through 50, Inclusive,

Defendants.

CASE NO. BC352639

(Honorable Kenneth R. Freeman,
Department 64)

**PLAINTIFF'S ANSWERS TO
DEFENDANT CHARLES W.
HAYES' SPECIAL
INTERROGATORIES**

ASKING PARTY: Defendant CHARLES W. HAYES

RESPONDING PARTY: Plaintiffs JOSEPH HENTZ, STUART SMITH, JEAN
MOLLENHAUER, ROGAN COOMBS, JOSEPH DROLL,
GREGG ROOTEN, THOMAS R. WOOD, MARILYN WOOD,
GREG STAININGER

SET NUMBER: One (1)

EX.L ✓

1 ANSWER TO SPECIAL INTERROGATORY NO. 3:

2 Plaintiff is unable to identify any such persons at this time.

3 ANSWER TO SPECIAL INTERROGATORY NO. 4:

4 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
5 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
6 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
7 personal knowledge on this subject but will adopt the responses of Mr. Marks.

8 ANSWER TO SPECIAL INTERROGATORY NO. 5:

9 Plaintiff is unable to identify any such documents at this time.

10 ANSWER TO SPECIAL INTERROGATORY NO. 6:

11 Plaintiff is unable to identify any such persons at this time.

12 ANSWER TO SPECIAL INTERROGATORY NO. 7:

13 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
14 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
15 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
16 personal knowledge on this subject but will adopt the responses of Mr. Marks.

17 ANSWER TO SPECIAL INTERROGATORY NO. 8:

18 Plaintiff is unable to identify any such documents at this time.

19 ANSWER TO SPECIAL INTERROGATORY NO. 9:

20 Plaintiff is unable to identify any such persons at this time.

21 ANSWER TO SPECIAL INTERROGATORY NO. 10:

22 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
23 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
24 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
25 personal knowledge on this subject but will adopt the responses of Mr. Marks.

26 ANSWER TO SPECIAL INTERROGATORY NO. 11:

27 Plaintiff is unable to identify any such documents at this time.

28 ///

1 ANSWER TO SPECIAL INTERROGATORY NO. 12:

2 Plaintiff is unable to identify any such persons at this time.

3 ANSWER TO SPECIAL INTERROGATORY NO. 13:

4 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
5 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
6 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
7 personal knowledge on this subject but will adopt the responses of Mr. Marks.

8 ANSWER TO SPECIAL INTERROGATORY NO. 14:

9 Plaintiff is unable to identify any such documents at this time.

10 ANSWER TO SPECIAL INTERROGATORY NO. 15:

11 Plaintiff is unable to identify any such persons at this time.

12 ANSWER TO SPECIAL INTERROGATORY NO. 16:

13 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
14 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
15 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
16 personal knowledge on this subject but will adopt the responses of Mr. Marks.

17 ANSWER TO SPECIAL INTERROGATORY NO. 17:

18 Plaintiff is unable to identify any such documents at this time.

19 ANSWER TO SPECIAL INTERROGATORY NO. 18:

20 Plaintiff is unable to identify any such persons at this time.

21 ANSWER TO SPECIAL INTERROGATORY NO. 19:

22 It is my understanding that Defendant Hayes is a Trustee of the TUSPCO Trust which
23 accepted my money in trust and may be the alter ego of TUSPCO, and /or TNET, of which Hayes
24 is also an officer or trustee. Discovery is continuing.

25 ANSWER TO SPECIAL INTERROGATORY NO. 20:

26 Letters written by HAYES and JOYNER to subscribers and to Mr. Marks, which were
27 produced to Defendants in November, 2006. I believe additional documents exist within the
28 exclusive possession and control of Defendants, which I have not yet seen.

1 ANSWER TO SPECIAL INTERROGATORY NO. 21:

2 I can only speculate upon the number and identity of persons having knowledge of the
3 foregoing facts but it would certainly include Messrs. Hayes, Joyner and most of the subscribers
4 to the PPSA, including Plaintiffs.

5 ANSWER TO SPECIAL INTERROGATORY NO. 22:

6 Plaintiff is unable to identify any such documents at this time.

7 ANSWER TO SPECIAL INTERROGATORY NO. 23:

8 I have no personal recollection at this time.

9 ANSWER TO SPECIAL INTERROGATORY NO. 24:

10 I have no personal recollection at this time.

11 ANSWER TO SPECIAL INTERROGATORY NO. 25:

12 I have no personal recollection at this time.

13 ANSWER TO SPECIAL INTERROGATORY NO. 26:

14 Unknown.

15 ANSWER TO SPECIAL INTERROGATORY NO. 27:

16 Unknown.

17 ANSWER TO SPECIAL INTERROGATORY NO. 28:

18 I have no personal recollection at this time.

19 ANSWER TO SPECIAL INTERROGATORY NO. 29:

20 I have no personal recollection at this time.

21 ANSWER TO SPECIAL INTERROGATORY NO. 30:

22 Unknown.

23 ANSWER TO SPECIAL INTERROGATORY NO. 31:

24 Unknown.

25 ANSWER TO SPECIAL INTERROGATORY NO. 32:

26 I have no personal recollection at this time. I rely upon the recollections of Mr. Marks and
27 what I have heard from others in the FEI market. However, neither Mr. Hayes nor Mr. Joyner has
28 ever indicated to me that they had stopped "working on publication" or denied that they were going

1 to publish the remaining volumes of Book 1 to subscribers, which task I have always understood
2 to be their principle responsibility as caretakers of Galambos' estate. The reason for TUSPCO'S
3 existence is to publish the lectures of AJG in book form. So long as TUSPCO exists, that is an
4 explicit representation to the public and AJG's former students that its officers and agents, Hayes
5 and Joyner, are actively working on publication. If they deny this assertion, they should be
6 removed from office.

7 ANSWER TO SPECIAL INTERROGATORY NO. 33:

8 I can only speculate on the identity and number of persons in the FEI market and those
9 outside the market who received letters from TUSPCO or visited its internet site. Certainly the
10 subscribers to the PPSA would have been advised.

11 ANSWER TO SPECIAL INTERROGATORY NO. 34:

12 Unknown, except for letters to subscribers and representations on the internet.

13 ANSWER TO SPECIAL INTERROGATORY NO. 35:

14 May 18, 1998; July 17, 1998; March 12, 1999 and continuously on TUSPCO'S web site
15 until this action was filed.

16 ANSWER TO SPECIAL INTERROGATORY NO. 36:

17 I personally have little, if any, knowledge regarding Hayes' assurances. I rely upon Mr.
18 Marks' knowledge and recollection of events. The 1999 Open House was detailed in introductory
19 paragraph 5 of Mr. Marks' Responses to Interrogatories. I adopt those responses.

20 ANSWER TO SPECIAL INTERROGATORY NO. 37:

21 I can only speculate upon the number of people having knowledge of the foregoing facts
22 but it would certainly include Messrs. Hayes, Joyner and most of the subscribers to the PPSA.

23 ANSWER TO SPECIAL INTERROGATORY NO. 38:

24 Unknown, except for letters to subscribers and representations on the internet.

25 ANSWER TO SPECIAL INTERROGATORY NO. 39:

26 I can only speculate on the identity of such persons but I understand that assurances were
27 made on TUSPCO's website.

28 ///

1 ANSWER TO SPECIAL INTERROGATORY NO. 40:

2 May 18, 1998; July 17, 1998; March 12, 1999 and continuously on TUSPCO'S web site
3 until this action was filed.

4 ANSWER TO SPECIAL INTERROGATORY NO. 41:

5 Unknown.

6 ANSWER TO SPECIAL INTERROGATORY NO. 42:

7 Unknown.

8 ANSWER TO SPECIAL INTERROGATORY NO. 43:

9 Unknown, except for the April 1999 representations detailed in introductory paragraph 5
10 to Mr. Marks' Responses to Hayes' Special Interrogatories, Set No. 1.

11 ANSWER TO SPECIAL INTERROGATORY NO. 44:

12 Unknown, except for the April 1999 representations detailed in introductory paragraph 5
13 to Mr. Marks' Responses to Hayes' Special Interrogatories, Set No. 1.

14 ANSWER TO SPECIAL INTERROGATORY NO. 45:

15 I have no personal recollection at this time. I rely upon the recollections of Mr. Marks and
16 what I have heard from others in the FEI market. However, neither Mr. Hayes nor Mr. Joyner has
17 ever indicated to me that they had stopped "working on publication" or denied that they were going
18 to publish the remaining volumes of Book 1 to subscribers, which task I have always understood
19 to be their principle responsibility as caretakers of Galambos' estate. The reason for TUSPCO'S
20 existence is to publish the lectures of AJG in book form. So long as TUSPCO exists, that is an
21 explicit representation to the public and AJG's former students that its officers and agents, Hayes
22 and Joyner, are actively working on publication. If they deny this assertion, they should be
23 removed from office.

24 ANSWER TO SPECIAL INTERROGATORY NO. 46:

25 Unknown.

26 ANSWER TO SPECIAL INTERROGATORY NO. 47:

27 I can only speculate on the identity and number of persons in the FEI market and those
28 outside the market who received letters from TUSPCO or visited its internet site. Certainly the

1 subscribers to the PPSA would have been advised.

2 ANSWER TO SPECIAL INTERROGATORY NO. 48:

3 Unknown.

4 ANSWER TO SPECIAL INTERROGATORY NO. 49:

5 Unknown, except for the April 1999 Open House.

6 ANSWER TO SPECIAL INTERROGATORY NO. 50:

7 I can only speculate on the identity of such persons other than the list of persons identified
8 by Mr. Marks in introductory paragraph 5 to his responses to Set 1 of Hayes' Special
9 Interrogatories.

10 ANSWER TO SPECIAL INTERROGATORY NO. 51:

11 Unknown, except for those produced by Mr. Marks.

12 ANSWER TO SPECIAL INTERROGATORY NO. 52:

13 I do not recall the exact amount at this time but I would trust TUSPCO's records to be
14 accurate.

15 ANSWER TO SPECIAL INTERROGATORY NO. 53:

16 Plaintiff objects to this Interrogatory on the grounds that it is vague, ambiguous and falsely
17 assumes that a dollar amount could be attributed to Volume I.

18 ANSWER TO SPECIAL INTERROGATORY NO. 54:

19 My personal knowledge on this subject is quite limited; I would rely upon, and adopt, Mr.
20 Marks' response to this Interrogatory. I do believe the TUSPCO website promised publication and
21 offered Book 1 for sale and no one representing TUSPCO ever informed me that the remaining
22 volumes of Book 1 would not be published.

23 ANSWER TO SPECIAL INTERROGATORY NO. 55:

24 Unknown.

25 ANSWER TO SPECIAL INTERROGATORY NO. 56:

26 Unknown.

27 ANSWER TO SPECIAL INTERROGATORY NO. 57:

28 Unknown, except for letters to subscribers and representations on the internet.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANSWER TO SPECIAL INTERROGATORY NO. 58:

May 18, 1998; July 17, 1998; March 12, 1999 and continuously on TUSPCO'S web site until this action was filed.

ANSWER TO SPECIAL INTERROGATORY NO. 59:

The PPSA and TUSPCO's website have always stated this.

ANSWER TO SPECIAL INTERROGATORY NO. 60:

I can only speculate upon the number of people having knowledge of the foregoing facts but it would certainly include Messrs. Hayes, Joyner and most of the subscribers to the PPSA.

ANSWER TO SPECIAL INTERROGATORY NO. 61:

Unknown, I rely upon the recollections and personal knowledge of Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 62:

Unknown, I rely upon the recollections and personal knowledge of Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 63:

Unknown, I rely upon the recollections and personal knowledge of Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 64:

Unknown, I rely upon the recollections and personal knowledge of Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 65:

Unknown, except for documents produced by Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 66:

Unknown, except for documents produced by Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 67:

It is my understanding and belief that the representation was made on TUSPCO's website continually for many years, until sometime after this action was commenced.

ANSWER TO SPECIAL INTERROGATORY NO. 68:

Unknown, I can only speculate on the identities of the thousands of persons who visited the website.

ANSWER TO SPECIAL INTERROGATORY NO. 69:

Unknown, except for documents produced by Mr. Marks.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANSWER TO SPECIAL INTERROGATORY NO. 70:

It is my understanding and belief that the representation was made on TUSPCO's website continually for many years, until sometime after this action was commenced.

ANSWER TO SPECIAL INTERROGATORY NO. 71:

Unknown, I can only speculate on the identities of the thousands of persons who visited the website.

ANSWER TO SPECIAL INTERROGATORY NO. 72:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 73:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 74:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 75:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 76:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 77:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 78:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANSWER TO SPECIAL INTERROGATORY NO. 79:

Unknown, except for those produced by Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 80:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 81:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 82:

Unknown, except for those produced by Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 83:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 84:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt. It is my understanding that the lectures of V-201 have been fully transcribed and could therefore easily be duplicated and that the technology exists for transferring such transcript to compact disk.

ANSWER TO SPECIAL INTERROGATORY NO. 85:

Unknown, except for those produced by Mr. Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 86:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 87:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 88:

Unknown, except for documents produced by Fred Marks.

1 ANSWER TO SPECIAL INTERROGATORY NO. 89:

2 I have no personal knowledge on this subject but rely upon the facts and information
3 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

4 ANSWER TO SPECIAL INTERROGATORY NO. 90:

5 I have no personal knowledge on this subject but rely upon the facts and information
6 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

7 ANSWER TO SPECIAL INTERROGATORY NO. 91:

8 Unknown, except for documents produced by Fred Marks.

9 ANSWER TO SPECIAL INTERROGATORY NO. 92:

10 I have no personal knowledge on this subject but rely upon the facts and information
11 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

12 ANSWER TO SPECIAL INTERROGATORY NO. 93:

13 I have no personal knowledge on this subject but rely upon the facts and information
14 provided by Mr. Marks, whose answer to this Interrogatory I adopt. I am informed that Defendants
15 deny that they are obligated to publish the remaining volumes of Book I to subscribers who have
16 paid for it or to refund their money.

17 ANSWER TO SPECIAL INTERROGATORY NO. 94:

18 Unknown, except for documents produced by Fred Marks.

19 ANSWER TO SPECIAL INTERROGATORY NO. 95:

20 I have no personal knowledge on this subject but rely upon the facts and information
21 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

22 ANSWER TO SPECIAL INTERROGATORY NO. 96:

23 It is my understanding that Defendant Hayes is a Trustee of the TUSPCO Trust which
24 accepted my money in trust and may be the alter ego of TUSPCO, and /or TNET, of which Hayes
25 is also an officer or trustee. Discovery is continuing.

26 ANSWER TO SPECIAL INTERROGATORY NO. 97:

27 Unknown, except for documents produced by Fred Marks.

28 ///

1 ANSWER TO SPECIAL INTERROGATORY NO. 98:

2 I have no personal knowledge on this subject but rely upon the facts and information
3 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

4 ANSWER TO SPECIAL INTERROGATORY NO. 99:

5 It is my understanding that Defendant Hayes is a Trustee of the TUSPCO Trust which
6 accepted my money in trust and may be the alter ego of TUSPCO, and /or TNET, of which Hayes
7 is also an officer or trustee. Discovery is continuing.

8 ANSWER TO SPECIAL INTERROGATORY NO. 100:

9 Unknown, except for documents produced by Fred Marks.

10 ANSWER TO SPECIAL INTERROGATORY NO. 101:

11 I have no personal knowledge on this subject but rely upon the facts and information
12 provided by Mr. Marks, whose answer to this Interrogatory I adopt.

13 ANSWER TO SPECIAL INTERROGATORY NO. 102:

14 I have no personal knowledge on this subject but rely upon the facts and information
15 provided by Mr. Marks, whose answer to this Interrogatory I adopt. I am a subscriber to the PPSA.

16 ANSWER TO SPECIAL INTERROGATORY NO. 103:

17 Unknown, except for documents produced by Fred Marks.

18 ANSWER TO SPECIAL INTERROGATORY NO. 104:

19 The subscribers and TUSPCO's agents and employees.

20 ANSWER TO SPECIAL INTERROGATORY NO. 105:

21 The PPSA so provides and Defendants have paratially performed by delivery Volume I.

22 ANSWER TO SPECIAL INTERROGATORY NO. 106:

23 Unknown, except for documents produced by Fred Marks.

24 ANSWER TO SPECIAL INTERROGATORY NO. 107:

25 The subscribers and TUSPCO's agents and employees.

26 ANSWER TO SPECIAL INTERROGATORY NO. 108:

27 The PPSA so provides.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANSWER TO SPECIAL INTERROGATORY NO. 109:

Unknown, except for documents produced by Fred Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 110:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt.

ANSWER TO SPECIAL INTERROGATORY NO. 111:

I have no personal knowledge on this subject but rely upon the facts and information provided by Mr. Marks, whose answer to this Interrogatory I adopt. It is my understanding that Defendant Hayes is a Trustee of the TUSPCO Trust which accepted my money in trust and may be the alter ego of TUSPCO, and /or TNET, of which Hayes is also an officer or trustee. Discovery is continuing.

ANSWER TO SPECIAL INTERROGATORY NO. 112:

Unknown, but perhaps from the date of execution of the PPSA until the present time.

ANSWER TO SPECIAL INTERROGATORY NO. 113:

Unknown, except for documents produced by Fred Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 114:

Unknown, except for Mr. Joyner and Mr. Hayes.

ANSWER TO SPECIAL INTERROGATORY NO. 115:

Whatever positions Mr. Hayes or Mr. Joyner hold with TUSPCO, the TUSPCO Trust and/or TNET, such positions were voluntarily accepted by them, along with the duties owed to subscribers to the PPSA.

ANSWER TO SPECIAL INTERROGATORY NO. 116:

Unknown.

ANSWER TO SPECIAL INTERROGATORY NO. 117:

Unknown, except for documents produced by Fred Marks.

ANSWER TO SPECIAL INTERROGATORY NO. 118:

Unknown, except for Mr. Joyner and Mr. Hayes.

///

1 ANSWER TO SPECIAL INTERROGATORY NO. 119:

2 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
3 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
4 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
5 personal knowledge on this subject but will adopt the responses of Mr. Marks.

6 ANSWER TO SPECIAL INTERROGATORY NO. 120:

7 Plaintiff is unable to identify any such documents at this time.

8 ANSWER TO SPECIAL INTERROGATORY NO. 121:

9 Unknown, except for Mr. Joyner and Mr. Hayes.

10 ANSWER TO SPECIAL INTERROGATORY NO. 122:

11 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
12 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
13 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
14 personal knowledge on this subject but will adopt the responses of Mr. Marks.

15 ANSWER TO SPECIAL INTERROGATORY NO. 123:

16 Plaintiff is unable to identify any such documents at this time.

17 ANSWER TO SPECIAL INTERROGATORY NO. 124:

18 Unknown, except for Mr. Joyner and Mr. Hayes.

19 ANSWER TO SPECIAL INTERROGATORY NO. 125:

20 Plaintiff is unaware of any facts other than those set forth within the Complaint and those
21 set forth by co-Plaintiff Frederic G. Marks' in his responses to Set One of the Special
22 Interrogatories previously propounded to him by Defendant Charles W. Hayes. Plaintiff has no
23 personal knowledge on this subject but will adopt the responses of Mr. Marks.

24 ANSWER TO SPECIAL INTERROGATORY NO. 126:

25 Plaintiff is unable to identify any such documents at this time.

26 ANSWER TO SPECIAL INTERROGATORY NO. 127:

27 Plaintiff is unable to identify any such persons at this time.

28 ///

1 ANSWER TO SPECIAL INTERROGATORY NO. 128:

2 Plaintiff is unable to identify any such documents at this time.

3 ANSWER TO SPECIAL INTERROGATORY NO. 129:

4 Plaintiff is unable to identify any such persons at this time.

5 ANSWER TO SPECIAL INTERROGATORY NO. 130:

6 Plaintiff is unable to identify any such documents at this time.

7 ANSWER TO SPECIAL INTERROGATORY NO. 131:

8 Plaintiff is unable to identify any such persons at this time.

9 ANSWER TO SPECIAL INTERROGATORY NO. 132:

10 Plaintiff is unable to identify any such documents at this time.

11 ANSWER TO SPECIAL INTERROGATORY NO. 133:

12 Plaintiff has little personal knowledge of Defendant Hayes' and Joyner's relationship with
13 TUSPCO, the TUSPCO Trust and TNET and would rely upon, and adopt, Mr. Marks'
14 understanding and responses to this Interrogatory as his own. Plaintiff believes that Defendants
15 Joyner and/or Hayes are guilty of malfeasance in disbursing trust funds which should have been
16 used to publish the remaining volumes of Book 1.

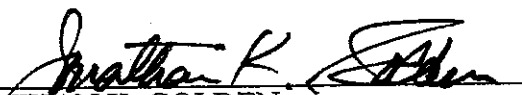
17 ANSWER TO SPECIAL INTERROGATORY NO. 134:

18 Objection, this interrogatory seeks the attorney's work product.

19 ANSWER TO SPECIAL INTERROGATORY NO. 135:

20 Objection, this interrogatory seeks the attorney's work product.

21 DATED: January 19, 2007

22
23 
24 JONATHAN K. GOLDEN
25 Attorney for Plaintiffs FREDERIC G. MARKS,
26 JOSEPH HENTZ, STUART SMITH, JEAN
27 MOLLENHAUER, ROGAN COOMBS, JOSEPH
28 DROLL, GREGG ROOTEN, THOMAS R.
WOOD, MARILYN WOOD, GREG
STAININGER, and JOHN FOUNTAIN

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 20, 2006, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joseph Hentz
Type or Print Name

Joseph Hentz
Signature

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

**** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 28, 2006, at ORANGE, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Stuart Smith

Type or Print Name

Stuart Smith

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

[] on [] in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at [] California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 [] California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] at [] California.

[] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] at [] California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co. Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on ~~December~~ Jan 8, 2006, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jean Mollenhauer

Type or Print Name

Jean Mollenhauer 1-8-07

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

***(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co. Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF HUMBOLDT

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of _____

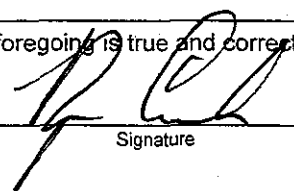
a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 20, 2006, at Fortuna, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Rogan Coombs
Type or Print Name



Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

**(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 1, 2006, at Orange, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joseph Droll
Type or Print Name

Joseph Droll
Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

[] ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at Orange, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Gregg Rooten Type or Print Name

Gregg Rooten Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Plus

Rev. 7/99

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF ARIZONA

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at State of Arizona, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Thomas R. Wood
Type or Print Name

[Handwritten Signature]
Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing 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 California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF ARIZONA

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 29, 2006, at State of Arizona, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Marilyn Wood
Type or Print Name

[Signature]
Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

[] on [] in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at [] California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 [] California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] at [] California.

[] *(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] at [] California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF STATE OF GEORGIA

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES

and know its contents.

[X] CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 16, 2006 2007, at Savannah Georgia, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Greg Staininger

Type or Print Name

[Handwritten Signature]

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL

[] *I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing 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 _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

[] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus

Rev. 7/99

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES }

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 1880 Century Park East, Suite 300, Los Angeles, California 90067.

On January 19, 2007 I served the foregoing document described as **PLAINTIFF'S ANSWERS TO DEFENDANT CHARLES W. HAYES' SPECIAL INTERROGATORIES** on the interested parties in this action

X by placing the original X a true copy thereof in sealed envelopes addressed as follows:

Lacey, Dunn & Do
315 W. Arden Avenue
Suite 11
Glendale, CA 91203

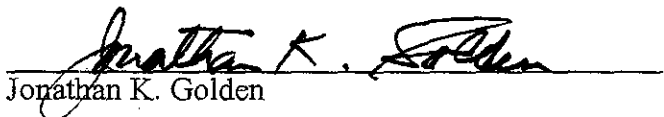
John P. Godsil, Esq.
Nicolas A. Rozansky, Esq.
Freeman, Freeman & Smiley, LLP
3415 Sepulveda Boulevard, Suite 1200
Los Angeles, CA 90034-6060

X **By mail** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing 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 of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 19, 2007, at Los Angeles, California.

X STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Jonathan K. Golden

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1 John P. Godsil (State Bar No. 174356)
Nicolas A. Rozansky (State Bar No. 219855)
2 FREEMAN, FREEMAN & SMILEY, LLP
3415 Sepulveda Boulevard, Suite 1200
3 Los Angeles, California 90034-6060
Telephone: (310) 255-6100
4 Facsimile: (310) 391-4042

5 Attorneys for Defendants Wayne Joyner,
The Universal Scientific Publications Company Trust,
6 The Universal Scientific Publications Company, Inc.,
and The Natural Estate Trust
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
11

12 FREDERIC G. MARKS, et. al.,
13 Plaintiffs,

14 vs.

15 WAYNE JOYNER, et. al.,
16 Defendants.

) CASE NO. BC 352639
)
) (Hon. Kenneth R. Freeman – Dept 64)
)
) **SPECIAL INTERROGATORIES, SET**
) **ONE, TO PLAINTIFF FREDERIC G.**
) **MARKS; DECLARATION OF JOHN P.**
) **GODSIL RE: ADDITIONAL**
) **DISCOVERY**

Action Filed: May 19, 2006

17
18
19
20 PROPOUNDING PARTY: Defendant Wayne Joyner
21 RESPONDING PARTY: Plaintiff Frederic G. Marks
22 SET NUMBER: One

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 Pursuant to *Code of Civil Procedure* § 2030.010, et. seq, defendant Wayne Joyner hereby
25 requests that plaintiff Frederic G. Marks responds to the following special interrogatories within
26 thirty days of service.
27
28

EX.M ✓

SPECIAL INTERROGATORIES

1
2 SPECIAL INTERROGATORY NO. 1:

3 State in complete detail all facts which support YOUR claim for damages set forth in the
4 COMPLAINT. (For purposes of these interrogatories, "YOU" and "YOUR" shall mean and refer
5 to plaintiff Frederic G. Marks, his present or former agents, partners, employees, attorneys,
6 accountants, consultants, and anyone else acting on his behalf. Further, "COMPLAINT" shall
7 mean and refer to the Complaint YOU filed in this lawsuit on or about May 19, 2006.)

8 SPECIAL INTERROGATORY NO. 2:

9 State in complete detail all facts which support the contention that the proprietary heirs of
10 AJG are not entitled to publish Book 1 in the form of edited selections from the tape recorded
11 lectures of AJG. (For purposes of these interrogatories, "AJG" shall mean and refer to Andrew J.
12 Galambos.)

13 SPECIAL INTERROGATORY NO. 3:

14 State in complete detail all facts which support the contention set forth in paragraph 2 of
15 the COMPLAINT that Wayne Joyner is a trustee of the TUSPCO TRUST. (For purposes of these
16 interrogatories, "TUSPCO TRUST" shall mean and refer to defendant The Universal Scientific
17 Publications Company Trust.)

18 SPECIAL INTERROGATORY NO. 4:

19 State in complete detail all facts which support the contention set forth in paragraph 3 of
20 the COMPLAINT that "[a]t all relevant times, Defendants Joyner and Hayes controlled TUSPCO."
21 (For purposes of these interrogatories, "TUSPCO" shall mean and refer to defendant The Universal
22 Scientific Publications Company, Inc.)

23 SPECIAL INTERROGATORY NO. 5:

24 State in complete detail all facts which support the contention set forth in paragraph 4 of
25 the COMPLAINT that TNET is the alter ego of TUSPCO. (For purposes of these interrogatories,
26 "TNET" shall mean and refer to defendant The Natural Estate Trust.)
27
28

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1 SPECIAL INTERROGATORY NO. 6:

2 State in complete detail all facts which support the contention set forth in paragraph 5 of
3 the COMPLAINT that "Defendants Joyner and Hayes have intermingled the assets of TUSPCO
4 and The Natural Estate Trust."

5 SPECIAL INTERROGATORY NO. 7:

6 State in complete detail all facts which support the contention that Wayne Joyner owes one
7 or more of the PLAINTIFFS a fiduciary duty. (For purposes of these interrogatories,
8 "PLAINTIFFS" shall mean and refer to Frederic G. Marks, Joseph Hentz, Stuart Smith, Jean
9 Mollenhauer, Rogan Coombs, Joseph Droll, Gregg Rooten, Thomas R. Wood, Marilyn Wood,
10 Greg Staininger, and John Fountain.)

11 SPECIAL INTERROGATORY NO. 8:

12 State in complete detail all facts which support the contention set forth in paragraph 5 of
13 the COMPLAINT that Wayne Joyner has dissipated the assets of TUSPCO.

14 SPECIAL INTERROGATORY NO. 9:

15 State in complete detail all facts which support the contention set forth in paragraph 5 of
16 the COMPLAINT that Wayne Joyner has dissipated the assets of TUSPCO TRUST.

17 SPECIAL INTERROGATORY NO. 10:

18 State in complete detail all facts which support the contention set forth in paragraph 5 of
19 the COMPLAINT that Wayne Joyner has dissipated the assets of TNET.

20 SPECIAL INTERROGATORY NO. 11:

21 State in complete detail all facts which support the contention that any of the
22 DEFENDANTS is an alter ego of any of the other DEFENDANTS. (For purposes of these
23 interrogatories, "DEFENDANTS" shall mean and refer to Wayne Joyner, Charles W. Hayes,
24 TUSPCO TRUST, TUSPCO, and TNET.)

25 SPECIAL INTERROGATORY NO. 12:

26 State in complete detail all facts which support the contention set forth in paragraph 13 of
27 the COMPLAINT that "[c]ollectively, Plaintiffs own subscription rights to 270 copies of Book 1."
28

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6666
(310) 255-6100

1 SPECIAL INTERROGATORY NO. 13:

2 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
3 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) do YOU individually own?

4 SPECIAL INTERROGATORY NO. 14:

5 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
6 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Joseph Hentz own?

7 SPECIAL INTERROGATORY NO. 15:

8 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
9 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Stuart Smith own?

10 SPECIAL INTERROGATORY NO. 16:

11 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
12 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Jean Mollenhauer own?

13 SPECIAL INTERROGATORY NO. 17:

14 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
15 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Rogan Coombs own?

16 SPECIAL INTERROGATORY NO. 18:

17 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
18 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Joseph Droll own?

19 SPECIAL INTERROGATORY NO. 19:

20 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
21 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Gregg Rooten own?

22 SPECIAL INTERROGATORY NO. 20:

23 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
24 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Thomas R. Wood own?

25 SPECIAL INTERROGATORY NO. 21:

26 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
27 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Marilyn Wood own?
28

1 SPECIAL INTERROGATORY NO. 22:

2 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
3 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does Greg Staininger own?

4 SPECIAL INTERROGATORY NO. 23:

5 How many of the "subscription rights to 270 copies of Book 1" collectively owned by
6 PLAINTIFFS (as alleged in paragraph 13 of the COMPLAINT) does John Fountain own?

7 SPECIAL INTERROGATORY NO. 24:

8 State in complete detail all facts which support the contention set forth in paragraph 13 of
9 the COMPLAINT that "[c]ollectively, Plaintiffs own approximately 20% of all subscriptions [to
10 Book 1]."

11 SPECIAL INTERROGATORY NO. 25:

12 State in complete detail all facts which support the contention set forth in paragraph 15 of
13 the COMPLAINT that Wayne Joyner and Charles W. Hayes are the successor trustees of TUSPCO
14 TRUST.

15 SPECIAL INTERROGATORY NO. 26:

16 State in complete detail all facts which support the contention that YOU are entitled to an
17 accounting of the assets of TUSPCO.

18 SPECIAL INTERROGATORY NO. 27:

19 State in complete detail all facts which support the contention that YOU are entitled to an
20 accounting of the assets of TUSPCO TRUST.

21 SPECIAL INTERROGATORY NO. 28:

22 State in complete detail all facts which support the contention that YOU are entitled to an
23 accounting of the assets of TNET.

24 SPECIAL INTERROGATORY NO. 29:

25 State in complete detail all facts which support the contention set forth in paragraph 28 of
26 the COMPLAINT that "Defendants Joyner [and] Hayes. . . have wrongfully paid themselves and
27 others substantial sums from TUSPCO and the TUSPCO Trust, depleting the assets of TUSPCO
28 and the TUSCPO Trust."

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-8060
(310) 255-6100

1 SPECIAL INTERROGATORY NO. 30:

2 State in complete detail all facts which support the contention set forth in paragraph 30 of
3 the COMPLAINT that "Defendants have repudiated any and all remaining obligations under the
4 Subscription Agreement."

5 SPECIAL INTERROGATORY NO. 31:

6 State in complete detail all facts which support the declaratory relief cause of action in the
7 COMPLAINT.

8 SPECIAL INTERROGATORY NO. 32:

9 State in complete detail all facts which support the specific performance cause of action in
10 the COMPLAINT.

11 SPECIAL INTERROGATORY NO. 33:

12 State in complete detail all facts which support the breach of contract cause of action in the
13 COMPLAINT.

14 SPECIAL INTERROGATORY NO. 34:

15 State in complete detail all facts which support the breach of fiduciary duty cause of action
16 in the COMPLAINT.

17 SPECIAL INTERROGATORY NO. 35:

18 State in complete detail all facts which support the contention set forth in paragraph 32 of
19 the COMPLAINT that "TUSPCO Trust [has] . . . a contractual duty to either (a) publish and deliver
20 the remaining volumes of Book 1 to Plaintiffs, or (b) refund the purchase price, plus interest to
21 Plaintiffs."

22 SPECIAL INTERROGATORY NO. 36:

23 State in complete detail all facts which support the contention set forth in paragraph 32 of
24 the COMPLAINT that "TUSPCO . . . [has] . . . a contractual duty to either (a) publish and deliver
25 the remaining volumes of Book 1 to Plaintiffs, or (b) refund the purchase price, plus interest to
26 Plaintiffs."
27
28

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1 SPECIAL INTERROGATORY NO. 37:

2 State in complete detail all facts which support the contention set forth in paragraph 33 of
3 the COMPLAINT that one or more the DEFENDANTS are "contractually obligated to publish the
4 final volumes of Book 1, consisting of the edited, transcribed lectures of AJG in course V-201, in
5 the same form that they published Volume 1 of Book 1, which consisted of the edited, verbatim,
6 transcribed lectures of AJG in course V-50."

7 SPECIAL INTERROGATORY NO. 38:

8 State in complete detail all facts which support the contention set forth in paragraph 34 of
9 the COMPLAINT that DEFENDANTS "are obligated to . . . publish the remaining volumes of
10 Book 1 to Plaintiffs in the same form that they published Volume 1 of Book 1."

11 SPECIAL INTERROGATORY NO. 39:

12 State in complete detail all facts which support the contention set forth in paragraph 34 of
13 the COMPLAINT that DEFENDANTS "are obligated to . . . refund the purchase price [for Book
14 1], plus six percent (6%) interest to Plaintiffs."

15 SPECIAL INTERROGATORY NO. 40:

16 State in complete detail all facts which support the contention set forth in paragraph 38 of
17 the COMPLAINT that "Plaintiffs have performed all conditions, covenants and promises required
18 on their part to be performed."

19 SPECIAL INTERROGATORY NO. 41:

20 State in complete detail all facts which support the contention set forth in paragraph 39 of
21 the COMPLAINT that "Defendants have failed and refused, and continue to fail and refuse, to
22 perform the remaining conditions of the contract."

23 SPECIAL INTERROGATORY NO. 42:

24 State in complete detail all facts which support the contention set forth in paragraph 40 of
25 the COMPLAINT that "Plaintiffs have no adequate remedy at law."

26
27
28

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1 SPECIAL INTERROGATORY NO. 43:

2 State in complete detail all facts which support the contention set forth in paragraph 41 of
3 the COMPLAINT that PLAINTIFFS are entitled to a decree that "Defendants deliver the verbatim
4 transcripts of AJG's lectures in course V-201, and/or any compact disc containing such transcripts,
5 to Plaintiffs so that Plaintiffs may, at their own expense, publish and distribute course V-201 (the
6 remaining volumes of Book 1) to themselves and to any other fully paid original Subscriber to the
7 Subscription Agreement who may so request."

8 SPECIAL INTERROGATORY NO. 44:

9 State in complete detail all facts which support the contention set forth in paragraph 43 of
10 the COMPLAINT that Wayne Joyner "breached the Subscription Agreement."

11 SPECIAL INTERROGATORY NO. 45:

12 State in complete detail all facts which support the contention set forth in paragraph 43 of
13 the COMPLAINT that "Plaintiffs have performed all of their obligations under the Subscription
14 Agreement."

15 SPECIAL INTERROGATORY NO. 46:

16 State in complete detail all facts which support the contention set forth in paragraph 44 of
17 the COMPLAINT that "Plaintiffs have been damaged in the amount of at least \$289,440."

18 SPECIAL INTERROGATORY NO. 47:

19 State in complete detail all facts which support the contention set forth in paragraph 46 of
20 the COMPLAINT that "[a]t all relevant times, a fiduciary relationship existed between Plaintiffs"
21 and Wayne Joyner.

22 SPECIAL INTERROGATORY NO. 48:

23 State in complete detail all facts which support the contention set forth in paragraph 47 of
24 the COMPLAINT that "TUSPCO Trust's funds [have been distributed] . . . to unauthorized
25 recipients."

1 SPECIAL INTERROGATORY NO. 49:

2 State in complete detail all facts which support the contention set forth in paragraph 48 of
3 the COMPLAINT that Wayne Joyner "should be adjudged individually liable to Plaintiffs."
4

5 Dated: October 7, 2006

FREEMAN, FREEMAN & SMILEY, LLP

6
7
8 By: 

John P. Goetzl

9 Attorneys for Defendants Wayne Joyner,
10 The Universal Scientific Publications Company
11 Trust, The Universal Scientific Publications
12 Company, Inc., and The Natural Estate Trust

12 597000

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

DECLARATION OF JOHN P. GODSIL RE: ADDITIONAL DISCOVERY

I, John P. Godsil, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and I am employed by Freeman, Freeman & Smiley, LLP, counsel for defendants Wayne Joyner, The Universal Scientific Publications Company Trust, The Universal Scientific Publications Company, Inc., and The Natural Estate Trust. I have personal knowledge of the matters described below, and if called as a witness, I could and would testify competently thereto.

2. I am propounding to plaintiff Frederic G. Marks ("Plaintiff") the attached Special Interrogatories, Set No. One, on behalf of defendant Wayne Joyner.

3. This set of special interrogatories will cause the total number of specially prepared interrogatories propounded to Plaintiff to exceed the number of specially prepared interrogatories permitted by *Code of Civil Procedure* § 2030.030.

4. No prior interrogatories have been propounded to Plaintiff, including any interrogatories propounded by defendant Wayne Joyner.

5. This set of special interrogatories contains a total of 49 interrogatories.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in this case.

7. I personally examined each of the questions in this set of interrogatories.

8. This number of interrogatories is warranted under *Code of Civil Procedure* § 2030.040 because of the complexity and the quantity of the existing and potential issues in this case. This number of interrogatories is further warranted because Plaintiff's lengthy paragraph Complaint contains allegations relating to numerous events spanning over many years, and relating to multiple parties. Further, Plaintiff's alleged damages exceed \$250,000. Propounding these interrogatories is necessary for my client to expeditiously conduct an investigation into Plaintiff's claims. See, *Code of Civil Procedure* § 2030.040(2). Thus, in order for my client to obtain additional facts concerning this matter, it is necessary for my client to exceed the number of interrogatories permitted under *Code of Civil Procedure* § 2030.030.


FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass Plaintiff, or Plaintiff's counsel, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of October 2006, at Los Angeles, California.



John P. Godsil

1 John P. Godsil (State Bar No. 174356)
Nicolas A. Rozansky (State Bar No. 219855)
2 FREEMAN, FREEMAN & SMILEY, LLP
3415 Sepulveda Boulevard, Suite 1200
3 Los Angeles, California 90034-6060
Telephone: (310) 255-6100
4 Facsimile: (310) 391-4042

5 Attorneys for Defendants Wayne Joyner,
The Universal Scientific Publications Company Trust,
6 The Universal Scientific Publications Company, Inc.,
and The Natural Estate Trust
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
11

12 FREDERIC G. MARKS, et. al.,
13 Plaintiffs,
14 vs.

15 WAYNE JOYNER, et. al.,
16 Defendants.
17

) CASE NO. BC 352639
)
) (Hon. Kenneth R. Freeman – Dept 64)
)

) **PROOF OF SERVICE**
)
)
)

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

25
26
27
28

1 PROOF OF SERVICE

2 I, Brenda Goff, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not
4 a party to the within action; my business address is Freeman, Freeman & Smiley, LLP,
3415 S. Sepulveda Boulevard, Suite 1200, Los Angeles, California 90034.

5 On October 27, 2006, I served the within documents:

6 *(See the Attached List of Documents)*

- 8 by transmitting via facsimile the document(s) listed above to the
9 fax number(s) set forth below, before 5:00 p.m. on this date.
- 10 by placing the document(s) listed above in a sealed envelope with postage
11 thereon fully prepaid, in the United States mail at Los Angeles, California,
12 addressed as set forth below.
- 13 by placing the document(s) listed above in a sealed *Overnite Express* envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to an *Overnite*
15 *Express* agent for delivery.

16 17 18	Jonathan K. Golden, Esq. Law Offices of Jonathan Golden 1880 Century Park East, Suite 300 Los Angeles, California 90067 Tel.: (310) 553-3830 Fax: (310) 553-1337	16 17 18	Kevin S. Lacey, Esq. Catherine L. Sekely, Esq. Lacey, Dunn & Do 315 W. Arden Avenue, Suite 11 Glendale, California 91203 Tel.: (818) 291-9858 Fax: (818) 291-9860
----------------	---	----------------	---

19
20 I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
22 Service on that same day with postage thereon fully prepaid in the ordinary course of business.
23 I am aware that on motion of the party served, service is presumed invalid if postal cancellation
24 date or postage meter date is more than one day after date of deposit for mailing in affidavit.
25 I declare under penalty of perjury under the laws of the State of California that the above is true
26 and correct.

27 Executed on October 27, 2006 at Los Angeles, California.

28 
Brenda Goff

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

LIST OF DOCUMENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1. Special Interrogatories, Set One, to Plaintiff Frederic C. Marks; Declaration of John P. Godsil re Additional Discovery
- 2. Request for Production of Documents, Set One, to Plaintiff Frederic C. Marks
- 3. Proof of Service

Form Interrogatories:

- 1. Form Interrogatories, Set One, to Plaintiff Frederic Marks
- 2. Form Interrogatories, Set One, to Plaintiff Joseph Hentz
- 3. Form Interrogatories, Set One, to Plaintiff Stuart Smith
- 4. Form Interrogatories, Set One, to Plaintiff Jean Mollenhauer
- 5. Form Interrogatories, Set One, to Plaintiff Rogan Coombs
- 6. Form Interrogatories, Set One, to Plaintiff Joseph Droll
- 7. Form Interrogatories, Set One, to Plaintiff Gregg Rooten
- 8. Form Interrogatories, Set One, to Plaintiff Thomas R. Wood
- 9. Form Interrogatories, Set One, to Plaintiff Marilyn Wood
- 10. Form Interrogatories, Set One, to Plaintiff Greg Staininger
- 11. Form Interrogatories, Set One, to Plaintiff John Fountain

Requests for Admission

- 1. Requests for Admission, Set One, to Plaintiff Frederic Marks
- 2. Requests for Admission, Set One, to Plaintiff Joseph Hentz
- 3. Requests for Admission, Set One, to Plaintiff Stuart Smith
- 4. Requests for Admission, Set One, to Plaintiff Jean Mollenhauer
- 5. Requests for Admission, Set One, to Plaintiff Rogan Coombs
- 6. Requests for Admission, Set One, to Plaintiff Joseph Droll
- 7. Requests for Admission, Set One, to Plaintiff Gregg Rooten
- 8. Requests for Admission, Set One, to Plaintiff Thomas R. Wood
- 9. Requests for Admission, Set One, to Plaintiff Marilyn Wood
- 10. Requests for Admission, Set One, to Plaintiff Greg Staininger
- 11. Requests for Admission, Set One, to Plaintiff John Fountain

10/27/06

FREEMAN, FREEMAN & SMILEY, LLP
PENTHOUSE, SUITE 1200
3415 SEPULVEDA BOULEVARD
LOS ANGELES, CALIFORNIA 90034-6060
(310) 255-6100

1 JONATHAN K. GOLDEN, ESQ. (CSB 49459)
1880 Century Park East, Suite 300
2 Los Angeles, California 90067
Telephone: (310) 553-3830
3 Facsimile: (310) 553-1337

4 Attorneys for Plaintiffs

5

6

7

8

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

FREDERIC G. MARKS, JOSEPH HENTZ,
STUART SMITH, JEAN MOLLENHAUER,
ROGAN COOMBS, JOSEPH DROLL, GREG
ROOTEN, THOMAS R. WOOD, MARIYLN
WOOD and GREG STAININGER,

Plaintiffs,

v.

WAYNE JOYNER and CHARLES W.
HAYES, individually and as Trustees of the
UNIVERSAL SCIENTIFIC PUBLICATIONS
COMPANY TRUST, THE UNIVERSAL
SCINTIFIC PUBLICATIONS COMPANY,
INC., THE NATURAL ESTATE TRUST and
DOES 1 through 50, inclusive,

Defendants.

Case No.: BC352639

[Honorable Kenneth R. Freeman,
Department 64]

**PLAINTIFF FREDERIC G. MARKS'
RESPONSES TO SPECIAL
INTERROGATORIES**

PROPOUNDING PARTY: Defendant WAYNE JOYNER

RESPONDING PARTY: Plaintiff FREDERIC G. MARKS

SET ONE: ONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

The following objections and statement are incorporated into each of the responses below. Discovery is ongoing in this matter. Each of the responses contained herein is based only upon such information and documents as are presently available and specifically known to Plaintiff. Plaintiff discloses only those contentions which have been presently formulated, and information in his possession which is not privileged.

Further discovery, independent investigation, legal research and analysis may reveal additional facts, add meaning to known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in and variations from the statement of contentions. The following responses are given without prejudice to Plaintiff's right to produce evidence of any subsequently discovered fact or facts which Plaintiff may discover or recall. Plaintiff reserves the right to change any and all responses set forth herein as additional facts are established, analysis is performed, legal research is completed and contentions are made. The responses set forth below are made in a good faith effort to supply as much factual information and specification of legal contention as is presently known, but are in no way to prejudice Plaintiff in relation to further discovery, research and analysis.

Plaintiff further objects to each of the Special Interrogatories (Set One), to the extent that it seeks information protected by the attorney-client privilege or attorney work product rule. Nothing contained in Plaintiff's responses is intended to be nor should be construed to be a waiver of any of these privileges.

RESPONSES TO SPECIAL INTERROGATORIES

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Plaintiff objects to this interrogatory on the grounds that it is ambiguous, overbroad, burdensome, oppressive and seeks information protected by the attorney-client and work product privileges. Notwithstanding the foregoing objections and without waiving them, the Plaintiff will state the claim for damages is predicated upon the fact that Plaintiff, as well as all other Plaintiff subscribers in this action paid in advance for the publication *Sic Itur Ad*

1 *Astra* pursuant to the contract and the balance of the volumes purchased, containing course
2 V-201, have not been delivered.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

4 Plaintiff objects to this interrogatory on the grounds that it is uncertain and
5 unintelligible. The term "proprietary heirs" has not been defined nor is the meaning of
6 "edited selections from the tape recorded lectures of AJG" clear. In sum, Plaintiff is
7 uncertain whether this interrogatory states a contention that Plaintiff has advanced.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

10 Defendant JOYNER has, in the past, conducted himself and represented himself,
11 both orally and in writing as an officer of TUSPCO and Trustee of the NATURAL ESTATE
12 TRUST ("TNET"), entities which control, in conjunction with Defendant HAYES, THE
13 TUSPCO TRUST. Plaintiff has yet to conduct discovery in this case and he believes
14 additional evidence regarding Defendant's status as Trustee may be developed.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

16 Plaintiff objects to this interrogatory on the grounds that it calls for matters of public
17 record which are equally available to Defendants. Notwithstanding the foregoing objection,
18 and without waiving it, Defendant JOYNER and HAYES have publicly represented
19 themselves as officers of TUSPCO and persons responsible for publication of Volume I.
20 Defendants personally delivered Volume I to several Plaintiffs.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

22 Plaintiff objects to this interrogatory on the grounds that it calls for matters of public
23 record which are equally available to Defendants. Notwithstanding the foregoing objection,
24 and without waiving it, Plaintiff will state that Defendant JOYNER is the sole trustee of
25 TNET, which is the sole shareholder of TUSPCO. Both entities share the same overriding
26 purpose and goal, to wit, to further publication, perpetuation and protection of the
27 innovations of AJG. The Plaintiff has yet to conduct discovery, but expects to discover
28 further evidence on this issue.

1 RESPONSE TO SPECIAL INTERROGATORY NO. 6:

2 Plaintiff objects to this interrogatory on the grounds that it calls for matters of public
3 record which are equally available to Defendants. Notwithstanding the foregoing objection,
4 and without waiving it, Plaintiff will state that Defendant JOYNER is the sole trustee of
5 TNET, which is the sole shareholder of TUSPCO. Both entities share the same overriding
6 purpose and goal, to wit, to further publication, perpetuation and protection of the
7 innovations of AJG. The Plaintiff has yet to conduct discovery, but expects to discover
8 further evidence on this issue.

9
10 RESPONSE TO SPECIAL INTERROGATORY NO. 7:

11 Plaintiff objects to this interrogatory on the grounds that it that it is ambiguous,
12 overbroad, compound, burdensome, oppressive and seeks information protected by
13 attorney's work product. Furthermore, it seeks information which is not relevant to the
14 subject matter of the action in that Plaintiff MARKS has no information or knowledge
15 respecting whether or not Defendant JOYNER has ever owed a fiduciary duty to any other
16 Plaintiff.

17 RESPONSE TO SPECIAL INTERROGATORY NO. 8:

18 Plaintiff has yet to obtain discovery from Defendants who are sole possessors of the
19 evidence supporting this contention. The contention was made upon information and belief
20 based upon the following:

- 21 (1) The probable size of the assets of the estate of Mr. & Mrs. Galmbos, the
22 TUSPCO TRUST, TUSPCO and TNET as of July 1989, when MARKS last
23 served as attorney for Mr. & Mrs. Galmbos and their companies;
- 24 (2) Defendants' expenditure of monies of the Galmbos' and their companies'
25 attorneys fees in a dispute with William Martin;
- 26 (3) Defendants' expenditure of \$8,000 per month for several years on the
27 services of an individual or individuals who were hired to edit the transcripts
28 of AJG's course V-201, and who failed to do so, but rather undertook to write

1 a book containing the purported editor's own version of the teachings of
2 AJG;

- 3 (4) Defendants' expenditures of monies of the Galmbos' and their companies for
4 the personal benefit of Defendant JOYNER, specifically expenditures for Mr.
5 JOYNER's personal security in regard to possible harm feared by Mr.
6 JOYNER in connection with the dispute with Mr. William Martin;
- 7 (5) Losses of the Galmbos' estate and entity assets due to improvident operations
8 in the stock market and mutual funds by Defendant HAYES with the consent
9 of Defendant JOYNER;
- 10 (6) The stated intent of HAYES and JOYNER to preserve the tape recordings of
11 lectures of AJG, and their failure to spend the funds necessary to preserve the
12 tape recordings;
- 13 (7) The stated intent of Defendants HAYES and JOYNER to preserve the
14 personal residence of Mr. & Mrs. Galmbos as a museum and their failure to
15 do so as evidenced by the sale of the residence.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

17 Plaintiff has yet to obtain discovery from Defendants who are sole possessors of the
18 evidence supporting this contention. The contention was made upon information and belief
19 based upon the following:

- 20 (1) The probable size of the assets of the estate of Mr. & Mrs. Galmbos, the
21 TUSPCO TRUST, TUSPCO and TNET as of July 1989, when MARKS last
22 served as attorney for Mr. & Mrs. Galmbos and their companies;
- 23 (2) Defendants' expenditure of monies of the Galmbos' and their companies'
24 attorney's fees in dispute with William Martin;
- 25 (3) Defendants' expenditure of \$8,000 per month for several years on the
26 services of an individual or individuals who were hired to edit the transcripts
27 of AJG's course V-201, and who failed to do so, but rather undertook to write
28 a book containing the purported editor's own version of the teachings of
AJG;

- 1 (4) Defendants' expenditures of monies of the Galmbos' and their companies for
2 the personal benefit of Defendant JOYNER, specifically expenditures for Mr.
3 JOYNER's personal security in regard to possible harm feared by Mr.
4 JOYNER in connection with the dispute with Mr. William Martin;
5 (5) Losses of the Galmbos' estate and entity assets due to improvident operations
6 in the stock market and mutual funds by Defendant HAYES with the consent
7 of Defendant JOYNER;
8 (6) The stated intent of HAYES and JOYNER to preserve the tape recordings of
9 lectures of AJG, and their failure to spend the funds necessary to preserve the
10 tape recordings;
11 (7) The stated intent of Defendants HAYES and JOYNER to preserve the
12 personal residence of Mr. & Mrs. Galmbos as a museum and their failure to
13 do so as evidenced by the sale of the residence.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

15 Plaintiff has yet to obtain discovery from Defendants who are sole possessors of the
16 evidence supporting this contention. The contention was made upon information and belief
17 based upon the following:

- 18 (1) The probable size of the assets of the estate of Mr. & Mrs. Galmbos, the
19 TUSPCO TRUST, TUSPCO and TNET as of July 1989, when MARKS last
20 served as attorney for Mr. & Mrs. Galmbos and their companies;
21 (2) Defendants' expenditure of monies of the Galmbos' and their companies'
22 attorney's fees in dispute with William Martin;
23 (3) Defendants' expenditure of \$8,000 per month for several years on the
24 services of an individual or individuals who were hired to edit the
25 transcripts of AJG's course V-201, and who failed to do so, but rather
26 undertook to write a book containing the purported editor's own version of
27 the teachings of AJG;
28 (4) Defendants' expenditures of monies of the Galmbos' and their companies
for the personal benefit of Defendant JOYNER, specifically expenditures for

1 Mr. JOYNER's personal security in regard to possible harm feared by Mr.
2 JOYNER in connection with the dispute with Mr. William Martin;

3 (5) Losses of the Galmbos' estate and entity assets due to improvident operations
4 in the stock market and mutual funds by Defendant HAYES with the consent
5 of Defendant JOYNER;

6 (6) The stated intent of HAYES and JOYNER to preserve the tape recordings of
7 lectures of AJG, and their failure to spend the funds necessary to preserve
8 the tape recordings;

9 (7) The stated intent of Defendants HAYES and JOYNER to preserve the
10 personal residence of Mr. & Mrs. Galmbos as a museum and their failure to
11 do so as evidenced by the sale of the residence.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

13 Plaintiff objects to this interrogatory on the grounds that it that it is ambiguous,
14 uncertain, overbroad, compound, burdensome, oppressive and seeks to invade the attorneys'
15 work product privilege. Furthermore, the interrogatory is improper in form because it is
16 conjunctive.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

18 Plaintiffs own subscription rights to copies of Book 1 as follows:

19 FREDERIC G. MARKS 198;

20 JOSEPH M. HENTZ 18

21 STEWART SMITH 4;

22 JEAN MOLLENHAUER 10;

23 ROGAN COOMBS 11;

24 JOSEPH DROLL 7;

25 GREGG ROOTEN 3;

26 MR & MRS. THOMAS AND MARILYN WOOD 4;

27 GREG STAININGER 21.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

1 See response to Interrogatory 12 above.

2 RESPONSE TO SPECIAL INTERROGATORY NO. 14:

3 See response to Interrogatory 12 above.

4
5 RESPONSE TO SPECIAL INTERROGATORY NO. 15:

6 See response to Interrogatory 12 above.

7
8 RESPONSE TO SPECIAL INTERROGATORY NO. 16:

9 See response to Interrogatory 12 above.

10
11 RESPONSE TO SPECIAL INTERROGATORY NO. 17:

12 See response to Interrogatory 12 above.

13
14 RESPONSE TO SPECIAL INTERROGATORY NO. 18:

15 See response to Interrogatory 12 above.

16
17 RESPONSE TO SPECIAL INTERROGATORY NO. 19:

18 See response to Interrogatory 12 above.

19
20 RESPONSE TO SPECIAL INTERROGATORY NO. 20:

21 See response to Interrogatory 12 above.

22
23 RESPONSE TO SPECIAL INTERROGATORY NO. 21:

24 See response to Interrogatory 12 above.

25
26 RESPONSE TO SPECIAL INTERROGATORY NO. 22:

27 See response to Interrogatory 12 above.

28
RESPONSE TO SPECIAL INTERROGATORY NO. 23:

1 Plaintiff objects to this interrogatory on the grounds that it seeks information which
2 is not relevant to the subject matter of this action. Mr. Fountains' claims have been
3 dismissed.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 24:**

5 Plaintiff is informed that 1,309 first edition copies of Book 1 were sold under the
6 prepublication subscription agreement.

7
8 **RESPONSE TO SPECIAL INTERROGATORY NO. 25:**

9 Defendant HAYES admits that he is a successor trustee of TUSPCO TRUST.
10 Defendant JOYNER has, in the past, conducted himself and represented himself, both orally
11 and in writing as an officer of TUSPCO and Trustee of the NATURAL ESTATE TRUST
12 ("TNET"), entities which control, in conjunction with Defendant HAYES, THE TUSPCO
13 TRUST. Plaintiff has yet to conduct discovery in this case and he believes additional
14 evidence regarding Defendant's status as Trustee may be developed.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

16 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
17 unintelligible, burdensome, oppressive and seeks to invade the attorneys' work product
18 privilege. Furthermore, it seeks information which is not relevant to the subject matter of
19 the action because this is not an action for a formal accounting.

20
21 **RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

22 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
23 unintelligible, burdensome, oppressive and seeks to invade the attorneys' work product
24 privilege. Furthermore, it seeks information which is not relevant to the subject matter of
25 the action because this is not an action for a formal accounting.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

27 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
28 unintelligible, burdensome, oppressive and seeks to invade the attorneys' work product

1 privilege. Furthermore, it seeks information which is not relevant to the subject matter of
2 the action because this is not an action for a formal accounting.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

4 Plaintiff has yet to obtain discovery from Defendants who are sole possessors of the
5 evidence supporting this contention. The contention was made upon information and belief
6 based upon the following:

- 7 (1) The probable size of the assets of the estate of Mr. & Mrs.
8 Galmbos, the TUSPCO TRUST, TUSPCO and TNET as of July
9 1989, when MARKS last served as attorney for Mr. & Mrs.
10 Galmbos and their companies;
- 11 (2) Defendants' expenditure of monies of the Galmbos' and their
12 companies' attorney's fees in dispute with William Martin;
13 Defendants' expenditure of \$8,000 per month for several years on
14 the services of an individual or individuals who were hired to edit
15 the transcripts of AJG's course V-201, and who failed to do so, but
16 rather undertook to write a book containing the purported editor's
17 own version of the teachings of AJG;
- 18 (3) Defendants' expenditures of monies of the Galmbos' and their companies
19 for the personal benefit of Defendant JOYNER, specifically expenditures
20 for Mr. JOYNER's personal security in regard to possible harm feared by
21 Mr. JOYNER in connection with the dispute with Mr. William Martin;
- 22 (4) Losses of the Galmbos' estate and entity assets due to improvident
23 operations in the stock market and mutual funds by Defendant HAYES with
24 the consent of Defendant JOYNER.
- 25 (5) The stated intent of HAYES and JOYNER to preserve the tape recordings
26 of lectures of AJG, and their failure to spend the funds necessary to
27 preserve the tape recordings;
- 28 (6) The stated intent of Defendants HAYES and JOYNER to preserve the
personal residence of Mr. & Mrs. Galmbos as a museum and their failure
to do so as evidenced by the sale of the residence.

1 RESPONSE TO SPECIAL INTERROGATORY NO. 30:

2 Defendants have both orally and in writing, in documents filed in this action, denied
3 that TUSPCO or TUSPCO TRUST have any legally enforceable obligations remaining
4 under the Subscription Agreement.
5

6 RESPONSE TO SPECIAL INTERROGATORY NO. 31:

7 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
8 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
9 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
10 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
11 Agreement is valid and enforceable whereas Defendants claim that it is not.
12

13 RESPONSE TO SPECIAL INTERROGATORY NO. 32:

14 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
15 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
16 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
17 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
18 Agreement is valid and enforceable whereas Defendants claim that it is not.
19
20

21 RESPONSE TO SPECIAL INTERROGATORY NO. 33:

22 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
23 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
24 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
25 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
26 Agreement is valid and enforceable whereas Defendants claim that it is not.
27

28 RESPONSE TO SPECIAL INTERROGATORY NO. 34:

1 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
2 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
3 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
4 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
5 Agreement is valid and enforceable whereas Defendants claim that it is not.

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 35:**

7 The contract which is the subject of this litigation so provides.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

10 The contract which is the subject of this litigation so provides.

11
12 **RESPONSE TO SPECIAL INTERROGATORY NO. 37:**

13 The contract which is the subject of this litigation so provides.

14
15 **RESPONSE TO SPECIAL INTERROGATORY NO. 38:**

16 The contract which is the subject of this litigation so provides.

17
18 **RESPONSE TO SPECIAL INTERROGATORY NO. 39**

19 The contract which is the subject of this litigation so provides.

20
21 **RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

22 Plaintiff fully paid, in advance, for all Volumes of Book 1.

23
24 **RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

25 Defendants have delivered only Volume I of Book 1 to Plaintiff; have refused to
26 deliver the remaining Volumes and denied Plaintiff's request for further assurances of their
27 performance under the contract.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

1 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
2 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
3 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
4 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
5 Agreement is valid and enforceable whereas Defendants claim that it is not.

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

7 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
8 overbroad, burdensome, oppressive and seeks to invade the work product privilege.
9 Notwithstanding the foregoing objections, and without waiving them, Plaintiff will state that
10 the cause of action is supported by the facts that the Plaintiffs contend that the Subscription
11 Agreement is valid and enforceable whereas Defendants claim that it is not.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

13 Defendants have delivered only Volume I of Book 1 to Plaintiff; have refused to
14 deliver the remaining Volumes and denied Plaintiff's request for further assurances of their
15 performance under the contract.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 45:**

17 Plaintiff objects to this interrogatory on the grounds that it duplicates Special
18 Interrogatory No. 40.

19
20 **RESPONSE TO SPECIAL INTERROGATORY NO. 46:**

21 This sum represents an estimate of the total amount paid in advance by Plaintiffs for
22 all subscriptions to Book 1 together with 6% per annum from and after the date payment
23 was made in full.

24
25 **RESPONSE TO SPECIAL INTERROGATORY NO. 47:**

26 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
27 overbroad, burdensome, oppressive, compound and seeks to invade the attorneys' work
28 product privilege. Notwithstanding the foregoing objections, and without waiving them,

1 Plaintiff will state that a fiduciary relationship exists between Plaintiffs and any other person
2 or entity exercising control over the funds entrusted to the TUSPCO TRUST.

3 RESPONSE TO SPECIAL INTERROGATORY NO. 48:

4 Plaintiff has yet to obtain discovery from Defendants who are sole possessors of the
5 evidence supporting this contention. The contention was made upon information and belief
6 based upon the following:

- 7 (1) The probable size of the assets of the estate of Mr. & Mrs. Galmbos, the
8 TUSPCO TRUST, TUSPCO and TNET as of July 1989, when MARKS
9 last served as attorney for Mr. & Mrs. Galmbos and their companies;
- 10 (2) Defendants' expenditure of monies of the Galmbos' and their companies'
11 attorneys fees in dispute with William Martin;
- 12 (3) Defendants' expenditure of \$8,000 per month for several years on the
13 services of an individual or individuals who were hired to edit the transcripts
14 of AJG's course V-201, and who failed to do so, but rather undertook to write
15 a book containing the purported editor's own version of the teachings of
16 AJG;
- 17 (4) Defendants' expenditures of monies of the Galmbos' and their companies for
18 the personal benefit of Defendant JOYNER, specifically expenditures for Mr.
19 JOYNER's personal security in regard to possible harm feared by Mr.
20 JOYNER in connection with the dispute with Mr. William Martin;
- 21 (5) Losses of the Galmbos' estate and entity assets due to improvident operations
22 in the stock market and mutual funds by Defendant HAYES with the consent
23 of Defendant JOYNER;
- 24 (6) The stated intent of HAYES and JOYNER to preserve the tape recordings of
25 lectures of AJG, and their failure to spend the funds necessary to preserve the
26 tape recordings;
- 27 (7) The stated intent of Defendants HAYES and JOYNER to preserve the
28 personal residence of Mr. & Mrs. Galmbos as a museum and their failure to
do so as evidenced by the sale of the residence.

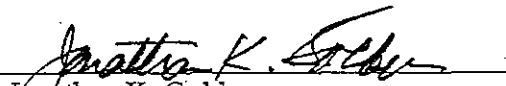
1 RESPONSE TO SPECIAL INTERROGATORY NO. 49:

2 Plaintiff objects to this interrogatory on the grounds that it is ambiguous, uncertain,
3 overbroad, burdensome, oppressive, and seeks to invade the attorney-client and work
4 product privileges. Notwithstanding the foregoing objections, and without waiving them,
5 Plaintiff will state that any person, including Defendant JOYNER, who is entrusted with the
6 control of trust funds, may, as a matter of law, be adjudged individually liable to the trust's
7 beneficiaries for the loss of those funds.

8 DATED: November 21, 2006

LAW OFFICES OF JONATHAN K. GOLDEN

9
10 By


Jonathan K. Golden
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, FREDERIC G. MARKS, am one of the Plaintiffs in this action and do hereby declare, under penalty of perjury, that I have read the **RESPONSES TO SPECIAL INTERROGATORIES** and know the contents thereof; that the same is true of my own knowledge, except as to those matters that are stated on information and belief and, as to those matters, I do believe the same to be true.

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct.

Executed this 13th day of November, 2006 at Santa Monica, California

Frederic G. Marks
Frederic G. Marks

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 1880 Century Park East, Suite 300, Los Angeles, California 90067.

On November 21, 2006, I served the foregoing document described as **PLAINTIFFS' RESPONSES TO SPECIAL INTERROGATORIES** on the interested parties in this action

X by placing the original X a true copy thereof in sealed envelopes addressed as follows:

Kevin S. Lacey, Esq.
Lacey, Dunn & Do
315 W. Arden Avenue
Suite 11
Glendale, CA 91203

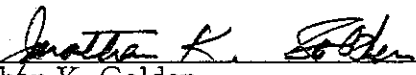
John P. Godsil, Esq.
Freeman, Freeman & Smiley
3415 Sepulveda Boulevard
Suite 1200
Los Angeles, CA 90034-6060

X **By mail** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing 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 of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 21, 2006, at Los Angeles, California.

X STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Jonathan K. Golden

1 JONATHAN K. GOLDEN, ESQ. (CSB 49459)
1900 Avenue of the Stars, Suite 1900
2 Los Angeles, California 90067
Telephone: (310) 553-3830
3 Facsimile: (310) 553-1337

4 Attorneys for Plaintiffs

5
6
7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
10

11 FREDERIC G. MARKS, JOSEPH HENTZ,)
12 STUART SMITH, JEAN MOLLENHAUER,)
13 ROGAN COOMBS, JOSEPH DROLL, GREG)
14 ROOTEN, THOMAS R. WOOD, MARIYLN)
WOOD and GREG STAININGER,)

15 Plaintiffs,

16 v.

17 WAYNE JOYNER and CHARLES W.
18 HAYES, individually and as Trustees of the
19 UNIVERSAL SCIENTIFIC PUBLICATIONS
20 COMPANY TRUST, THE UNIVERSAL
SCINTIFIC PUBLICATIONS COMPANY,
21 INC., THE NATURAL ESTATE TRUST and
DOES 1 through 50, inclusive,
22

23 Defendants.
24

Case No.: BC352639

[Honorable Kenneth R. Freeman,
Department 64]

**PLAINTIFF FREDERIC G. MARKS'
SUPPLEMENTAL RESPONSES TO
SPECIAL INTERROGATORIES**

25 PROPOUNDING PARTY: Defendant CHARLES HAYES

26 RESPONDING PARTY: Plaintiff FREDERIC G. MARKS

27 SET ONE: ONE
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

The following objections and statement are incorporated into each of the responses below. Discovery is ongoing in this matter. Each of the responses contained herein is based only upon such information and documents as are presently available and specifically known to Plaintiff. Plaintiff discloses only those contentions which have been presently formulated, and information in his possession which is not privileged.

Further discovery, independent investigation, legal research and analysis may reveal additional facts, add meaning to known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in and variations from the statement of contentions. The following responses are given without prejudice to Plaintiff's right to produce evidence of any subsequently discovered fact or facts which Plaintiff may discover or recall. Plaintiff reserves the right to change any and all responses set forth herein as additional facts are established, analysis is performed, legal research is completed and contentions are made. The responses set forth below are made in a good faith effort to supply as much factual information and specification of legal contention as is presently known, but are in no way to prejudice Plaintiff in relation to further discovery, research and analysis.

Plaintiff further objects to each of the Special Interrogatories (Set One), to the extent that it seeks information protected by the attorney-client privilege or attorney work product rule. Nothing contained in Plaintiff's responses is intended to be nor should be construed to be a waiver of any of these privileges.

SUPPLEMENTAL RESPONSES TO SPECIAL INTERROGATORIES

RESPONSE TO SPECIAL INTERROGATORY NO. 25:

Oral representations were made both in person and via telephone

RESPONSE TO SPECIAL INTERROGATORY NO. 26:

In or about 1998 defendant Hayes contacted FGM by telephone regarding the desirability of removing William Martin (Martin) as editor of the AJG book and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to FGM by

1 reason of Martin's written and verbal statements showing he had beliefs about world history
2 and specifically World War II that were inimical to those of the Galambos and contrary to
3 the very essence and core of the teachings of AJG. Hayes asked FGM to prepare a
4 declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
5 Martin from any position of control or authority over the ideas of AJG as set forth in his
6 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
7 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
8 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
9 every intention of publishing the entirety of the AJG book including an edited transcript of
course V-201 edited by someone other than Martin.

10 1999 open house for delivery of Volume One of the AJG Book. As recorded in
11 documents previously provided to legal counsel for both individual defendants in response
12 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
13 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
14 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
15 the notices of the Open House dated 1999, April 1 and again April 11, defendants Hayes and
16 Joyner stated that the remainder of the volumes (V-201) will be distributed as each volume
17 is completed. FGM attended the Open House of April 17, took delivery of four hard bound
18 copies of Volume One, and bought several additional paper bound copies of Volume One. It
19 appeared that well over fifty and probably as many as one hundred people attended the Open
20 House including the following: Joseph Hentz, Stuart Smith, Richard Curtin, Wayne Joyner,
21 Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates and subscribers
22 known to FGM but whose names FGM can not presently recall. At the Open House
23 defendant Joyner reiterated that the remaining volumes of the book were in process of
24 editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
25 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
26 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
27 at a table and take orders and advance payments for additional copies of the remaining
28 volumes of the Book (V-201).

1 Communications between FGM and HAYES about publication of AJG book: In or
2 about 1999, and after the above-mentioned Open House, defendant Hayes telephoned FGM
3 to inform FGM that Volume 1 of the AJG book was being offered by TUSPCO on
4 Amazon.com, the internet book seller. Hayes suggested that FGM write a book review of
5 Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not say to
6 FGM anything about any change in the previously announced plans of TUSPCO, Joyner and
7 Hayes to publish V-201.

8 Communications between Jack Hurwitz and HAYES about publication of V-201: In
9 or about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed
10 FGM that he had been in contact with Hayes regarding the publication of the remaining
11 volumes of the book (V-201). Hurwitz told FGM that Hayes said editors were working on
12 an abridged version of the V-201 lectures, but when such abridged version was published
13 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
14 Course V-201.

15 Other than as identified above, Plaintiff has no specific recollection of the dates upon
16 which representations were made.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

18 Representations on April 17, 1999 were in person. All others were by telephone.

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

20 Plaintiff has previously produced to Defendants all relevant documents within his
21 possession or control which relate to HAYES' oral representations. Plaintiff is unable to
22 distinguish whether such documents relate to telephonic as opposed to in person
23 representations.

24 /////

25 /////

26 /////

27 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

28

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

2 Plaintiff's personal knowledge is limited to his own telephone conversations with
3 HAYES. However, Plaintiff is informed and believes that HAYES made similar
4 representations to the witnesses identified in Introductory Paragraph No. 14.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

6 Plaintiff has no present recollection of any specific dates other than what is described
7 in Introductory Paragraph No. 5.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

10 See Introductory Statement, Paragraph 5.

11
12 **RESPONSE TO SPECIAL INTERROGATORY NO. 32:**

13 Plaintiff has previously produced to Defendants all relevant documents within his
14 possession or control which relate to HAYES' oral representations. Plaintiff is unable to
15 distinguish whether such documents relate to telephonic as opposed to in person
16 representations.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 33:**

18 See Introductory Statement, Paragraph 5. Plaintiff presently has no personal
19 knowledge of what HAYES may have stated orally in person to others but believes such
20 statements may have also been made, on other occasions, to the witnesses listed in
21 Introductory Paragraph No. 14.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 34:**

23 Communications between FGM and HAYES about removal of William Martin as
24 Editor and backup trustee: In or about 1998 defendant Hayes contacted FGM by telephone
25 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
26 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
27 FGM by reason of Martin's written and verbal statements showing he had beliefs about
28 world history and specifically World War II that were inimical to those of the Galambos and

1 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
2 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
3 Martin from any position of control or authority over the ideas of AJG as set forth in his
4 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
5 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
6 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
7 every intention of publishing the entirety of the AJG book including an edited transcript of
8 course V-201 edited by someone other than Martin.

9 1999 open house for delivery of Volume One of the AJG Book: As recorded in
10 documents previously provided to legal counsel for both individual defendants in response
11 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
12 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
13 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
14 the notices of the Open House dated 1999, April 1 and again on April 11, defendants Hayes
15 and Joyner stated that the remainder of the volumes (V-201) will be distributed as each
16 volume is completed. FGM attended the Open House of April 17, took delivery of four hard
17 bound copies of Volume One, and bought several additional paper bound copies of Volume
18 One. It appeared that well over fifty and probably as many as one hundred people attended
19 the Open House including the following: Joseph Hentz, Stuart Smith, Richard Curtin,
20 Wayne Joyner, Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates
21 and subscribers known to FGM but whose names FGM can not presently recall. At the Open
22 House defendant Joyner reiterated that the remaining volumes of the book were in process
23 of editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
24 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
25 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
26 at a table and take orders and advance payments for additional copies of the remaining
27 volumes of the Book (V-201).

28 Communications between FGM and HAYES about publication of AJG Book: In or
about 1999, and after the above-mentioned Open House (item 5 above), defendant Hayes
telephoned FGM to inform FGM that Volume 1 of the AJG book was being offered by
TUSPCO on Amazon.com, the internet book seller. Hayes suggested that FGM write a book

1 review of Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not
2 say to FGM anything about any change in the previously announced plans of TUSPCO,
3 Joyner and Hayes to publish V-201.

4 AJG Book offering on Amazon.Com: From at least as early as the year 2002 (and
5 presumably since 1999 until after the filing of this lawsuit, Volume one of the AJG book
6 was being offered on Amazon.com. In 2006 the Amazon.com website posting for Volume
7 One included a book description entitled "from the publisher" as well several reviews by
8 readers dated between 2002 and 2005 inclusive.

9 The TUSPCO website: A TUSPCO website was in existence from at least 2004
10 onward (and presumably from 1999 onward) until after the filing of the complaint in
11 this lawsuit. The TUSPCO website included an offering of not only volume 1 (V-50),
12 but also an offer to sell the remaining volumes (V-201) in advance of publication.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

14 The documents previously identified in Introductory No. 5 produced to Defendants,
15 as well as TUSPCO's website.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 37:**

17 May 18, 1998, July 17, 1998, March 12, 1999, April 1, 1999, and continuously on
18 TUSPCO's website until after this action was filed.

19
20 **RESPONSE TO SPECIAL INTERROGATORY NO. 38:**

21 Communications between FGM and HAYES about removal of William Martin as
22 Editor and backup trustee: In or about 1998 defendant Hayes contacted FGM by telephone
23 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
24 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
25 FGM by reason of Martin's written and verbal statements showing he had beliefs about
26 world history and specifically World War II that were inimical to those of the Galambos and
27 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
28 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
Martin from any position of control or authority over the ideas of AJG as set forth in his

1 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
2 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
3 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
4 every intention of publishing the entirety of the AJG book including an edited transcript of
5 course V-201 edited by someone other than Martin.

6 Defendants' hiring of editors of AJG Book: It is the understanding of Plaintiff that
7 after removal of Martin as editor, Joyner and Hayes retained the services of Peter Sisco as
8 editor of Volume One of the book, and thereafter retained the services of Peter Giansante as
9 editor of the remaining volumes consisting of the V-201 lectures.

10 1999 open house for delivery of Volume One of the AJG Book: As recorded in
11 documents previously provided to legal counsel for both individual defendants in response
12 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
13 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
14 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
15 the notices of the Open House dated 1999, April 1 and again on April 11, defendants Hayes
16 and Joyner stated that the remainder of the volumes (V-201) will be distributed as each
17 volume is completed. FGM attended the Open House of April 17, took delivery of four hard
18 bound copies of Volume One, and bought several additional paper bound copies of Volume
19 One. It appeared that well over fifty and probably as many as one hundred people attended
20 the Open House including the following: Joseph Hentz, Stuart Smith, Richard Curtin,
21 Wayne Joyner, Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates
22 and subscribers known to FGM but whose names FGM can not presently recall. At the Open
23 House defendant Joyner reiterated that the remaining volumes of the book were in process
24 of editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
25 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
26 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
27 at a table and take orders and advance payments for additional copies of the remaining
28 volumes of the Book (V-201).

Communications between FGM and HAYES about publication of AJG Book: In or
about 1999, and after the above-mentioned Open House, defendant Hayes telephoned FGM
to inform FGM that Volume 1 of the AJG book was being offered by TUSPCO on

1 Amazon.com, the internet book seller. Hayes suggested that FGM write a book review of
2 Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not say to
3 FGM anything about any change in the previously announced plans of TUSPCO, Joyner and
4 Hayes to publish V-201.

5 AJG Book offering on Amazon.Com: From at least as early as the year 2002 (and
6 presumably since 1999) until after the filing of this lawsuit, Volume one of the AJG book
7 was being offered on Amazon.com. In 2006 the Amazon.com website posting for Volume
8 One included a book description entitled "from the publisher" as well several reviews by
9 readers dated between 2002 and 2005 inclusive.

10 Communications between Jack Hurwitz and HAYES about publication of V-201: In
11 or about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed
12 FGM that he had been in contact with Hayes regarding the publication of the remaining
13 volumes of the book (V-201). Hurwitz told FGM that Hayes said editors were working on
14 an abridged version of the V-201 lectures, but when such abridged version was published
15 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
16 Course V-201.

17 The TUSPCO website: A TUSPCO website was in existence from at least
18 2004 onward (and presumably from 1999 onward) until after the filing of the
19 complaint in this lawsuit. The TUSPCO website included an offering of not only
20 volume 1 (V-50), but also an offer to sell the remaining volumes (V-201) in advance
21 of publication.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

23 See Introductory Statement, Paragraph 5. Plaintiff presently has no personal
24 knowledge of what HAYES may have stated orally in person to others but believes such
25 statements may have also been made, on other occasions, to the witnesses listed in
26 Introductory Paragraph 14.

27 **RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

28 The documents previously identified in Introductory Paragraph No. 5 produced to
29 Defendants, as well as TUSPCO's website.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

2 All persons who received letters over HAYES' signature, as previously produced to
3 Defendants, and all persons who visited TUSPCO's website before this action was filed.
4

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

6 May 18, 1998, July 17, 1998, March 12, 1999, April 1, 1999, and continuously on
7 TUSPCO's website until after this action was filed.
8

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

10 Plaintiff is unable to fix a specific date for any telephone call he may have had with
11 HAYES. However, Jack Hurwitz received such assurances in 2004. See Introductory
12 Paragraph No.8.
13

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

15 Plaintiff's personal knowledge is limited to his own telephone conversations with
16 HAYES. However, Plaintiff is informed and believes that HAYES made similar
17 representations to the witnesses identified in Introductory Paragraph No. 14.
18

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 45:**

20 Plaintiff has no present recollection of any specific dates other than what is described
21 in Introductory Paragraph No. 5.
22

23 **RESPONSE TO SPECIAL INTERROGATORY NO. 46:**

24 See Introductory Statement, Paragraph 5. Plaintiff presently has no personal
25 knowledge of what HAYES may have stated orally in person to others but believes such
26 statements may have also been made, on other occasions, to the witnesses listed in
27 Introductory Paragraph No. 14.
28

RESPONSE TO SPECIAL INTERROGATORY NO. 47:

Communications between FGM and HAYES about removal of William Martin as

1 Editor and backup trustee: In or about 1998 defendant Hayes contacted FGM by telephone
2 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
3 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
4 FGM by reason of Martin's written and verbal statements showing he had beliefs about
5 world history and specifically World War II that were inimical to those of the Galambos and
6 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
7 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
8 Martin from any position of control or authority over the ideas of AJG as set forth in his
9 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
10 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
11 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
12 every intention of publishing the entirety of the AJG book including an edited transcript of
13 course V-201 edited by someone other than Martin.

13 Defendants' hiring of editors of AJG Book: It is the understanding of Plaintiff that
14 after removal of Martin as editor, Joyner and Hayes retained the services of Peter Sisco as
15 editor of Volume One of the book, and thereafter retained the services of Peter Giansante as
16 editor of the remaining volumes consisting of the V-201 lectures.

17 1999 open house for delivery of Volume One of the AJG Book: As recorded in
18 documents previously provided to legal counsel for both individual defendants in response
19 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
20 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
21 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
22 the notices of the Open House dated 1999, April 1 and again on April 11, defendants Hayes
23 and Joyner stated that the remainder of the volumes (V-201) will be distributed as each
24 volume is completed. FGM attended the Open House of April 17, took delivery of four hard
25 bound copies of Volume One, and bought several additional paper bound copies of Volume
26 One. It appeared that well over fifty and probably as many as one hundred people attended
27 the Open House including the following: Joseph Hentz, Stuart Smith, Richard Curtin,
28 Wayne Joyner, Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates
and subscribers known to FGM but whose names FGM can not presently recall. At the Open
House defendant Joyner reiterated that the remaining volumes of the book were in process

1 of editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
2 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
3 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
4 at a table and take orders and advance payments for additional copies of the remaining
5 volumes of the Book (V-201).

6 Communications between FGM and HAYES about publication of AJG Book: In or
7 about 1999, and after the above-mentioned Open House, defendant Hayes telephoned FGM
8 to inform FGM that Volume 1 of the AJG book was being offered by TUSPCO on
9 Amazon.com, the internet book seller. Hayes suggested that FGM write a book review of
10 Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not say to
11 FGM anything about any change in the previously announced plans of TUSPCO, Joyner and
12 Hayes to publish V-201.

13 AJG Book offering on Amazon.Com. From at least as early as the year 2002 (and
14 presumably since 1999) until after the filing of this lawsuit, Volume one of the AJG book
15 was being offered on Amazon.com. In 2006 the Amazon.com website posting for Volume
16 One included a book description entitled "from the publisher" as well several reviews by
17 readers dated between 2002 and 2005 inclusive.

18 Communications between Jack Hurwitz and HAYES about publication of V-201: In
19 or about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed
20 FGM that he had been in contact with Hayes regarding the publication of the remaining
21 volumes of the book (V-201). Hurwitz told FGM that Hayes said editors were working on
22 an abridged version of the V-201 lectures, but when such abridged version was published
23 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
24 Course V-201.

25 The TUSPCO website: A TUSPCO website was in existence from at least 2004
26 onward (and presumably from 1999 onward) until after the filing of the complaint in
27 this lawsuit. The TUSPCO website included an offering of not only volume 1 (V-50),
28 but also an offer to sell the remaining volumes (V-201) in advance of publication.

RESPONSE TO SPECIAL INTERROGATORY NO. 48:

1 Plaintiff is unable to fix a specific date for any telephone call he may have had with
2 HAYES. However, Jack Hurwitz received such assurances in 2004. See Introductory
3 Paragraph No.8.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 49:**

5 Plaintiff's personal knowledge is limited to his own telephone conversations with
6 HAYES. However, Plaintiff is informed and believes that HAYES made similar
7 representations to the witnesses identified in Introductory Paragraph No. 14.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 50:**

10 Plaintiff's personal knowledge is limited to his own telephone conversations with
11 HAYES. However, Plaintiff is informed and believes that HAYES made similar
12 representations to the witnesses identified in Introductory Paragraph No. 14.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 51:**

14 Plaintiff has no present recollection of any specific dates other than what is described
15 in Introductory Paragraph No. 5.

16
17 **RESPONSE TO SPECIAL INTERROGATORY NO. 52:**

18 See Introductory Statement, Paragraph 5. Plaintiff presently has no personal
19 knowledge of what HAYES may have stated orally in person to others but believes such
20 statements may have also been made, on other occasions, to the witnesses listed in
21 Introductory Paragraph No. 14.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 53:**

23 The documents previously identified in Introductory No. 5 produced to Defendants,
24 as well as TUSPCO's website.

25
26 **RESPONSE TO SPECIAL INTERROGATORY NO. 56:**

27 Communications between FGM and HAYES about publication of AJG Book: In or
28 about 1999, and after the above-mentioned Open House, defendant Hayes telephoned FGM

1 to inform FGM that Volume 1 of the AJG book was being offered by TUSPCO on
2 Amazon.com, the internet book seller. Hayes suggested that FGM write a book review of
3 Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not say to
4 FGM anything about any change in the previously announced plans of TUSPCO, Joyner and
5 Hayes to publish V-201.

6 AJG Book offering on Amazon.com: From at least as early as the year 2002 (and
7 presumably since 1999 per statement 6 above) until after the filing of this lawsuit, Volume
8 one of the AJG book was being offered on Amazon.com. In 2006 the Amazon.com website
9 posting for Volume One included a book description entitled "from the publisher" as well
10 several reviews by readers dated between 2002 and 2005 inclusive.

11 Communications between Jack Hurwitz and HAYES about publication of V-201: In
12 or about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed
13 FGM that he had been in contact with Hayes regarding the publication of the remaining
14 volumes of the book (V-201). Hurwitz told FGM that Hayes said editors were working on
15 an abridged version of the V-201 lectures, but when such abridged version was published
16 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
17 Course V-201.

18 Communications between FGM and JOYNER: By mid-2004, having heard nothing
19 more about the efforts of defendants Hayes and Joyner to publish the remaining volumes (V-
20 201), FGM called Joyner on the phone to ask for a status report. Joyner said he was not free
21 to discuss the matter on the phone, but would meet with FGM to discuss the status of
22 publication of V-201 if, and only if, FGM signed an agreement not to disclose the content of
23 the discussions at such meeting. FGM did not so agree at that time, or at any time. On or
24 about July 8, 2004 FGM met with Joyner at his office. In that meeting Joyner stated he
25 could not discuss the status of publication of V-201 because of a non-disclosure
26 agreement to which he was a party. Joyner added, however, that due to the long and
27 special association of FGM with the Galambos' that Joyner would be willing to
28 disclose the status of publication of V-201 if two conditions were met: Charles Hayes
29 would attend the meeting and FGM would sign an agreement not to disclose to
30 anyone the information to be imparted by Joyner and Hayes at the meeting. FGM

1 agreed to the participation of Hayes at the meeting, but did not agree to the non-
2 disclosure requirement. Written correspondence between FGM, Joyner and Hayes on
3 these matters followed in 2004 and 2005 has been supplied to Defendants' legal
4 counsel.

5 The TUSPCO Website: A TUSPCO website was in existence from at least
6 2004 onward (and presumably from 1999 onward) until after the filing of the
7 complaint in this lawsuit. The TUSPCO website included an offering of not only
8 volume 1 (V-50), but also an offer to sell the remaining volumes (V-201) in advance
9 of publication.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 57:**

11 Plaintiff is unable to fix a specific date upon any telephone call he may have had
12 with HAYES. However, Jack Hurwitz received such assurances in 2004. See Introductory
13 Paragraph No.8.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 58:**

15 Plaintiff's personal knowledge is limited to his own telephone conversations with
16 HAYES. However, Plaintiff is informed and believes that HAYES made similar
17 representations to the witnesses identified in Introductory Paragraph No. 14.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 59:**

19 The documents previously identified in Introductory Paragraph No. 5 produced to
20 Defendants, as well as TUSPCO's website.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 60:**

22 May 18, 1998, July 17, 1998, March 12, 1999, April 1, 1999, and continuously on
23 TUSPCO's website until after this action was filed.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 61:**

25 Communications between FGM and HAYES about removal of William Martin as
26 Editor and backup Trustee: In or about 1998 defendant Hayes contacted FGM by telephone
27

1 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
2 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
3 FGM by reason of Martin's written and verbal statements showing he had beliefs about
4 world history and specifically World War II that were inimical to those of the Galambos and
5 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
6 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
7 Martin from any position of control or authority over the ideas of AJG as set forth in his
8 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
9 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
10 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
11 every intention of publishing the entirety of the AJG book including an edited transcript of
12 course V-201 edited by someone other than Martin.

12 Defendants' hiring of editors of AJG Book: It is the understanding of Plaintiff that
13 after removal of Martin as editor, Joyner and Hayes retained the services of Peter Sisco as
14 editor of Volume One of the book, and thereafter retained the services of Peter Giansante as
15 editor of the remaining volumes consisting of the V-201 lectures.

16 1999 open house for delivery of Volume One of the AJG Book. As recorded in
17 documents previously provided to legal counsel for both individual defendants in response
18 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
19 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
20 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
21 the notices of the Open House dated 1999, April 1 and again April 11, defendants Hayes and
22 Joyner stated that the remainder of the volumes (V-201) will be distributed as each volume
23 is completed. FGM attended the Open House of April 17, took delivery of four hard bound
24 copies of Volume One, and bought several additional paper bound copies of Volume One. It
25 appeared that well over fifty and probably as many as one hundred people attended the Open
26 House including the following: Joseph Hentz, Stuart Smith, Richard Curtin, Wayne Joyner,
27 Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates and subscribers
28 known to FGM but whose names FGM can not presently recall. At the Open House
defendant Joyner reiterated that the remaining volumes of the book were in process of
editing for printing and distribution as expeditiously as feasible. Defendant Hayes either

1 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
2 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
3 at a table and take orders and advance payments for additional copies of the remaining
4 volumes of the Book (V-201).

5 Communications between FGM and HAYES about publication of AJG Book: In or
6 about 1999, and after the above-mentioned Open House (item 5 above), defendant Hayes
7 telephoned FGM to inform FGM that Volume 1 of the AJG book was being offered by
8 TUSPCO on Amazon.com, the internet book seller. Hayes suggested that FGM write a book
9 review of Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not
10 say to FGM anything about any change in the previously announced plans of TUSPCO,
11 Joyner and Hayes to publish V-201.

12 AJG Book offering on Amazon.com. From at least as early as the year 2002 (and
13 presumably since 1999 per statement 6 above) until after the filing of this lawsuit, Volume
14 one of the AJG book was being offered on Amazon.com. In 2006 the Amazon.com website
15 posting for Volume One included a book description entitled "from the publisher" as well
16 several reviews by readers dated between 2002 and 2005 inclusive.

17 Communications between Jack Hurwitz and HAYES about publication of V-201: In
18 or about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed
19 FGM that he had been in contact with Hayes regarding the publication of the remaining
20 volumes of the book (V-201). Hurwitz told FGM that Hayes said editors were working on
21 an abridged version of the V-201 lectures, but when such abridged version was published
22 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
23 Course V-201.

24 The TUSPCO Website: A TUSPCO website was in existence from at least
25 2004 onward (and presumably from 1999 onward) until after the filing of the
26 complaint in this lawsuit. The TUSPCO website included an offering of not only
27 volume 1 (V-50), but also an offer to sell the remaining volumes (V-201) in advance
28 of publication.

RESPONSE TO SPECIAL INTERROGATORY NO. 62:

1 Plaintiff's personal knowledge is limited to his own telephone conversations with
2 HAYES. However, Plaintiff is informed and believes that HAYES made similar
3 representations to the witnesses identified in Introductory Paragraph No. 14.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 63:**

5 Plaintiff is unable to fix a specific date upon any telephone call he may have had
6 with HAYES. However, Jack Hurwitz received such assurances in 2004. See Introductory
7 Paragraph No.8.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 64:**

10 Plaintiff's personal knowledge is limited to his own telephone conversations with
11 HAYES. However, Plaintiff is informed and believes that HAYES made similar
12 representations to the witnesses identified in Introductory Paragraph No. 14.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 65:**

14 Plaintiff has no present recollection of any specific dates other than what is described
15 in Introductory Paragraph No. 5.

16
17 **RESPONSE TO SPECIAL INTERROGATORY NO. 66**

18 See Introductory Statement, Paragraph 5. Plaintiff presently has no personal
19 knowledge of what HAYES may have stated orally in person to others but believes such
20 statements may have also been made, on other occasions, to the witness listed in
21 Introductory Paragraph No. 14.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 67:**

23 The documents previously identified in Introductory Paragraph No. 5 produced to
24 Defendants, as well as TUSPCO's website.

25
26
27 **RESPONSE TO SPECIAL INTERROGATORY NO. 68:**

28 The website itself; those pages have been previously produced to Defendants by
29 Plaintiff.

RESPONSE TO SPECIAL INTERROGATORY NO. 182:

1 Communications between FGM and JOYNER: By mid-2004, having heard
2 nothing more about the efforts of defendants Hayes and Joyner to publish the remaining
3 volumes (V-201), FGM called Joyner on the phone to ask for a status report. Joyner said he
4 was not free to discuss the matter on the phone, but would meet with FGM to discuss the
5 status of publication of V-201 if, and only if, FGM signed an agreement not to disclose the
6 content of the discussions at such meeting. FGM did not so agree at that time, or at any time.
7 On or about July 8, 2004 FGM met with Joyner at his office. In that meeting Joyner stated
8 he could not discuss the status of publication of V-201 because of a non-disclosure
9 agreement to which he was a party. Joyner added, however, that due to the long and
10 special association of FGM with the Galambos' that Joyner would be willing to disclose
11 the status of publication of V-201 if two conditions were met: Charles Hayes would attend
12 the meeting and FGM would sign an agreement not to disclose to anyone the information to
13 be imparted by Joyner and Hayes at the meeting. FGM agreed to the participation of Hayes
14 at the meeting, but did not agree to the non-disclosure requirement. Written correspondence
15 between FGM, Joyner and Hayes on these matters followed in 2004 and 2005 has been
16 supplied to defendants' legal counsel.

17 Communications with other subscribers: In 2004 and 2005 FGM wrote to
18 defendant Joyner with copies to defendant Hayes regarding my concerns about the V-
19 201 book. The letters FGM wrote and letters from defendant Joyner have been
20 supplied to counsel for defendants Joyner and Hayes in response to the request of
21 defendant Joyner for production of documents. FGM has received no response to his
22 letters to Joyner and Hayes. Beginning in or around July 2004 FGM spoke to other
23 subscribers about my concerns. FGM sent a letter dated December 1, 2005 about those
24 concerns to other subscribers, and enclosed therein a copy of a letter he had written to
25 defendant Joyner dated September 15, 2005. Those two letters are included in the
26 documents supplied to counsel for defendants in response to the request of defendant Joyner
27 for production of documents. The subscribers to whom FGM spoke or sent the foregoing
correspondence include the remaining plaintiffs in this lawsuit, and also Richard Curtin,
Brian Gladish, Jack Hurwitz, Franklin Moore, Peter Ronay, James Turner, David L. Wood,

1 MD, and Charles J. Young. FGM has had no response of any kind from defendants Joyner
2 and Hayes to his letters sent to them in 2004 and 2005. Those letters have been supplied to
3 counsel for defendants Joyner and Hayes in response to the request for production of
4 documents from defendant Joyner.

5 Defendants HAYES and JOYNER have refused to acknowledge any legal obligation
6 to publish the remaining volumes and have denied under penalty of perjury, in their verified
7 Answers, that they have any legal obligation to publish the remaining volumes to Plaintiffs
8 who fully paid for them.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 183:**

10 Communications between FGM and JOYNER: By mid-2004,
11 having heard nothing more about the efforts of defendants Hayes and Joyner to publish the
12 remaining volumes (V-201), FGM called Joyner on the phone to ask for a status report.
13 Joyner said he was not free to discuss the matter on the phone, but would meet with FGM to
14 discuss the status of publication of V-201 if, and only if, FGM signed an agreement not to
15 disclose the content of the discussions at such meeting. FGM did not so agree at that time, or
16 at any time. On or about July 8, 2004 FGM met with Joyner at his office. In that meeting
17 Joyner stated he could not discuss the status of publication of V-201 because of a
18 non-disclosure agreement to which he was a party. Joyner added, however, that due
19 to the long and special association of FGM with the Galambos' that Joyner would be
20 willing to disclose the status of publication of V-201 if two conditions were met: Charles
21 Hayes would attend the meeting and FGM would sign an agreement not to disclose to
22 anyone the information to be imparted by Joyner and Hayes at the meeting. FGM agreed to
23 the participation of Hayes at the meeting, but did not agree to the non-disclosure
24 requirement. Written correspondence between FGM, Joyner and Hayes on these matters
followed in 2004 and 2005 has been supplied to Defendants' legal counsel.

25 Communications with other subscribers: In 2004 and 2005 FGM wrote to
26 defendant Joyner with copies to defendant Hayes regarding my concerns about the V-
27 201 book. The letters FGM wrote and letters from defendant Joyner have been
28 supplied to counsel for defendants Joyner and Hayes in response to the request of

1 defendant Joyner for production of documents. FGM has received no response to his
2 letters to Joyner and Hayes. Beginning in or around July 2004 FGM spoke to other
3 subscribers about my concerns. FGM sent a letter dated December 1, 2005 about those
4 concerns to other subscribers, and enclosed therein a copy of a letter he had written to
5 defendant Joyner dated September 15, 2005. Those two letters are included in the documents
6 supplied to counsel for defendants in response to the request of defendant Joyner for
7 production of documents. The subscribers to whom FGM spoke or sent the foregoing
8 correspondence include the remaining plaintiffs in this lawsuit, and also Richard Curtin,
9 Brian Gladish, Jack Hurwitz, Franklin Moore, Peter Ronay, James Turner, David L. Wood,
10 MD, and Charles J. Young. FGM has had no response of any kind from defendants Joyner
11 and Hayes to his letters sent to them in 2004 and 2005. Those letters have been supplied to
12 counsel for defendants Joyner and Hayes in response to the request for production of
13 documents from defendant Joyner.

14 Defendants' Demurrers and verified Answers in the present action.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 184:**

16 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
17 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 185:**

19 HAYES has represented in writing and admitted in this action that he is a Trustee of
20 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed and controls the TUSPCO
21 TRUST, and that he is a Trustee of the Natural Estate Trust which is the sole shareholder of
22 TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the TUSPCO
23 TRUST which was and is the custodian of trust funds deposited by Plaintiffs to it. Any
24 person who controls trust funds has a non-delegable legal duty to account to the
25 beneficiaries of the trust.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 186:**
27
28

1 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March 12,
2 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
3 Marks dated October 13, 2004.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 187:**

5 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
6 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

7
8 **RESPONSE TO SPECIAL INTERROGATORY NO. 188:**

9 HAYES has represented in writing and admitted in this action that he is a Trustee of
10 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed and controls the
11 TUSPCO TRUST, and that he is a Trustee of the Natural Estate Trust which is the sole
12 shareholder of TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the
13 TUSPCO TRUST which was and is the custodian of trust funds deposited by plaintiffs to it.
14 Any person who controls trust funds has a non-delegable legal duty to account to the
15 beneficiaries of the trust.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 189:**

17 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March
18 12, 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
19 Marks dated October 13, 2004.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 190:**

21 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
22 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

23
24 **RESPONSE TO SPECIAL INTERROGATORY NO. 191:**

25 HAYES has represented in writing and admitted in this action that he is a Trustee of
26 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed the TUSPCO TRUST,
27 and that he is a Trustee of the Natural Estate Trust which is the sole shareholder of
28 TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the TUSPCO

1 TRUST which was and is the custodian of trust funds deposited by Plaintiffs to it. Any
2 person who controls trust funds has a non-delegable legal duty to account to the
3 beneficiaries of the trust.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 192:**

5 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March
6 12, 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
7 Marks dated October 13, 2004.

8
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 193:**

10 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
11 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

12
13 **RESPONSE TO SPECIAL INTERROGATORY NO. 194:**

14 Defendant has admitted the following facts:

15 (1) He is a trustee of the Natural Estate Trust (TNET). He further admits that
16 TNET is the sole shareholder of TUSPCO, Inc. He further admits that the primary purpose
17 and goal of TNET is embodied in the following directive: "The Trustee is directed to
18 concentrate the distributions from the Trust on activities that will further publication,
19 perpetuation, and protection of the innovations of Andrew J. Galambos." He admits that
20 each Plaintiff in this action is a subscriber to the written Pre-Publication Subscription
21 Agreement (PPSA) which is the subject of this action. He admits that he and defendant
22 JOYNER are officers of TUSPCO, Inc. which is the entity contractually obligated to deliver
23 the balance of Book One to subscribers to the PPSA. He admits that the balance of Book
24 One has not been delivered to Plaintiffs, in accordance with the PPSA. Finally, Defendants
25 HAYES and JOYNER have expressly refused to explain to anyone why they and TUSPCO
26 have not published the remaining volumes of Book One nor are they willing to disclose what
27 they, or anyone else, has done with the money deposited to pay for the books. Instead,
28 Defendants have denied that Plaintiffs are entitled to receive what was promised in the
PPSA, or that Plaintiffs are entitled to know why they are not entitled to receive what was

1 promised in the PPSA. Defendants have denied that Plaintiffs, or anyone else, is entitled to
2 know what happened to the money deposited in payment for Book 1 under the PPSA, or to
3 know what steps, if any, Defendants have taken as Trustees of TNET to fulfill the central
4 purpose of that Trust, to wit: To publish, accurately and in permanent form, for the sake of
5 Andrew J. Galambos and human posterity, the lectures (intellectual property) of Galambos.
6 More specifics follow.

7 Communications between FGM and HAYES about removal of William Martin as
8 Editor and backup Trustee: In or about 1998 defendant Hayes contacted FGM by telephone
9 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
10 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
11 FGM by reason of Martin's written and verbal statements showing he had beliefs about
12 world history and specifically World War II that were inimical to those of the Galambos and
13 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
14 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
15 Martin from any position of control or authority over the ideas of AJG as set forth in his
16 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
17 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
18 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
19 every intention of publishing the entirety of the AJG book including an edited transcript of
20 course V-201 edited by someone other than Martin.

21 Defendants' hiring of editors of AJG Book: It is the understanding of Plaintiff that
22 after removal of Martin as editor, Joyner and Hayes retained the services of Peter Sisco as
23 editor of Volume One of the book, and thereafter retained the services of Peter Giansante as
24 editor of the remaining volumes consisting of the V-201 lectures.

25 1999 open house for delivery of Volume One of the AJG Book: As recorded in
26 documents previously provided to legal counsel for both individual defendants in response
27 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
28 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
California to distribute and celebrate the publication of Book One, Volume One by AJG. In
the notices of the Open House dated 1999, April 1 and again April 11, defendants Hayes and
Joyner stated that the remainder of the volumes (V-201) will be distributed as each volume

1 is completed. FGM attended the Open House of April 17, took delivery of four hard bound
2 copies of Volume One, and bought several additional paper bound copies of Volume One. It
3 appeared that well over fifty and probably as many as one hundred people attended the Open
4 House including the following: Joseph Hentz, Stuart Smith, Richard Curtin, Wayne Joyner,
5 Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates and subscribers
6 known to FGM but whose names FGM can not presently recall. At the Open House
7 defendant Joyner reiterated that the remaining volumes of the book were in process of
8 editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
9 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
10 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
11 at a table and take orders and advance payments for additional copies of the remaining
12 volumes of the Book (V-201).

12 Communications between FGM and HAYES about publication of AJG book: In or
13 about 1999, and after the above-mentioned Open House (item 5 above), defendant Hayes
14 telephoned FGM to inform FGM that Volume 1 of the AJG book was being offered by
15 TUSPCO on Amazon.com, the internet book seller. Hayes suggested that FGM write a book
16 review of Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not
17 say to FGM anything about any change in the previously announced plans of TUSPCO,
18 Joyner and Hayes to publish V-201.

19 AJG Book offering on Amazon.com: From at least as early as the year 2002 (and
20 presumably since 1999 per statement 6 above) until after the filing of this lawsuit, Volume
21 one of the AJG book was being offered on Amazon.com. In 2006 the Amazon.com website
22 posting for Volume One included a book description entitled "from the publisher" as well
23 several reviews by readers dated between 2002 and 2005 inclusive.

24 Communications between Jack Hurwitz and HAYES about publication of V-201: In or
25 about 2004 Jack H. Hurwitz (Hurwitz), another FEI graduate and subscriber informed FGM
26 that he had been in contact with Hayes regarding the publication of the remaining volumes
27 of the book (V-201). Hurwitz told FGM that Hayes said editors were working on an
28 abridged version of the V-201 lectures, but when such abridged version was published
Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
Course V-201.

1 Communications between FGM and JOYNER: By mid-2004, having heard nothing
2 more about the efforts of defendants Hayes and Joyner to publish the remaining volumes (V-
3 201), FGM called Joyner on the phone to ask for a status report. Joyner said he was not free
4 to discuss the matter on the phone, but would meet with FGM to discuss the status of
5 publication of V-201 if, and only if, FGM signed an agreement not to disclose the content of
6 the discussions at such meeting. FGM did not so agree at that time, or at any time. On or
7 about July 8, 2004 FGM met with Joyner at his office. In that meeting Joyner stated he
8 could not discuss the status of publication of V-201 because of a non-disclosure
9 agreement to which he was a party. Joyner added, however, that due to the long and special
10 association of FGM with the Galambos' that Joyner would be willing to disclose the status
11 of publication of V-201 if two conditions were met: Charles Hayes would attend the meeting
12 and FGM would sign an agreement not to disclose to anyone the information to be imparted
13 by Joyner and Hayes at the meeting. FGM agreed to the participation of Hayes at the
14 meeting, but did not agree to the non-disclosure requirement. Written correspondence
15 between FGM, Joyner and Hayes on these matters followed in 2004 and 2005 has been
16 supplied to defendants' legal counsel.

17 The TUSPCO Wesbite: A TUSPCO website was in existence from at least 2004
18 onward (and presumably from 1999 onward) until after the filing of the complaint in
19 this lawsuit. The TUSPCO website included an offering of not only volume 1 (V-50),
20 but also an offer to sell the remaining volumes (V-201) in advance of publication.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 195 :**

22 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March
23 12, 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
24 Marks dated October 13, 2004.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 196 :**

26 All parties to this action, as well as Richard Curtir., Brian Gladish, Jack Hurwitz,
27 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 197:**

1 Defendant has admitted the following facts:

2 (1) He is a trustee of the Natural Estate Trust (TNET). He further admits that
3 TNET is the sole shareholder of TUSPCO, Inc. He further admits that the primary purpose
4 and goal of TNET is embodied in the following directive: "The Trustee is directed to
5 concentrate the distributions from the Trust on activities that will further publication,
6 perpetuation, and protection of the innovations of Andrew J. Galambos." He admits that
7 each Plaintiff in this action is a subscriber to the written Pre-Publication Subscription
8 Agreement (PPSA) which is the subject of this action. He admits that he is and defendant
9 JOYNER are the officers of TUSPO, Inc. which is the entity contractually obligated to
10 deliver the balance of Book One to subscribers to the PPSA. He admits that the balance of
11 Book One has not been delivered to Plaintiffs, in accordance with the PPSA. Finally,
12 defendants HAYES and JOYNER have expressly refused to explain to anyone why they and
13 TUSPCO have not published the remaining volumes of Book One nor have they been
14 willing to disclose what they or anyone else have done with the money deposited to pay for
15 the books. Instead, Defendants have denied that Plaintiffs are entitled to receive what was
16 promised in the PPSA, or that Plaintiffs are entitled to know why they are not entitled to
17 receive what was promised in the PPSA. Defendants have denied that Plaintiffs, or anyone
18 else, is entitled to know what happened to the money deposited in payment for Book 1 under
19 the PPSA, or to know what steps, if any, Defendants have taken as Trustees of TNET to
20 fulfill the central purpose of the Trust, to wit: To publish, accurately and in permanent form,
21 for the sake of Andrew J. Galambos and human posterity, the lectures (intellectual property)
22 of Galambos. More specifics follow.

23 Communications between FGM and HAYES about removal of William Martin as
24 Editor and backup Trustee: In or about 1998 defendant Hayes contacted FGM by telephone
25 regarding the desirability of removing William Martin (Martin) as editor of the AJG book
26 and also as a backup Trustee of TNET. This removal appeared necessary and appropriate to
27 FGM by reason of Martin's written and verbal statements showing he had beliefs about
28 world history and specifically World War II that were inimical to those of the Galambos and
29 contrary to the very essence and core of the teachings of AJG. Hayes asked FGM to prepare
30 a declaration under penalty of perjury to support the efforts of Hayes and Joyner to remove
31 Martin from any position of control or authority over the ideas of AJG as set forth in his

1 teachings including the Course V-50 and V-201, the subject of the book in the PPSA. FGM
2 prepared such a declaration and supplied it to defendants Hayes and Joyner. During the
3 course of phone conversations between FGM and Hayes, it appeared to FGM that Hayes had
4 every intention of publishing the entirety of the AJG book including an edited transcript of
5 course V-201 edited by someone other than Martin.

6 Defendants' hiring of editors of AJG Book: It is the understanding of Plaintiff that
7 after removal of Martin as editor, Joyner and Hayes retained the services of Peter Sisco as
8 editor of Volume One of the book, and thereafter retained the services of Peter Giansante as
9 editor of the remaining volumes consisting of the V-201 lectures.

10 1999 open house for delivery of Volume One of the AJG Book: As recorded in
11 documents previously provided to legal counsel for both individual defendants in response
12 to the request for production of documents by defendant Joyner, on April 17, 1999 Hayes
13 and Joyner held an Open House for subscribers and all FEI graduates at Commerce,
14 California to distribute and celebrate the publication of Book One, Volume One by AJG. In
15 the notices of the Open House dated 1999, April 1 and again April 11, defendants Hayes and
16 Joyner stated that the remainder of the volumes (V-201) will be distributed as each volume
17 is completed. FGM attended the Open House of April 17, took delivery of four hard bound
18 copies of Volume One, and bought several additional paper bound copies of Volume One. It
19 appeared that well over fifty and probably as many as one hundred people attended the Open
20 House including the following: Joseph Hentz, Stuart Smith, Richard Curtin, Wayne Joyner,
21 Charles Hayes, Peter Sisco (editor of Volume One) and other FEI graduates and subscribers
22 known to FGM but whose names FGM can not presently recall. At the Open House
23 defendant Joyner reiterated that the remaining volumes of the book were in process of
24 editing for printing and distribution as expeditiously as feasible. Defendant Hayes either
25 joined in such reiteration or at least did not contradict it. According to Stuart Smith,
26 defendant Joyner or perhaps Joyner and Hayes asked Mr. Smith and Mr. Smith agreed to sit
27 at a table and take orders and advance payments for additional copies of the remaining
28 volumes of the Book (V-201).

29 Communications between FGM and HAYES about publication of AJG book: In or
30 about 1999, and after the above-mentioned Open House (item 5 above), defendant Hayes
31 telephoned FGM to inform FGM that Volume 1 of the AJG book was being offered by

1 TUSPCO on Amazon.com, the internet book seller. Hayes suggested that FGM write a book
2 review of Volume 1 to be posted on Amazon.com. In that phone conversation Hayes did not
3 say to FGM anything about any change in the previously announced plans of TUSPCO,
4 Joyner and Hayes to publish V-201.

5 AJG Book offering on Amazon.com: From at least as early as the year 2002 (and
6 presumably since 1999 per statement 6 above) until after the filing of this lawsuit, Volume
7 one of the AJG book was being offered on Amazon.com. In 2006 the Amazon.com website
8 posting for Volume One included a book description entitled "from the publisher" as well
9 several reviews by readers dated between 2002 and 2005 inclusive.

10 Communications between Jack Hurwitz and HAYES about publication of V-201: In or
11 about 2004 Jack H. Hurwitz (Hurwitz), another FBI graduate and subscriber informed FGM
12 that he had been in contact with Hayes regarding the publication of the remaining volumes
13 of the book (V-201). Hurwitz told FGM that Hayes said editors were working on an
14 abridged version of the V-201 lectures, but when such abridged version was published
15 Hayes and Joyner would also deliver simultaneously to subscribers a complete transcript of
16 Course V-201.

17 Communications between FGM and JOYNER: By mid-2004, having heard nothing
18 more about the efforts of defendants Hayes and Joyner to publish the remaining volumes (V-
19 201), FGM called Joyner on the phone to ask for a status report. Joyner said he was not free
20 to discuss the matter on the phone, but would meet with FGM to discuss the status of
21 publication of V-201 if, and only if, FGM signed an agreement not to disclose the content of
22 the discussions at such meeting. FGM did not so agree at that time, or at any time. On or
23 about July 8, 2004 FGM met with Joyner at his office. In that meeting Joyner stated he
24 could not discuss the status of publication of V-201 because of a non-disclosure
25 agreement to which he was a party. Joyner added, however, that due to the long and special
26 association of FGM with the Galambos' that Joyner would be willing to disclose the status
27 of publication of V-201 if two conditions were met: Charles Hayes would attend the meeting
28 and FGM would sign an agreement not to disclose to anyone the information to be imparted
by Joyner and Hayes at the meeting. FGM agreed to the participation of Hayes at the
meeting, but did not agree to the non-disclosure requirement. Written correspondence

1 between FGM, Joyner and Hayes on these matters followed in 2004 and 2005 has been
2 supplied to Defendants' legal counsel.

3 The TUSPCO Website: A TUSPCO website was in existence from at least 2004
4 onward (and presumably from 1999 onward) until after the filing of the complaint in
5 this lawsuit. The TUSPCO website included an offering of not only volume 1 (V-50),
6 but also an offer to sell the remaining volumes (V-20...) in advance of publication.

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 198:**

8
9 The PPSA.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 199:**

11 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
12 Franklin Moore, Peter Ronay, James Turner, david L. Wood, M.D., and Charles J. Young.

13
14 **RESPONSE TO SPECIAL INTERROGATORY NO. 200:**

15 HAYES has represented in writing and admitted in this action that he is a Trustee of
16 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed the TUSPCO TRUST,
17 and that he is a Trustee of the Natural Estate Trust which is the sole shareholder of
18 TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the TUSPCO
19 TRUST which was and is the custodian of trust funds deposited by Plaintiffs to it. Any
20 person who controls trust funds has a non-delegable legal duty to account to the
21 beneficiaries of the trust.

22 **DEFENDANTS' HANDLING ASSETS OF AJG, TUSPCO, etc.**

23 Plaintiff Frederic G. Marks ("Marks") has yet to obtain discovery from Defendants
24 who are sole possessors of the evidence supporting the contentions in paragraph 5 of
25 the Complaint. The contention was made upon information and belief based upon the
26 following:

- 27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
1. The probable size of the assets of the estate of Mr. & Mrs. Galambos,
the TUSPCO TRUST, TUSPCO and The Galambos' Natural Estate

1 Trust (TNET) as of July 1989 when Marks last served as attorney for
2 Mr. and Mrs. Galambos and their companies;

3 2. Defendants' expenditure of monies of the Galambos' and their
4 companies for attorney's fees in dispute with William Martin;

5 3. Defendants' expenditure of \$8,000 per month for several years on the
6 services of an individual or individuals who were hired to edit the
7 transcripts of AJG's course V-201, and who failed to do so, but rather
8 undertook to write a book containing the editor's own version of the
9 teachings of AJG; Defendants' expenditures of monies of the Galambos'
10 and their companies for the personal benefit of Defendant Joyner,
11 specifically expenditures for Mr. Joyner's personal security in regard to
12 possible harm feared by Mr. Joyner in connection with the dispute with
13 Mr. William Martin;

14 4. Losses of the Galambos' estate and entity assets due to improvident
15 operations in the stock market and mutual funds by Defendant Hayes
16 with the consent of Defendant Joyner;

17 5. The stated intent of Hayes and Joyner to preserve the tape recordings of
18 lectures of AJG, and their failure to spend the funds necessary to
19 preserve the tape recordings;

20 6. The stated intent of Defendants Hayes and Joyner to preserve the
21 personal residence of Mr. & Mrs. Galambos as a Galambos museum
22 and their failure to do so as evidenced by the sale of the residence.

23 7. The request of defendant Hayes to Franklin Moore to produce a
24 compact disc version of Course V-201 for defendants followed by the
25 refusal of Hayes to pay for the reasonable cost of the compact disc
26 reproduction produced by Mr. Moore.
27
28

RESPONSE TO SPECIAL INTERROGATORY NO. 201:

1 Unknown, but not later than the first day that HAYES became a Trustee of the
2 TUSPCO TRUST or officer of TUSPCO and from that date forward to the present time.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 202:**

4 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March
5 12, 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
6 Marks dated October 13, 2004.

7
8 **RESPONSE TO SPECIAL INTERROGATORY NO. 203:**

9 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
10 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

11
12 **RESPONSE TO SPECIAL INTERROGATORY NO. 204:**

13 HAYES has represented in writing and admitted in this action that he is a Trustee of
14 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed the TUSPCO TRUST,
15 and that he is a Trustee of the Natural Estate Trust which is the sole shareholder of
16 TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the TUSPCO
17 TRUST which was and is the custodian of trust funds deposited by plaintiffs to it. Any
18 person who controls trust funds has a non-delegable legal duty to account to the
19 beneficiaries of the trust.

20
21 **RESPONSE TO SPECIAL INTERROGATORY NO. 205**

22 Unknown, but not later than the first day that HAYES became a Trustee of the
23 TUSPCO TRUST or officer of TUSPCO and from that date forward to the present time.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 206**

25 The PPSA, the TUSPCO Website, letters dated May 18, 1998, July 17, 1998, March
26 12, 1999, and April 1, 1999 bearing HAYES' signature; letter from Wayne Joyner to Nancy
27 Marks dated October 13, 2004.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 207:**

1 All parties to this action, as well as Richard Curtin, Brian Gladish, Jack Hurwitz,
2 Franklin Moore, Peter Ronay, James Turner, David L. Wood, M.D., and Charles J. Young.

3
4 **RESPONSE TO SPECIAL INTERROGATORY NO. 208:**

5 Defendants' handling assets of AJG, TUSPCO, etc: Plaintiff Frederic G.
6 Marks ("Marks") has yet to obtain discovery from Defendants who are sole
7 possessors of the evidence supporting the contentions in paragraph 5 of the
8 Complaint. The contention was made upon information and belief based upon the
9 following:

- 10 1. The probable size of the assets of the estate of Mr. & Mrs.
11 Galambos, the TUSPCO TRUST, TUSPCO and The Galambos'
12 Natural Estate Trust (TNET) as of July 1989 when Marks last
13 served as attorney for Mr. and Mrs. Galambos and their companies;
- 14 2. Defendants' expenditure of monies of the Galambos' and their
15 companies for attorney's fees in dispute with William Martin;
- 16 3. Defendants' expenditure of \$8,000 per month for several years on
17 the services of an individual or individuals who were hired to edit
18 the transcripts of AJG's course V-2C1, and who failed to do so, but
19 rather undertook to write a book containing the editor's own version
20 of the teachings of AJG; Defendants' expenditures of monies of the
21 Galambos' and their companies for the personal benefit of
22 Defendant Joyner, specifically expenditures for Mr. Joyner's
23 personal security in regard to possible harm feared by Mr. Joyner in
24 connection with the dispute with Mr. William Martin;
- 25 4. Losses of the Galambos' estate and entity assets due to improvident
26 operations in the stock market and mutual funds by Defendant
27 HAYES with the consent of JOYNER.

- 1 5. The stated intent of Hayes and Joyner to preserve the tape
2 recordings oflectures of AJG, and their failure to spend the funds necessary
3 to preserve the tape recordings;
- 4 6. The stated intent of Defendants Hayes and Joyner to preserve the
5 personal residence of Mr. & Mrs. Galambos as a Galambos museum
6 and their failure to do so as evidenced by the sale of the residence.
- 7 7. The request of defendant Hayes to Franklin Moore to produce a
8 compact disc version of Course V-201T for defendants followed by the
9 refusal of Hayes to pay for the reasonable cost of the compact disc
10 reproduction produced by Mr. Moore.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 209:**

12 Financial records of the TUSPCO TRUST are in exclusive possession and control of
13 Defendants to which Plaintiffs have yet to be granted access.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 210:**

15 Unknown at this time. Discovery is continuing.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 211:**

17 Defendants' handling assets of AJG, TUSPCO, etc.: Plaintiff Frederic G.
18 Marks ("Marks") has yet to obtain discovery from Defendants who are sole
19 possessors of the evidence supporting the contentions in paragraph 5 of the
20 Complaint. The contention was made upon information and belief based upon the
21 following:
22 following:

- 23 1. The probable size of the assets of the estate of Mr. & Mrs. Galambos,
24 the TUSPCO TRUST, TUSPCO and The Galambos' Natural Estate
25 Trust (TNET) as of July 1989 when Marks last served as attorney for
26 Mr. and Mrs. Galambos and their companies;
27 2. Defendants' expenditure of monies of the Galambos' and their
28 companies for attorney's fees in dispute with William Martin;

1 3. Defendants' expenditure of \$8,000 per month for several years on the
2 services of an individual or individuals who were hired to edit the
3 transcripts of AJG's course V-201, and who failed to do so, but rather
4 undertook to write a book containing the editor's own version of the
5 teachings of AJG; Defendants' expenditures of monies of the Galambos'
6 and their companies for the personal benefit of Defendant Joyner,
7 specifically expenditures for Mr. Joyner's personal security in regard to
8 possible harm feared by Mr. Joyner in connection with the dispute with
9 Mr. William Martin;

10 4. Losses of the Galambos' estate and entity assets due to improvident
11 operations in the stock market and mutual funds by Defendant Hayes
12 with the consent of Defendant Joyner;

13 5. The stated intent of Hayes and Joyner to preserve the tape recordings of
14 lectures of AJG, and their failure to spend the funds necessary to
15 preserve the tape recordings;

16 6. The stated intent of Defendants Hayes and Joyner to preserve the
17 personal residence of Mr. & Mrs. Galambos as a Galambos museum
18 and their failure to do so as evidenced by the sale of the residence.

19 7. The request of defendant Hayes to Franklin Moore to produce a
20 compact disc version of Course V-201T for defendants followed by the
21 refusal of Hayes to pay for the reasonable cost of the compact disc
22 reproduction produced by Mr. Moore.

23
24 **RESPONSE TO SPECIAL INTERROGATORY NO. 211:**

25 Financial records of the TUSPCO TRUST are in exclusive possession and control of
26 Defendants to which Plaintiffs have yet to be granted access.

27
28 **RESPONSE TO SPECIAL INTERROGATORY NO. 212:**

1 Financial records of the TUSPCO, Inc. are in exclusive possession and control of
2 Defendants to which Plaintiffs have yet to be granted access.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 213:**

4 Unknown at this time. Discovery is continuing.

5
6 **RESPONSE TO SPECIAL INTERROGATORY NO. 214:**

7 Defendants' handling assets of AJG, TUSPCO, etc: Plaintiff Frederic G.
8 Marks ("Marks") has yet to obtain discovery from Defendants who are sole
9 possessors of the evidence supporting the contentions in paragraph 5 of the
10 Complaint. The contention was made upon information and belief based upon the
11 following:

- 12 1. The probable size of the assets of the estate of Mr. & Mrs. Galambos,
13 the TUSPCO TRUST, TUSPCO and The Galambos' Natural Estate
14 Trust (TNET) as of July 1989 when Marks last served as attorney for
15 Mr. and Mrs. Galambos and their companies;
- 16 2. Defendants' expenditure of monies of the Galambos' and their
17 companies for attorney's fees in dispute with William Martin;
- 18 3. Defendants' expenditure of \$8,000 per month for several years on the
19 services of an individual or individuals who were hired to edit the
20 transcripts of AJG's course V-201, and who failed to do so, but rather
21 undertook to write a book containing the editor's own version of the
22 teachings of AJG; Defendants' expenditures of monies of the Galambos'
23 and their companies for the personal benefit of Defendant Joyner,
24 specifically expenditures for Mr. Joyner's personal security in regard to
25 possible harm feared by Mr. Joyner in connection with the dispute with
26 Mr. William Martin;
- 27 4. Losses of the Galambos' estate and entire assets due to improvident
28 operations in the stock market and mutual funds by Defendant Hayes

with the consent of Defendant Joyner;

5. The stated intent of Hayes and Joyner to preserve the tape recordings of lectures of AJG, and their failure to spend the funds necessary to preserve the tape recordings;
6. The stated intent of Defendants Hayes and Joyner to preserve the personal residence of Mr. & Mrs. Galambos as a Galambos museum and their failure to do so as evidenced by the sale of the residence.
7. The request of defendant Hayes to Franklin Moore to produce a compact disc version of Course V-201T for defendants followed by the refusal of Hayes to pay for the reasonable cost of the compact disc reproduction produced by Mr. Moore.

RESPONSE TO SPECIAL INTERROGATORY NO. 215:

Financial records of the Natural Estate Trust are in exclusive possession and control of Defendants to which Plaintiffs have yet to be granted access.

RESPONSE TO SPECIAL INTERROGATORY NO. 216:

Unknown at this time, pending discovery of records of TUSPCO TRUST. However, Plaintiff suspects that the following persons may be "unauthorized recipients" of funds: defendant JOYNER and HAYES, William Martin, and Peter Giansante. Discovery is continuing.

RESPONSE TO SPECIAL INTERROGATORY NO. 217:

Financial records of the TUSPCO TRUST are in exclusive possession and control of Defendants to which Plaintiffs have yet to be granted access.

RESPONSE TO SPECIAL INTERROGATORY NO. 218:

Unknown at this time, pending discovery of records of TUSPCO TRUST. However, Plaintiff suspects that the following persons may be "unauthorized recipients" of funds: defendant JOYNER and HAYES, William Martin, and Peter Giansante. Discovery is continuing.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 219:**

2 Financial records of the TUSPCO TRUST are in exclusive possession and control of
3 Defendants to which Plaintiffs have yet to be granted access.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 220:**

5 Unknown at this time, pending discovery of records of TUSPCO TRUST. However,
6 plaintiffs suspect that the following persons may be "unauthorized recipients" of fund:
7 defendant JOYNER and HAYES, William Martin, and Peter Giansante. Discovery is
8 continuing.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 221:**

10 Financial records of the TUSPCO TRUST are in exclusive possession and control of
11 Defendants to which Plaintiffs have yet to be granted access.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 222:**

13 HAYES has represented in writing and admitted in this action that he is a Trustee of
14 the TUSPCO TRUST, an officer of TUSPCO, Inc., which formed the TUSPCO TRUST, for
15 his benefit and that he is a Trustee of the Natural Estate Trust which is the sole shareholder
16 of TUSPCO, Inc. He therefore exercises *de jure* and *de facto* control over the TUSPCO
17 TRUST which was and is the custodian of trust funds deposited by plaintiffs to it. Any
18 person who controls trust funds has a non-delegable legal duty to account to the
19 beneficiaries of the trust.

20 **DEFENDANTS' HANDLING ASSETS OF AJG, TUSPCO, etc:**

21 Plaintiff Frederic G. Marks ("Marks") has yet to obtain discovery from Defendants
22 who are sole possessors of the evidence supporting the contentions in paragraph 5 of
23 the Complaint. The contention was made upon information and belief based upon the
24 following:

- 25 1. The probable size of the assets of the estate of Mr. & Mrs. Galambos,
26 the TUSPCO TRUST, TUSPCO and The Galambos' Natural Estate
27 Trust (TNET) as of July 1989 when Marks last served as attorney for
28 Mr. and Mrs. Galambos and their companies;

- 1 2. Defendants' expenditure of monies of the Galambos' and their
2 companies for attorney's fees in dispute with William Martin;
- 3 3. Defendants' expenditure of \$8,000 per month for several years on
4 the services of an individual or individuals who were hired to edit
5 the transcripts of AJG's course V-201, and who failed to do so, but
6 rather undertook to write a book containing the editor's own version
7 of the teachings of AJG; Defendants' expenditures of monies of the
8 Galambos' and their companies for the personal benefit of Defendant
9 Joyner, specifically expenditures for Mr. Joyner's personal security
10 in regard to possible harm feared by Mr. Joyner in connection with
11 the dispute with Mr. William Martin;
- 12 4. Losses of the Galambos' estate and entity assets due to improvident
13 operations in the stock market and mutual funds by Defendant Hayes
14 with the consent of Defendant Joyner;
- 15 5. The stated intent of Hayes and Joyner to preserve the tape
16 recordings of lectures of AJG, and their failure to spend the funds
17 necessary to preserve the tape recordings;
- 18 6. The stated intent of Defendants Hayes and Joyner to preserve the
19 personal residence of Mr. & Mrs. Galambos as a Galambos museum
20 and their failure to do so as evidenced by the sale of the residence.
- 21 7. The request of defendant Hayes to Franklin Moore to produce a
22 compact disc version of Course V-201T for defendants followed by the
23 refusal of Hayes to pay for the reasonable cost of the compact disc
24 reproduction produced by Mr. Moore.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 223:**

26 Financial records of the TUSPCO TRUST are in exclusive possession and control of
27 Defendants to which Plaintiffs have yet to be granted access.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 224:**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Unknown at this time. Discovery is continuing.

January 31, 2007

LAW OFFICES OF JONATHAN K. GOLDEN

By Jonathan K. Golden
Jonathan K. Golden
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, **FREDERIC G. MARKS**, am one of the Plaintiffs in this action and do hereby declare, under penalty of perjury, that I have read the **SUPPLEMENTAL RESPONSES TO PLAINTIFF CHARLES HAYES' SPECIAL INTERROGATORIES** and know the contents thereof; that the same is true of my own knowledge, except as to those matters that are stated on information and belief and, as to those matters, I do believe the same to be true.

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct.

January

Executed this 30th day of February 2007 at Santa Monica, California.

Frederic G. Marks
Frederic G. Marks

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am
6 over the age of 18 and not a party to the within action. My business address is 1900
7 Avenue of the Stars, Suite 1900, Los Angeles, California 90067.

8 On January 31, 2007, I served the foregoing document described as Supplemental
9 Responses to Special Interrogatories on the interested parties in this action by placing a true and
10 correct copy thereof enclosed in sealed envelopes addressed as follows:

11 Kevin Lacey, Esq.
12 Lacey, Dunn & Do
13 315 West Arden Avenue, Suite 11
14 Glendale, CA 91203

15 John P. Godsil, Esq.
16 Freeman, Freeman & Smiley
17 3415 S. Sepulveda Boulevard, Suite 1200
18 Los Angeles, CA 90034

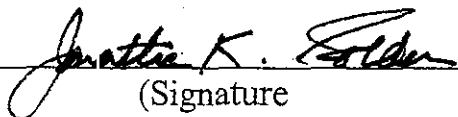
19 BY MESSENGER SERVICE -- A copy of the above described documents
20 were hand served on interested parties in this action by an agent from an attorney
21 service employed to deliver a true and correct copy thereof during normal business
22 hours, which was enclosed in a sealed envelope and which was placed for hand delivery
23 by upon delivery of said documents, a proof of service will be signed by the messenger,
24 confirming receipt and delivery of same.

25 XX BY MAIL -- I deposited such envelopes in the mail at Los
26 Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

27 X (State) I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on January 31, 2007, at Los Angeles, California.

Jonathan K. Golden
(Typed or Printed Name)


(Signature)

THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC.

BOOK SUBSCRIPTION TRUST ("TUSPCO TRUST")

This Trust Agreement is made and entered into by THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC. (the Trustor hereunder, hereinafter referred to as "TUSPCO" or "Trustor") and CHARLES W. HAYES (hereinafter referred to as "Trustee").

1. PURPOSE.

1.1 Pre-Publication Subscription Agreement. TUSPCO has entered into a pre-publication subscription agreement with various persons who are subscribing to such agreement for the purpose of purchasing from TUSPCO certain books described in such agreement. Such pre-publication subscription agreement is known to Trustor and Trustee and is incorporated herein by reference.

1.2 Trust Fund. Funds and other assets will, from time to time, be paid to the Trustee by Subscribers, to be held and disposed of pursuant to this trust agreement (the "trust") for the benefit of such Subscribers and for the benefit of TUSPCO, all of whom are beneficiaries hereunder. This trust shall consist only of funds received into the trust on or after July 6, 1984. The full name of this trust is The Universal Scientific Publications Company, Inc., Book Subscription Trust which may be abbreviated to "TUSPCO Trust".

2. RELATIONSHIP OF TUSPCO AND TRUSTEE.

2.1 Trustee as Custodian. The Trustee shall accept payments made to the Trustee and shall hold, accept and carry out the custodial duties of the Trustee pursuant to the terms of this agreement. The Trustee shall not be responsible for the collection of any payments into the trust or the correctness of any payment or disbursements made from the trust in accordance with the directions of TUSPCO.

2.2 Distribution. The Trustee shall, from time to time, on the written direction of Trustor, make distributions from the trust as required by the terms of this trust, in such manner, in such amounts, and for such purposes as may be specified in such direction.

2.3 Responsibility for Losses on Investments. In view of the fact that investment of the trust fund shall be directed by Trustor, the Trustee shall not be liable for any losses which may be incurred upon the investments of the trust, except to the extent that such losses shall have been caused by Trustee's violation of trust or negligence.

EX.P /

2.4 Trustee Authority Presumed. All persons dealing with the Trustee are released from inquiring into the decisions or authority of the Trustee and from seeing to the application of any funds paid to the Trustee.

3. INVESTMENT AND HOLDING OF TRUST PROPERTY.

3.1 Trustee Title, Authority and Power. As directed by the Trustor, the Trustee shall have the full power and authority with respect to any and all securities or property at any time received or held in the trust, to do all such acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken or exercised by the absolute owner thereof, including, but without in any way limiting the generality of the foregoing, the following powers and authority:

3.1.1 To sell and exchange any and all assets which from time to time comprise the trust, in either public or private sale, at such time or times and on such terms and conditions as to credit or otherwise as the Trustee may deem appropriate.

3.1.2 To invest and reinvest all or any part of the trust in such manner as is directed by Trustor in writing, including savings accounts, common stocks, stocks of investment companies, bonds, notes, securities or obligations of any kind, real property wherever situated, gold, silver, platinum, and other precious commodities, non-precious commodities, and the writing of call options upon securities held by the trust. No investment or speculation of trust funds shall be made, however, without the advance written instruction of Trustor.

3.1.3 To vote by proxy and otherwise to represent securities and, in that connection, to delegate such of its discretionary powers as it deems best; to consent as stockholder to any corporate act it shall deem proper; to participate in any plans or arrangements for the protection or promotion of the interest of security holders; to pay such sums of money as are consented to in writing by Trustor for the protection of the interests of the trust as security holder; and to retain assets received in lieu of or because of any securities held.

3.1.4 With the written consent of Trustor, to extend the time for payment of or hold past due any obligations held or any installment thereof; to consent to the modification thereof or waive any default thereunder; to compromise, arbitrate or otherwise adjust claims in favor of or against the trust; to foreclose upon any security in such manner as it deems proper; to pay such sums of money as it deems expedient for the insurance, protection, maintenance, and repair of property, or to redeem property for non-payment of taxes or any liens; and to lease for such time as the

Trustee deems proper, whether within or beyond the termination of the trust and without regard to any statutory restrictions on leasing by a trustee.

3.1.5 To cause investments to be registered in the name of the trust, or in that of the Trustee, as such, or in the name of a nominee for the trust, or the Trustee may retain investments unregistered and in form permitting transfer by delivery, with the written consent of Trustor.

3.1.6 With the written consent of Trustor, to borrow money for any trust purpose, upon such terms and conditions as the Trustee deems proper and to obligate the trust for repayment, and to encumber the trust or any of its property.

3.1.7 With the written consent of Trustor, to consult with or employ legal counsel of the Trustee's selection (who may, but not need be counsel to Trustor), agents or independent contractors (to whom the Trustee may delegate such ministerial and limited discretionary duties as Trustee sees fit). The compensation and fees of such person(s) shall be chargeable as an expense of the trust, and the Trustee shall be fully protected in acting upon advice of any such legal counsel.

3.2 Directions to Trustee. Trustor shall state to the Trustee in writing from time to time the funding policy and investment policy established for the trust. In investing and reinvesting the trust fund, the Trustee shall follow completely the requirements laid down for investment of the trust fund by Trustor, and, in no event, shall Trustee have any responsibility for the establishment or the adequacy of such funding policy and method. The Trustor may at any time and from time to time, by written direction to the Trustee, require the Trustee to invest in or retain any security or other form of investment or speculation as may be specified in such direction. The trust fund shall be invested pursuant to such direction. Neither the Trustee nor any other person shall be under any duty to question any such direction of the Trustor, and the Trustee shall promptly comply with any direction given by the Trustor hereunder. However, the Trustee shall not invest in loans to, or stocks issued by, Trustor or any affiliated company or entity of Trustor.

4. ACCOUNTING BY TRUSTEE.

4.1 Records. Trustee shall maintain accurate records and accounts of all investments, receipts, disbursements, and other transactions hereunder, and such records shall be available at all reasonable times to inspection by Trustor or any authorized representative of Trustor. The Trustee, at the direction of Trustor, shall submit to Trustor such valuations of the trust fund,

reports or other information as the Trustor may require.

4.2 Annual Accounting. Within sixty (60) days following the close of each fiscal year of the trust, or following the close of any period as may be designated by the Trustor in writing, the Trustee shall file with the Trustor a written account setting forth the description of all securities and other property purchased and sold, all receipts, disbursements and other transactions effected by the trust during such period, and listing the securities and other property held by the trust at the end of such period. The Trustee shall determine the current fair market value of the trust fund assets and of each Subscriber's account balance on the valuation date.

4.3 Approval of Account. The Trustor may approve such account by written notice of approval delivered to the Trustee or by failure to express objections to such account delivered to the Trustee in writing within ninety (90) days from the date upon which the account was delivered to the Trustor.

Upon receipt of a written approval of the account, or upon the passage of the period of time within which objections may be filed by Trustor, without written objections having been delivered to Trustee, such account shall be deemed to be approved, and the Trustee shall be released and discharged as to all items, matters and things set forth in such account.

5. REPLACEMENT OF TRUSTEE.

5.1 Resignation, Removal and Replacement. The Trustee may resign at any time by the giving of one hundred eighty (180) days' written notice. Trustor may remove any Trustee at any time for causes stated in the pre-publication subscription agreement. Trustor may appoint one or more additional Trustees and may appoint any successor trustee at any time, by written designation. On the removal or resignation of the Trustee or any successor trustee, the Trustee or successor trustee, as the case may be, shall transfer legal title to all trust property to its successor.

5.2 Final Accounting of Replaced Trustee. Within sixty (60) days of such transfer to the successor trustee, the resigning or removed Trustee shall render to Trustor an account in the form and manner prescribed for the annual account, unless such account is waived in writing by Trustor. Unless Trustor shall, within sixty (60) days after the rendition of such final account, deliver written objections to Trustee, the account shall be deemed to have been approved and the Trustee shall be released and discharged as to all items, matters and things set forth in such account.

6. TRUSTEE'S EXPENSES AND TAXES.

6.1 Compensation and Reimbursement of Expenses. Trustor shall pay to Trustee annually the expenses incurred in administering the trust and such compensation for the services of the Trustee as may be agreed upon by Trustor and Trustee from time to time.

6.2 Taxes. The Trustee shall deduct from and charge against the trust fund any taxes paid by the trust which may be imposed on the trust fund or the income thereof, or which the Trustee is required by law to pay with respect to the interest of any person in the trust fund.

7. MISCELLANEOUS.

7.1 California Situs. This trust has been accepted by the Trustee and will be administered in the State of California.

7.2 Limitation. No part of the trust fund or income (other than such part as is required to pay taxes) shall be used for, or diverted to, purposes other than for the benefit of TUSPCO and the Subscribers hereto, the Subscribers being beneficiaries hereof, and TUSPCO being the Trustor and also a beneficiary hereof.

7.3 Amendment. This agreement, other than paragraph 7.4, and other than the limitations on the use of trust funds stated in the pre-publication subscription agreement and paragraph 7.2, may be amended at any time by written agreement of Trustor and Trustee, provided that no such amendment shall operate to cause the trust fund or any part thereof to be delivered to TUSPCO prior to the time specified in the pre-publication subscription agreement and herein, or to be refunded to the Subscribers prior to the time specified in the pre-publication subscription agreement and herein.

7.4 Trust Irrevocable. Trustor intends that this trust be administered on an irrevocable basis, subject only to termination at such time as all trust funds are to be distributed either to TUSPCO or to the Subscribers under the pre-publication subscription agreement, as is more fully stated therein, provided, however, that the trust will continue for so long as any subscription payments are held in the trust fund pursuant to the

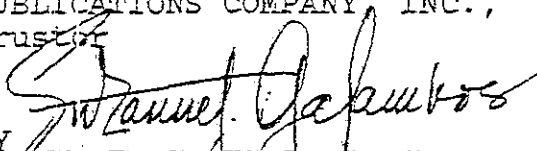
10/11/11 10:11 AM

terms hereof and pursuant to the terms of the pre-publication
subscription agreement.

DATED: 1992, March 2

THE UNIVERSAL SCIENTIFIC
PUBLICATIONS COMPANY, INC.,
Trustee

BY


Suzanne J. Galambos
Vice-President &
Chief Operating Officer


CHARLES W. HAYES, Trustee

1 JOYNER & SALUMBIDES

2 PENTHOUSE SUITE
3 9454 WILSHIRE BOULEVARD
4 BEVERLY HILLS, CALIFORNIA 90212
5 (213) 276-0064

FILED
JAN 25 1991
By GARY L. GRAVILL, County Clerk
DEPUTY

6 ATTORNEYS FOR Plaintiffs

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10
11 THE UNIVERSAL XYZ CORPORATION,
12 et al.,

13 Plaintiffs,

14 vs.

15 MITCHELL J. LANGE, et al.,

16 Defendants.

NO: 44 26 51

JUDGMENT ON STIPULATION
FOR ENTRY OF JUDGMENT

17 In the above-entitled cause plaintiffs, THE UNIVERSAL XYZ
18 CORPORATION, THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC.,
19 THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC. BOOK
20 SUBSCRIPTION TRUST, THE FEI COURSE SUBSCRIPTION TRUST and
21 defendant, MITCHELL J. LANGE, having stipulated through their
22 respective counsel, that judgment be entered:

23 1. In favor of plaintiff, THE UNIVERSAL XYZ CORPORATION and
24 against defendant, MITCHELL J. LANGE, in the sum of \$550,997.14.

25 2. In favor of plaintiff, THE UNIVERSAL SCIENTIFIC
26 PUBLICATIONS COMPANY, INC., and against defendant, MITCHELL J.
27 LANGE, in the sum of \$207,985.62.
28

EX. Q ✓

1 3. In favor of plaintiff, THE UNIVERSAL SCIENTIFIC
2 PUBLICATIONS COMPANY, INC. BOOK SUBSCRIPTION TRUST, and against
3 defendant, MITCHELL J. LANGE, in the sum of \$1,414,812.89.

4 4. In favor of plaintiff, THE FEI COURSE SUBSCRIPTION TRUST,
5 and against defendant, MITCHELL J. LANGE, in the sum of
6 \$342,321.49.

7 5. And that each party bear their own costs, disbursements,
8 and attorney fees.

9 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED:

10 1. That plaintiff THE UNIVERSAL XYZ CORPORATION have
11 judgment against defendant MITCHELL J. LANGE in the sum of
12 \$550,997.14.

13 2. That plaintiff THE UNIVERSAL SCIENTIFIC PUBLICATIONS
14 COMPANY, INC. have judgment against defendant MITCHELL J. LANGE
15 in the sum of \$207,985.62.

16 3. That plaintiff THE UNIVERSAL SCIENTIFIC PUBLICATIONS
17 COMPANY, INC. BOOK SUBSCRIPTION TRUST have judgment against
18 defendant MITCHELL J. LANGE in the sum of \$1,414,812.79.

19 4. That plaintiff THE FEI COURSE SUBSCRIPTION TRUST have
20 judgment against defendant MITCHELL J. LANGE in the sum of
21 \$342,321.49.

22 5. And that each party bear their own costs, disbursements,
23 and attorney fees.

24 DATED: JAN 25 1991, 1990

25 By ROBERT J. POLIS
26 JUDGE, SUPERIOR COURT
27 COUNTY OF ORANGE
28

THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC.

Post Office Box 9709 / Anaheim, California 92802 / Phone: (213) 723-1776

Page 1 of 8

Mr. Frederic J. Marks
Dear Fred:

This letter is by way of bringing all of our book and course subscribers up to date. We realize that our trust subscribers are a diverse assortment of individuals. Some of you disappeared almost as soon as the ink was dry on your book and/or course contract(s), and we have not been able to contact you since then. Some of you have been in contact with us by letter or by telephone from time to time over the years. Some of you we continue to see fairly regularly in our classes, and, therefore, we have been able to keep you apprised.

So, for those of you who "already know all that", we hope you will bear with us while we reiterate to all of our trust subscribers as a whole what we have been informing most of you individually or in groups over the past few years.

In 1984, our long-time friend(?) and associate, Mitchell J. ("Matt") Lange pleaded guilty to having stolen 1.5+ million dollars from our various entities. He had been quietly but systematically stealing from every entity to which he had access. He embezzled the contents of both the course trust and the book trust in their entirety. (He was a trustee of both, as you will recall.) In a stroke of cruel "humor", Lange left Professor Galambos two cashier's checks, totaling just over \$800 -- the remains of the assets of both trusts after he had embezzled them.

Lange was sentenced to four years in prison (Chino). With time off for "good behavior", Lange was released from prison after serving two years of his sentence.

Because, under California law, there is no recourse available to a victim (the state's public relations campaign to the contrary notwithstanding), and no mechanism to recover stolen property other than a civil suit, we had no choice but to sue Lange to recover the stolen moneys. In 1984, October (even before Lange formally pleaded guilty to his crime), we filed suit against Lange to recover the trust moneys he stole, as well as all of the other moneys from the various other entities. (These are outlined later in this letter.) The case has not yet come to trial.

On 1984, July 9, Professor Galambos received a letter from M. J. Lange dated 1984, July 3, in which Lange confessed to having taken all of the assets of both the book and course trusts. Without our knowledge, he had liquidated the contents of the money-market funds, the stocks belonging to the trusts, and the commodity accounts, taking all of the proceeds for his private use.

In his letter of 1984, July 3, Lange claimed to have "borrowed" the assets of both trusts. In point of fact, he stole them. One cannot "borrow" when there is no lender. And there is no lender when the person(s) to whom the property belongs has/have no knowledge of the so-called "borrowing".

EX.R ✓

Calling a thief a "borrower" does not make him a borrower. As Lincoln put it so well, "Calling a cow's tail a leg doesn't make it a leg."

The San Diego Police Department made some incredible discoveries of Lange's crimes and how he had committed them. Our accountant discovered that Lange also had taken substantial amounts of money from FEI/LIONSTech, from TUSPCO (the company as well as the trust), The Liberal Publishing Company, Inc., from the 20th Anniversary Alumni Meeting account, from the Joseph B. Galambos Centennial account, and from Galambos personally. (My Husband had personally advanced money to pay for the gold coin-medals we struck for the Joseph B. Galambos Centennial. Instead of repaying the loan to Galambos as the coin-medals were sold, Lange pocketed both the proceeds of the sale and the money which should have been repaid to Galambos to retire the company's debt to him.)

Perhaps Lange's most reprehensible act is that he stole even the assets from the royalty account of Joseph B. Galambos which held the cash proceeds from the coin-medals issued in commemoration of Joseph B. Galambos's centennial in 1982, a commemoration which many of you attended. Further Lange stole proceeds from the centennial commemoration itself.

Lange also stole a substantial amount of money from the 20th Anniversary Alumni Meeting account.

Lange's techniques for stealing included (but were not limited to) falsifying financial records so his thefts could remain undetected for a long period of time and juggling moneys from one account to another until they were ultimately siphoned into his own pocket.

Even as we write this, the amount of loss owing to Lange's crimes continues to mount. Since he liquidated all of the trust-owned stocks for his own use, we have lost all of the dividends, interest, and capital gains which would have accrued to the trusts over the years since he began selling off the trust stocks. Lange also sold all of the gold belonging to the trusts which had been purchased as a hedge against inflation. Lange pocketed that money as well. We not only lost the gold to his theft but the increase owing to the increase in gold prices since the gold was originally purchased.

Before Lange left San Diego for another city where he was taken into custody in 1984, August, he deposited whatever records he felt like leaving behind in whatever fashion he chose to leave them in a loft in San Diego. He subsequently sent Galambos a key to the loft.

We have been funding the presentation of trust courses out of our personal resources, those few remaining assets to which Lange had no access. We also are funding the publication of Galambos's books (and the other books on the book trust), out of our own pocket since Lange embezzled the trust funds.

This is a moral decision which Professor Galambos has made.

We remind you and, in particular, those of you who have been requesting refunds of book trust payments under Paragraph 6.4, Page 12, that this paragraph has been rendered null and void under Paragraph 6.5(5), Page 14. Lange's theft invokes the latter paragraph as stated in the contract.

Since we are continuing to deliver the products, none of our subscribers is being injured by Lange's theft. Up to this point, we, alone, have been Lange's victims.

Yet, in a larger sense, everyone, FEI graduate and flatlander alike, could well be a victim of Lange's insatiable greed. Anything that prevents or even delays getting volitional science and primary property theories into a more permanent form cannot help but have a damaging effect upon the future of the species -- not even speaking of the future of each of you.

Now, even more critical than the loss of the money is the loss of the remaining time of both of us as we attempt to make order out of the chaos Lange left in his wake. We have to determine from which entity he stole what amounts. We have spent the greater part of the past three years sifting through several thousand pages of raw data to put together a working set of records as carefully verified as is humanly possible. This has involved checking customers' enrollments or book orders and/or coin-medal orders against receipts against deposit records against contracts (if a contract was involved), and against customers' correspondence, if any. In many instances, we have had to contact customers by letter and/or by long-distance telephone to verify information.

Yet, despite the monumental financial loss and the even greater loss of our time which Lange has caused us, we have continued to offer the courses on the trust, funding them out of our remaining personal assets. We are paying for the publication of the books on the trust out of our own pocket. The latter is more difficult and more time-consuming because book production (aside from the actual writing) depends totally upon flatlanders. We have had a number of flatland subcontractors renege upon us over the years. Each time this happens, we are compelled to lose more time while we try to locate a more reliable subcontractor.

One of the reasons that progress comes so slowly is that the two of us must do everything that has to be done in our various companies. Thanks to Lange's thefts from FEI (the Institute, in addition to the trust), we can no longer afford any full-time associates, since these, too, would have to be funded out of our own capital. Galambos has a part-time assistant for his podium work, and we have a part-time assistant handling sales of books and cachets at our classes.

Several customers have complained that they have not received regular reports as to what transpired with respect to Lange, the status of the courses and books on the respective trusts.

We think you will agree that, given the handicaps under which we are operating -- and we are operating -- getting books published and new concepts recorded on tape via courses are the most important achievements we can complete at this time. Since most of you are younger than we are and many of you have -- or will have -- posterity, every

thing you value is "riding" on the moral publication and utilization of Galambos's theories as soon as practicable. This means publication by Galambos himself or by his explicitly named successor, followed by utilization of the theories by every one who recognizes their value. (This means utilization all of the time and not just when it happens to be convenient.) Actually, the moneys you paid for your pre-publication subscriptions are the very least of what you have at stake.

The schedule we have maintained over the past three-and-a-half years (not speaking of the schedule we maintained prior to 1984) would have killed any less dedicated persons. Frankly, I know of no living persons who even would have attempted it, given our circumstances. If you haven't had the experience, you cannot imagine what it is like to be a sensitive cosmological innovator who has been betrayed ideologically and emotionally and wrecked financially by someone whom he considered to be his best friend. And while this is happening, a number of individuals -- each of whom has profited hugely just from studying his original concepts -- stand idly by and watch it happen. In some instances, they actually cooperate with the betrayal.

It is the trauma of this large-scale betrayal, we are convinced, and not the hard work which brought about Professor Galambos's coronary thrombosis last year (see following paragraphs).

The fact remains that we have lost prime production time in the years since 1984. We have had to invoke the term in the book contract which enables us to put out Book 1 in several volumes. We had planned the first volume for publication in 1987. Galambos's coronary thrombosis rendered that plan impossible of achievement. Please bear in mind that we are committed to publishing Book 5 (MORE LASTING THAN BRONZE) prior to the actual release of any other of our titles. You will recall that "More Lasting than Bronze" is part of the translation of the Latin quotation, "Exegi monumentum aere perennius" ("I have erected a monument more lasting than bronze").

We had our book publishing schedules worked out for 1987, and we were moving as fast as possible, when, as you may know, Professor Galambos suffered a coronary thrombosis last May. He endeavored to continue working even while he was hospitalized. But his lectures and his books had to be postponed.

He wanted to give the lectures he had scheduled for July 4th for Thomas Paine and July 5th for the 300th anniversary of the publication of Newton's PRINCIPIA. But as the weeks passed, it became increasingly apparent that, to do so, might permanently jeopardize the rest of his achievements.

Reluctantly he decided to put the heart before the course.

Nevertheless, the postponed lectures were all delivered prior to the end of 1987.

We mention all of this to you so that you should be aware (if you are not already) of Lange's acts of major coercion. We also want you to be aware of Professor Galambos's coronary thrombosis.

That he has wrecked us financially is of no interest to Lange. That his crime may have far wider repercussions than "merely" the destruction of a friend who trusted him apparently does not concern Lange.

Contrary to the stories about his "innocence" which Lange has circulated in some areas -- stories which can be most delicately summed up in the single word, "eyewash", -- this was a well-planned and carefully orchestrated theft. No amount of protestation can wipe away the irrefutable evidence of Lange's guilt. We will not burden you with the ugly details of this evidence.

Ironically, a number of our long-time customers and even several of our tape course contractors could have prevented the bulk of this theft if only one of them had made just a single telephone call or had dropped a short note to either Professor Galambos or to me. As we learned much too late (1984, July), Lange had obtained large sums of money from a number of FEI customers as well as from several then-active tape course contractors and several former tape course contractors.

Sometime around 1980, Lange apparently decided to go into the real estate business. He claimed he wasn't earning enough through FEI and its related entities. (Considering what he was receiving on a contractual basis, this was a little hard to believe, but that is what he claimed.) He told Galambos that he planned to have some outside investors (sic) in his venture. Galambos said immediately, "I presume that none of them is from my market."

As you, our customers, know very well, as a condition of taking post-V-201 courses, our graduates agree contractually that they will not use the AJG or FEI market for any purpose not derived from AJG. This particular contractual agreement is even more strictly applied to our tape course contractors. Violation of this particular agreement, particularly if it were to involve raising capital from our customers, would be grounds for immediate termination of any contractual relationship with us.

Lange assured Galambos that all of his (Lange's) investors or would-be investors were flatlanders. "I know your policy on this," Lange added.

Since Galambos was talking with a man whom he had come to value as a friend and to trust as an associate for many years, he had no reason to question Lange further on this matter.

We would learn, however, -- and much too late -- that Lange's assurance was a lie, like nearly everything else Lange had told us over the more-than-two decades he was worming his way into Galambos's trust and confidence. As I mentioned above, Lange had obtained very large sums of money from a number of FEI customers as well as from several former tape course contractors and several then-active contractors.

Had even one of these individuals inquired of us, "Are you aware that Lange is raising capital in your market?", Lange would have been terminated immediately, and the bulk of the trusts could have been saved.

Don't ask us why persons who consider themselves to be moral and rational would knowingly participate in an obviously immoral act. The fact remains that they did.

of them lost whatever he or she speculated with Lange. And these were large amounts of money by anyone's standards.

The more sensitive among you will recognize that most of you already have been compensated for any delay in the delivery of books. (There has been no delay in the delivery of courses. Immediately following Galambos's coronary thrombosis, several lectures were postponed, but these all were delivered before the end of 1987.)

For instance, those of you who have contracts on the course trust will recall that, if you were in the Open-End Course at the time you entered into the course contract, you received up to a maximum of a 10% discount from your total tuition on the contract. This was provided to you with the contractual understanding that, if you resigned from OEC, you owed back to us the dollar amount of the discount. Many of you resigned from OEC long ago. Not one of the persons who resigned from OEC ever returned a dollar or even a penny!

Those of you who subscribed to Book 1 during the 1970's received a full refund of all moneys you paid to us. You had the option -- if you so chose -- to resubscribe to the book under the book trust for the same dollar amount that you originally paid. This offer was made despite the fact that, by 1978, when the trust first came into being, Book 1 subscriptions were selling for more than twice (in some instances) what you had paid for your original subscription. Please bear in mind that you had a full refund of your book payment(s) in your hand at the time you made the decision -- wholly yours -- to resubscribe.

As of this writing, Book 1 is selling for \$750.00, and, when the first volume comes off the press, there is likely to be an additional increase, but this will not be retroactive. The increase will only affect new subscribers, not those of you who purchased books on the trust.

Those of you who utilized time payment plans for the purchase of our books will recall that the contracts call for an annual inflation adjustment on any unpaid balance. None of you was ever charged an inflation adjustment because Lange reneged on his obligation to prepare the figures for and collect the inflation adjustment. Galambos, on the other hand, was unwilling to invoke an inflation adjustment for more than one year at a time. He refused to allow Lange to levy the adjustment for several years at once. Therefore, he (Galambos) lost the entire inflation adjustment, and his customers gained therefrom.

We are presently in the process of delivering the "Positive Victory" coin-medals, which we also had to fund out of our own resources because Lange stole moneys from the coin-medal account. These coin-medals were struck in 1987, and we have been delivering them in groups as we are able to determine which customer ordered how many medals and which serially numbered medals he or she ordered -- and, not incidentally, whether or not he or she paid for the medals. Those of you who have already been contacted about your coin-medals have some sensitivity to the monumental task involved in getting just this single product into the hands of its subscribers. (If you ordered this coin-medal and have not yet heard from us, please bear with us. We'll be contacting many of you in June or July to arrange for delivery of your coin-medals in August.)

Your cooperation in this matter will be very much appreciated.

We have not received any profit from the hundreds of "Positive Victory" coin-medals which were paid for while Lange was handling (and, as it turned out, stealing) moneys for this account. We also have lost literally hundreds of hours of valuable time just on this product alone, compiling careful records so that we can deliver these coin-medals.

It's the loss of the time that hurts the most, for that can never be recovered.

Speaking of our products, let me remind you of just some of the products which we have put into the market since 1978, July, when subscriptions to courses and books were first made available under the trusts.

Galambos has presented at least 63 new live courses. This does not include any courses presented on tape nor does it include any of the three courses in the Open-End Course series with a total of 20 lectures presented live each year.

Galambos has conceived and produced two coin-medals, the Joseph B. Galambos commemorative coin-medal and the "Positive Victory" coin-medal.

Galambos has conceived, produced, and published eight major and unique philatelic cachets, each of which is a mini-education in itself.

Galambos has written and published two monographs, the second of which he wrote within a few days of his coming home from the hospital, following his coronary thrombosis.

Volume I of Book 1, Book 2, Book 5, and Book 7 were being readied for publication when Galambos had a coronary thrombosis last year. We were slowed down, but we are continuing as rapidly as is consistent with the kind of quality achievement you have come to expect (and, I suspect, have come to take for granted) from Galambos.

As you look over the preceding five paragraphs, bear in mind that moneys paid on or before 1984, June 30, for FEI courses scheduled for later presentation, were stolen by Lange (whether they were paid into the course trust or paid to FEI directly). This means that we have personally funded, without any profit, all FEI courses for which tuitions were paid prior to 1984, June 30.

We urge you to provide us with your most current address, and, if you have a change of address, please do let us know. As the books are published, we want to make delivery as quickly as possible. We cannot take the time to track down customers for whom we do not have a "good" address. (The book contract specifically states that we will not do this.) Our previous letters to many of you have come back from the post office undelivered. We are sending this letter to the last address which we have for you.

As the books are published, we will advise you by letter. If the letter is returned to us by the post office as being undeliverable, we will put your book(s) in storage at your expense. We will not attempt to deliver books to an address that we have been advised is incorrect. Please keep in mind that, after some time, we will have to destroy the books in storage.

property to the State of California in something called "escheat".

In the event that our records show that you have an outstanding balance on your book subscription account and you are certain that you are paid in full, we will request that you provide us with copies of all cancelled checks and/or receipts for your book payments so that we can resolve the disparity as quickly as possible before any books are delivered to you.

We call your attention to the fact that all books will be shipped to subscribers at the subscribers' expense. You may prefer -- and you are certainly welcome -- to pick up your books at any live class we present, provided you make an advance appointment to come at least one hour before the class begins. If you are a V-201 graduate in good standing, you are welcome to enroll in the then-current class. Our live lectures are currently being presented in the Holiday Inn in Montebello next to the Santa Ana Taxway at the Slauson Avenue exit.

In the meantime, this letter has been "sandwiched in" amid production of some of the most important (V-201 definition -- remember) products the world has ever known.

Without the implementation of primary property theory and volitional science, the future of our civilization (not even speaking of our species) is rather bleak. Without these concepts, those of you who have children or ever expect to have children will have brought them into the world for nothing. (It could well be that civilization as we know it does not have remaining to it the length of time of another generation. Or do you really believe that international or home-grown terrorism will produce a stabilized durable civilization?)

Those of you who do not have posterity, nevertheless, have a life of your own to live and values of your own to leave as a recognition of your having lived.

Most of us are not cosmological innovators. A few of us have been privileged to learn from one.

But no matter what the level of your comprehension may be, each of you has the opportunity -- by virtue of the concepts you have learned from Galambos -- to leave the world a better place than you found it.

I urge you most sincerely: Don't blow that opportunity. You won't have another. Look around you. There is nothing else on the horizon that can have the kind of positive effect on civilization that Professor Galambos's theories can have.

Sincerely yours

Suzanne J. Galambos
Suzanne J. Galambos

*Kind personal regards,
Suzanne*

1983, March 15

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FREDERIC G. MARKS, ET AL.,) CASE NO. BC 352639
)
)
 PLAINTIFF,) VOLUME I
)
)
 V.) PAGES 1-169
)
)
 WAYNE JOYNER, ET AL.,)
)
)
 DEFENDANTS.)
)
 _____)

**CERTIFIED
COPY**

DEPOSITION OF FREDERIC G. MARKS,
TAKEN ON FRIDAY, FEBRUARY 9, 2007

**PORTER
SIPES &
ASSOCIATES
COURT REPORTERS**

REPORTED BY:
PATRICIA M. PORTER
CSR NO. 3730

3045 STONER AVENUE
LOS ANGELES, CALIFORNIA 90066-1107
PHONE 310-787-4499
FAX 310-915-0090
pmcsr@earthlink.net

EX.S ✓

1 HAVE A BETTER UNDERSTANDING?

2 A. I DID A LOT OF TAX LAW, AND IT OCCURRED TO
3 ME THAT IF YOU SELL A BOOK, AND YOU GET PAID, YOU
4 HAVE ORDINARY INCOME. AND I KNEW HE WASN'T PLANNING
5 TO GET IT PUBLISHED IN THE SAME YEAR THAT HE GOT THE
6 MONEY. SO I SAID YOU'RE GOING TO HAVE TO PAY TAX ON
7 THIS MONEY. BEFORE YOU PUBLISH. AND THEN -- I SAID
8 YOU GET THE MONEY, YOU GET INCOME, YOU GET TAXED.
9 AND YOU KNOW, YOU HAVEN'T PERFORMED.

01:55:08PM

10 WELL, HOW CAN I AVOID THE TAX, SAYS HE. I
11 SAID I'M NOT SURE YOU CAN, BUT YOU COULD HAVE A --
12 LIKE AN ESCROW HOLD THE MONEY FOR YOU. SO THAT
13 ENDED UP BECOMING WHAT IT DID, THE PRE-PUBLICATION
14 TRUST. THE TUSPCO TRUST.

01:55:31PM

15 Q. SO THE TUSPCO TRUST WAS YOUR IDEA?

01:55:52PM

16 A. NO. MY IDEA THAT -- MY IDEA WAS THAT HE
17 NOT DO IT AT ALL. BUT IF HE WANTED TO DO IT, AND
18 DIDN'T WANT TO PAY TAX, HE OUGHT NOT TO BE IN
19 RECEIPT OF THE MONEY IN HIS OWN HAND OR IN HIS OWN
20 COMPANY. AND ONE WAY WOULD BE LIKE AN ESCROW
21 ARRANGEMENT OR HAVE A BANK HOLD THE MONEY UNTIL HE
22 PUBLISHED.

01:56:13PM

23 Q. AND SO I TAKE IT THE PPSA WAS AUGMENTED AT
24 THAT POINT IN TIME TO REFER TO THE TUSPCO TRUST?

25 A. WELL, IT CAME UP. AND I CAN'T GIVE YOU THE

01:56:35PM

1 EXACT TIME, BUT IT -- I THINK IT CAME UP DURING THE
2 PROCESS OF DISCUSSING WHAT HE WANTED TO DO.

3 Q. WERE THERE ANY OTHER CHANGES THAT YOU CAN
4 RECALL THAT MR. GALAMBOS WANTED IN CONNECTION WITH
5 THE ORIGINAL DRAFT OF THE PPSA?

01:56:55PM

6 A. SECTION 6.5, WHICH GIVES HIM VARIOUS
7 REASONS NOT TO PERFORM, IT WAS ALL HIS IDEA, AND I
8 THINK HE JUST KEPT ON LOBBING ONE MORE AFTER ANOTHER
9 IN THERE. AND THOSE ARE ALL HIS IDEAS. THEY MAY
10 NOT HAVE ALL OCCURRED AT THE BEGINNING. THEY MAY
11 HAVE EVOLVED AFTER A COUPLE DRAFTS AND SOME
12 DISCUSSIONS.

01:57:24PM

13 Q. DO YOU RECALL OVER WHAT PERIOD OF TIME YOU
14 WERE INVOLVED IN THE DRAFTING OF THIS AGREEMENT?

15 A. SPRING OF 1978, I THINK.

01:57:35PM

16 Q. DO YOU RECALL HOW LONG THE BACK AND FORTH
17 WAS, IN TERMS OF THE INITIAL ASSIGNMENT TO
18 COMPLETION?

19 A. COULD BE A COUPLE OF MONTHS.

20 Q. OKAY. THE LAST COMPONENT, AND WE'LL JUST
21 CLOSE THIS LOOP, ON 50.2, YOU INDICATE IN YOUR
22 ANSWER THE DEFENDANTS' EVIDENT REPUDIATION OF ANY
23 OBLIGATION TO INFORM THE SUBSCRIBERS EITHER THAT
24 THEY ARE PROCEEDING TO PUBLISH OR HAVE NOT DECIDED
25 NOT TO, COMMENCING IN OR ABOUT OCTOBER OF 2004.

01:57:53PM

01:58:17PM

1 PERSONALLY.

2 Q. AFTER MATT LANGE LOOTED THE TUSPCO TRUST,
3 WAS THERE EVER A NO-REFUND POLICY INITIATED BY
4 TUSPCO OR TUSPCO TRUST?

5 MR. GOLDEN: I'M GOING TO OBJECT TO THE USE 02:17:01PM
6 OF THE TERM "INITIATED" AS VAGUE AND AMBIGUOUS. AND
7 I'LL ASK YOU TO REPHRASE THE QUESTION.

8 MR. GODSIL: I'D BE HAPPY TO.

9 BY MR. GODSIL:

10 Q. AFTER MATT LANGE LOOTED THE COMPANY, THE 02:17:11PM
11 TRUST, SO WE'RE TALKING ABOUT 1984, FORWARD. ALL
12 RIGHT? ARE YOU WITH ME?

13 A. YES.

14 Q. WAS THERE EVER A POINT IN TIME WHEN
15 GALAMBOS OR HIS REPRESENTATIVES ANNOUNCED THAT THERE 02:17:21PM
16 WOULD BE NO REFUNDS UNDER THE PPSA BECAUSE OF WHAT
17 LANGE HAD DONE?

18 A. MRS. GALAMBOS SENT OUT A LETTER IN WHICH
19 SHE SAID THAT.

20 Q. AND WHEN WAS THAT LETTER SENT? 02:17:32PM

21 A. 1988.

22 Q. AND WHAT DID YOU DO IN RESPONSE?

23 A. NOTHING. BECAUSE I DIDN'T CARE FOR A
24 REFUND. I WANTED THE BOOK.

25 Q. SO YOU UNDERSTOOD IN 1988 THAT THERE WAS A 02:17:43PM

1 NO-REFUND POLICY. CORRECT?

2 A. NO, THAT'S NOT CORRECT.

3 Q. WELL, YOU WERE NOTIFIED OF THE COMPANY'S

4 POSITION IN 1988 OF A NO-REFUND POLICY. CORRECT?

5 A. I CONSIDER THAT STATEMENT BY MRS. GALAMBOS 02:17:56PM

6 TO BE INAPPROPRIATE.

7 Q. BUT SHE MADE THE STATEMENT, RIGHT?

8 A. YES.

9 Q. THAT MUCH WE CAN AGREE TO?

10 A. SHE DID. 02:18:12PM

11 Q. 19 YEARS AGO?

12 A. THAT'S RIGHT.

13 Q. DID YOU EVER ASK FOR A REFUND?

14 A. NO.

15 WELL, YES, I DID. IN THE COMPLAINT. 02:18:31PM

16 Q. THE COMPLAINT FILED IN MAY OF 2006.

17 CORRECT?

18 A. CORRECT.

19 Q. AND MRS. GALAMBOS CITED SECTION 6.5 IN HER

20 1988 LETTER AS THE BASIS UPON WHICH REFUNDS WOULD 02:19:12PM

21 NOT BE ISSUED. IS THAT CORRECT?

22 A. I WOULD LIKE TO LOOK AT THE LETTER. BUT I

23 THINK SO. LET'S TAKE A LOOK AT IT. I BROUGHT IT IN

24 THIS MORNING.

25 Q. SURE. I HAD IT REPLICATED. IT'S A 02:19:26PM

1 BOAT AS ALL THE OTHER FOLKS. WE WEREN'T GOING TO
2 WRITE IT, WE WERE GOING TO READ IT WHEN HE GAVE IT
3 TO US.

4 Q. I'M SORRY, I MISSED THAT ANSWER?

5 A. WE WEREN'T GOING TO WRITE IT, WE WERE GOING 03:30:32PM
6 TO READ IT WHEN HE DELIVERED IT TO US. AND WE PAID.

7 Q. YOU BOUGHT A BOOK, CORRECT?

8 A. I BOUGHT FOUR COPIES.

9 Q. YOU BOUGHT FOUR COPIES OF THE SAME BOOK?

10 A. YES, RIGHT. 03:30:42PM

11 Q. AND YOUR END OF THE DEAL WAS TO PAY FOR THE
12 BOOK. RIGHT?

13 A. THAT'S IT.

14 Q. AND WAIT?

15 A. AND WAIT. 03:30:49PM

16 Q. AND YOU WAITED AS LONG AS YOU FELT
17 COMFORTABLE WAITING. CORRECT?

18 A. I WAITED UNTIL I FELT UNCOMFORTABLE
19 WAITING.

20 Q. SO YOU AGREE WITH MY STATEMENT. YOU WERE 03:30:59PM
21 COMFORTABLE FOR A CERTAIN PERIOD OF TIME, YOU GOT
22 UNCOMFORTABLE, YOU GOT TIRED OF WAITING?

23 A. WHATEVER YOU SAY.

24 MR. GOLDEN: NO, IT'S NOT WHATEVER HE SAYS.

25 THE WITNESS: THIS IS NOT A QUESTION, 03:31:12PM

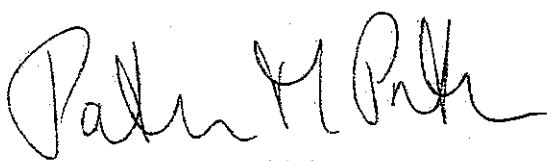
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, PATRICIA M. PORTER, A CERTIFIED SHORTHAND
REPORTER LICENSED BY THE STATE OF CALIFORNIA,
CERTIFY:

THAT THE FOREGOING DEPOSITION OF FREDERIC MARKS WAS
TAKEN BEFORE ME PURSUANT TO NOTICE
AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH
TIME THE WITNESS WAS PUT UNDER OATH BY ME;
THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS
MADE AT THE TIME OF THE EXAMINATION WERE RECORDED
STENOGRAPHICALLY BY ME AND WERE THEREAFTER
TRANSCRIBED;
THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY
AND OF ALL OBJECTIONS AT THE TIME OF THE
EXAMINATION.

IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS
14TH DAY OF FEBRUARY, 2007.


LICENSE NO. 3730

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

**CERTIFIED
COPY**

FREDERIC G. MARKS, ET AL.,) CASE NO. BC 352639
)
)
 PLAINTIFFS,) VOLUME II
)
)
 V.) PAGES 170-319
)
)
 WAYNE JOYNER, ET AL.,)
)
)
 DEFENDANTS.)
 _____)

DEPOSITION OF FREDERIC G. MARKS,

TAKEN ON TUESDAY, FEBRUARY 13, 2007

**P O R T E R
S I P E S &
A S S O C I A T E S
- COURT REPORTERS -**

REPORTED BY:
PATRICIA M. PORTER
CSR NO. 3730
FILE NO. 07-167

3045 STONER AVENUE
LOS ANGELES, CALIFORNIA 90066-1107
PHONE 310-787-4499
FAX 310-915-0090
pmpcsr@earthlink.net

1 THE TUSPCO TRUST?

2 A. I WASN'T BROUGHT INTO IT.

3 Q. SO YOU DIDN'T EXPLAIN TO HIM THAT THROUGH
4 THE TUSPCO TRUST, THERE WOULD BE FIDUCIARY
5 OBLIGATIONS TO YOU?

01:37:52PM

6 A. NO, I DIDN'T.

7 Q. DO YOU RECALL, AFTER YOU DRAFTED THE PPSA,
8 ADVISING PROFESSOR GALAMBOS TO HAVE THE PPSA
9 REVIEWED BY AN INDEPENDENT ATTORNEY?

10 A. I DIDN'T -- I DID NOT SUGGEST THAT.

01:38:22PM

11 Q. DID YOU EXPLAIN TO HIM THAT YOU ARE A
12 SUBSCRIBER TO THE AGREEMENT AND YOU ARE ENTERING
13 INTO A TRANSACTION WITH TUSPCO, WHO IS ALSO YOUR
14 CLIENT, AND DID YOU THINK THAT IT WOULD BE WISE TO
15 HAVE THE AGREEMENT REVIEWED BY AN INDEPENDENT
16 ATTORNEY?

01:38:54PM

17 A. COULD YOU READ THE QUESTION BACK, PLEASE?

18 Q. I MAY HAVE TO REPHRASE THAT.

19 A. I THINK YOU'RE ASKING MORE THAN ONE
20 QUESTION IS THE PROBLEM.

01:39:07PM

21 Q. LET'S HEAR IT BACK, AND IF WE BOTH
22 UNDERSTAND IT, MAYBE YOU CAN ANSWER.

23 (RECORD READ AS FOLLOWS:

24 "Q. DID YOU EXPLAIN TO

25 HIM THAT YOU ARE A SUBSCRIBER TO

1 USE OF THE TERM BUSINESS TRANSACTION. IF YOU WANT
2 TO SAY IT'S A CONTRACT WITH A CLIENT, THAT'S OKAY.
3 BY MS. SEKELY:

4 Q. DID YOU EXPLAIN TO PROFESSOR GALAMBOS THAT
5 YOU WERE ENTERING INTO A CONTRACT WITH YOUR CLIENT?

01:42:22PM

6 A. YOU MUST FORGIVE ME, MS. SEKELY.
7 MR. GALAMBOS IS PROBABLY THE SMARTEST MAN I EVER
8 MET. HE KNEW I WAS HIS ATTORNEY. HE KNEW I HAD
9 BOUGHT BOOKS AND HE KNEW WE WERE GOING TO SIGN A
10 WRITTEN CONTRACT FOR ALL SUBSCRIBERS AND I WAS GOING
11 TO SIGN. HE ALSO KNEW I THOUGHT IT WAS SILLY FOR
12 HIM TO DO THIS. I HAVE NOTHING MORE TO SAY ON THAT.

01:42:44PM

13 Q. AND ALL THOSE -- AND DID YOU EXPLAIN TO HIM
14 THAT ALL THE POTENTIAL LEGAL CONSEQUENCES OF THE
15 TUSPCO TRUST IN WRITING?

01:43:17PM

16 A. NO.

17 Q. DO YOU RECALL WHY YOU DID NOT SUGGEST TO
18 PROFESSOR GALAMBOS TO HAVE AN INDEPENDENT ATTORNEY
19 REVIEW THE PPSA?

20 A. YES. I MEAN I DON'T RECALL, BECAUSE IT
21 NEVER OCCURRED TO ME AT THE TIME, BUT I CAN TELL YOU
22 WHAT WOULD HAVE HAPPENED IF ANYONE HAD SUGGESTED IT
23 TO EITHER ONE OF US.

01:43:43PM

24 Q. AND WHAT IF YOU HAD SUGGESTED THAT TO
25 PROFESSOR GALAMBOS? WHAT DO YOU BELIEVE THAT HIS

01:44:02PM

1 REACTION WOULD HAVE BEEN?

2 A. "I DON'T WANT TO DEAL WITH ANY OTHER
3 ATTORNEYS, EXCEPT PEOPLE WHO ARE IN MY MARKET AND
4 YOU'RE THE ONE IN MY MARKET THAT I'VE CHOSEN TO BE
5 MY ATTORNEY. ISN'T THAT GOOD ENOUGH FOR YOU, FRED?"

01:44:15PM

6 Q. DID PROFESSOR GALAMBOS TO YOUR KNOWLEDGE
7 HAVE ANY FORMAL LEGAL TRAINING?

8 A. NO, HE DID NOT.

9 Q. IN THE SECOND PARAGRAPH OF EXHIBIT -- IF
10 YOU COULD TURN YOUR ATTENTION TO THE PPSA, EXHIBIT
11 5, PAGE 10, THE SECOND PARAGRAPH OF 4.3.

01:44:42PM

12 A. SHOULD I READ IT --

13 Q. PLEASE. THE STATEMENT STARTING WITH THE
14 WORDS "NOTWITHSTANDING THE FOREGOING"?

15 A. OKAY. I'LL READ THE WHOLE PARAGRAPH TO
16 MYSELF.

01:45:04PM

17 OKAY, I'VE READ IT. CAN WE HAVE A MINUTE.

18 MR. GOLDEN: GO AHEAD. GO ON.

19 BY MS. SEKELY:

20 Q. WHOSE IDEA BETWEEN YOU AND PROFESSOR
21 GALAMBOS WAS IT TO PUT IN THE TUSPCO GUARANTEE OF
22 THE FUNDS IN THE TUSPCO TRUST?

01:45:35PM

23 A. MR. GALAMBOS.

24 Q. DO YOU KNOW WHY?

25 A. HIS REPUTATION.

01:45:47PM

1 AGREEMENT ARE MITCHELL J. LANGE AND JERRY A. MILLER.
2 CORRECT?

3 A. CORRECT.

4 Q. CHARLES W. HAYES IS NOT REFERENCED ANYWHERE
5 IN THIS AGREEMENT. CORRECT?

02:12:41PM

6 A. I HAVEN'T READ ANYTHING PAST 3.1, BUT I
7 DOUBT IT. I DON'T BELIEVE AT THE TIME MR. HAYES WAS
8 THE ACCOUNTANT FOR MR. GALAMBOS.

9 Q. AND THIS TUSPCO TRUST REFERS TO THE PPSA,
10 CORRECT, THAT YOU DRAFTED? EXHIBIT 5?

02:13:13PM

11 A. YES, IT DOES. IN SECTION 1.1.

12 Q. AND YOU'RE A BENEFICIARY OF THIS AGREEMENT,
13 CORRECT, PURSUANT TO 1.2?

14 A. YES.

15 Q. DID YOU --

02:13:56PM

16 A. HOWEVER, AT THE TIME I DRAFTED IT, I HAD
17 NOT YET RECEIVED A REFUND OF THE OTHER AGREEMENT AND
18 PAID ANY MONEY INTO THE TUSPCO TRUST, BUT I FULLY
19 INTENDED TO.

20 Q. DID YOU EXPLAIN TO PROFESSOR GALAMBOS THAT
21 YOU WOULD BE A BENEFICIARY PURSUANT TO THE TUSPCO
22 TRUST?

02:14:15PM

23 A. NO.

24 Q. DO YOU BELIEVE HE UNDERSTOOD?

25 A. YES.

02:14:25PM

1 Q. DO YOU RECALL EXPLAINING TO HIM IN WRITING
2 THAT YOU WERE GOING TO BE A BENEFICIARY OF THE
3 TUSPCO TRUST?

4 A. I DON'T RECALL THAT.

5 Q. DID YOU INSTRUCT PROFESSOR GALAMBOS TO HAVE
6 THIS TUSPCO TRUST REVIEWED BY AN INDEPENDENT
7 ATTORNEY?

02:14:39PM

8 A. I DON'T RECALL DOING THAT.

9 Q. SO DO YOU BELIEVE THAT THE -- THIS TUSPCO
10 TRUST DOCUMENT ESTABLISHED A FIDUCIARY RELATIONSHIP
11 BETWEEN YOU AND TUSPCO?

02:15:22PM

12 MR. GOLDEN: CALLS FOR A LEGAL CONCLUSION.
13 IT'S BEYOND THE SCOPE OF THE DEPOSITION. YOU CAN
14 ASK HIM FOR FACTS, BUT THAT'S FOR THE COURT TO
15 DETERMINE. INSTRUCT HIM NOT TO ANSWER THAT
16 QUESTION.

02:15:37PM

17 BY MS. SEKELY:

18 Q. DID YOU UNDERSTAND AT THE TIME YOU WERE
19 DRAFTING THE TUSPCO TRUST THAT THIS -- THAT THIS
20 WOULD OR COULD CREATE A FIDUCIARY RELATIONSHIP
21 BETWEEN YOU AND TUSPCO?

02:15:51PM

22 MR. GOLDEN: THAT'S THE SAME QUESTION, ISN'T
23 IT?

24 MS. SEKELY: NO. IT'S WHAT HE KNEW AT THE
25 TIME HE DRAFTED IT.

02:16:01PM

1 MR. GOLDEN: WELL -- DO YOU UNDERSTAND THE
2 QUESTION?

3 THE WITNESS: I THINK I DO.

4 MR. GOLDEN: OKAY, WELL, THEN DO YOUR BEST
5 TO ANSWER IT. 02:16:13PM

6 THE WITNESS: I THINK IT DID, BUT IT REALLY
7 IS FOR THE COURT TO DETERMINE.

8 BY MS. SEKELY:

9 Q. WHEN DID YOU FIRST LEARN THAT MR. LANGE
10 TOOK THE MONEY FROM THE TUSPCO TRUST? 02:16:50PM

11 A. I BELIEVE IT WAS IN THE SUMMER OF 1984.

12 Q. AND HOW DID YOU LEARN THAT?

13 A. FROM A TELEPHONE CALL FROM MR. GALAMBOS.

14 Q. WHAT DID HE TELL YOU?

15 A. HE SAID THAT HE HAD RECEIVED EITHER A PHONE
16 CALL OR A NOTE, WRITTEN COMMUNICATION FROM 02:17:03PM

17 MR. LANGE. THAT MR. LANGE HAD LOST -- QUOTE,
18 BORROWED, MONEY FROM THE TRUST FOR SOME REAL ESTATE
19 DEVELOPMENTS MR. LANGE HAD GONE INTO. AND THAT

20 MR. LANGE HAD SAID UNFORTUNATELY, HE WASN'T ABLE TO
21 REPAY THAT MONEY. AND THAT ALL THE RECORDS HE HAD 02:17:44PM

22 MAINTAINED -- REMEMBER, NOW, THIS IS 22 AND A HALF

23 YEARS AGO. I THINK HE SAID ALL THE -- THAT LANGE

24 SAID "ALL THE RECORDS I'VE MAINTAINED ARE IN AN
25 OFFICE IN SAN DIEGO," AND HE HAD GIVEN MR. GALAMBOS 02:18:16PM

1 A. YES.

2 Q. CAN YOU RECALL IF THERE WAS A REASON WHY
3 YOU DID NOT DO SO?

4 A. IT NEVER OCCURRED TO ME TO DO SO. AND IF I
5 WAS IN THE SAME POSITION TODAY, I WOULDN'T. IT WAS
6 A SMALL SUM OF MONEY. AT THE TIME WE HAD A
7 MUNICIPAL COURT, AND SUPERIOR COURT. IT WOULD HAVE
8 BEEN A SMALL CLAIMS CASE.

02:28:25PM

9 Q. THE AMOUNT --

10 A. MY PERSONAL PAYMENT FOR THE FOUR BOOKS.
11 AND MR. GALAMBOS WAS DOING ALL THE HEAVY LABORING IN
12 THAT REGARD. IF HE GOT IT BACK, IT WOULD BENEFIT ME
13 PRO RATA. SO IT WAS NOT NECESSARY. THAT'S WHAT I
14 WOULD SAY NOW. I SUSPECT I WOULD HAVE SAID THE SAME
15 THING BACK THEN.

02:28:37PM

02:28:55PM

16 Q. DID YOU EVER LEARN THAT TUSPCO OR THE
17 TUSPCO TRUST RECOVERED THE AMOUNT THAT WAS STOLEN
18 FROM MR. LANGE?

19 A. I NEVER LEARNED WHAT, IF ANYTHING, THEY
20 RECOVERED. WHAT, IF ANYTHING. I DON'T HAVE ANY
21 KNOWLEDGE THAT THEY EVER RECOVERED A PENNY.

02:29:14PM

22 Q. DID YOU -- DID YOU EVER LEARN THAT
23 MR. LANGE OR HIS WIFE FILED FOR BANKRUPTCY?

24 A. I HEARD THAT. I SEEM TO RECALL HEARING
25 THAT. I'M NOT 100 PERCENT SURE.

02:29:39PM

1 CONTINUES TO SERVE INVOLUNTARILY. SO YOU ASSUME
2 HE'S SERVING VOLUNTARILY. THAT'S THE ONLY WAY IT
3 CAN BE.

4 BY MS. SEKELY:

5 Q. WHEN THE PLAINTIFFS SIGNED THE PPSA, THEY 03:23:41PM
6 DIDN'T PLACE ANY TRUST IN MR. HAYES, DID THEY?

7 A. NO.

8 Q. WHEN YOU DRAFTED THE TUSPCO TRUST,
9 MR. HAYES WAS NOT NAMED AS A TRUSTEE IN THAT, WAS
10 HE? 03:23:58PM

11 A. NO.

12 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT WHAT
13 WE'LL MARK AS EXHIBIT 19 --

14 A. I DON'T WANT THIS TO BE CONSTRUED AS
15 SAYING -- I DON'T THINK HE VOLUNTARILY ASSUMED THE 03:24:21PM
16 FIDUCIARY OBLIGATIONS. YOU HAVE TO UNDERSTAND, THE
17 ENTIRE GALAMBOS MARKET, WHICH MEANS THE PEOPLE WHO
18 TOOK HIS CLASSES AND ESPECIALLY THOSE WHO SUBSCRIBED
19 TO THE BOOK, WELCOMED WHAT THEY THOUGHT WAS THE
20 ACTIVITY OF MR. HAYES AND MR. JOYNER TO GET THIS 03:24:35PM
21 THING OVER WITH AND DONE. AND THEY REJECT OUT OF
22 HAND THEIR REFUSAL TO FINISH UP V-201. I DON'T KNOW
23 HOW TO BE MORE CLEAR THAN THAT.

24 MS. SEKELY: EXHIBIT 19 IS A -- A LATER COPY
25 OF THE TUSPCO TRUST. 03:25:11PM

1 THE WITNESS: YES.

2 BY MS. SEKELY:

3 Q. WHY?

4 A. BECAUSE THE LOSS SHOULD BE BORNE BY THE
5 PERSON RESPONSIBLE, NOT BY THE SUBSCRIBERS WHO
6 AREN'T RESPONSIBLE. AND EVEN IF THERE WERE
7 EXTENUATING CIRCUMSTANCES, WHY THEY SHOULD HAVE
8 TRUSTED MR. LANGE, HE WAS THEIR AGENT. I DON'T
9 BELIEVE YOU CAN RELY ON YOUR OWN AGENT'S
10 EMBEZZLEMENT TO JUSTIFY REFUSAL TO PAY OVER MONEY
11 YOU WOULD OTHERWISE BE OBLIGATED TO PAY OVER. I
12 THINK MR. GOLDEN PUT IT IN A LETTER TO ONE OF THE
13 LAWYERS LIKE THIS. IF NOT, HE WILL. IF
14 MR. GALAMBOS WAS SELLING REAL ESTATE, AND INSTRUCTED
15 THE BUYER TO USE AJAX ESCROW COMPANY, OWNED 100
16 PERCENT BY MR. GALAMBOS, AND THE BUYER PUT IN 100
17 PERCENT OF THE PURCHASE PRICE, AND THEN AJAX ESCROW
18 COMPANY, THROUGH THEIR AGENTS, DESIGNATED BY
19 MR. GALAMBOS EMBEZZLED THE MONEY, I BELIEVE THE
20 COURT WOULD ORDER MR. GALAMBOS TO CONVEY THE REAL
21 ESTATE WITHOUT FURTHER PAYMENT BY THE BUYERS. I
22 THINK THIS IS REALLY AN IDENTICAL SITUATION.

23 Q. SINCE YOU WERE THE ATTORNEY FOR TUSPCO AND
24 THE GALAMBOSES AT THE TIME THIS LETTER CAME OUT, DID
25 YOU CONVEY TO THE GALAMBOSES OR ANYONE AT TUSPCO

03:48:10PM

03:48:33PM

03:49:01PM

03:49:30PM

03:49:48PM

1 THAT YOU THOUGHT THAT THIS PARAGRAPH OF THE LETTER
2 WAS INAPPROPRIATE AT THE TIME?

3 A. I DON'T RECALL.

4 Q. DO YOU RECALL EVER CONVEYING TO ANYONE AT
5 TUSPCO OR PROFESSOR GALAMBOS THAT YOU THOUGHT THAT
6 IT WAS INAPPROPRIATE TO INVOKE PARAGRAPH 6.5(5) OF
7 THE PPSA?

03:50:15PM

8 A. WELL, LET ME THINK ABOUT THAT FOR A MOMENT.
9 I DON'T RECALL.

10 Q. ON THE NEXT PAGE, THAT'S PAGE FOUR OF EIGHT
11 OF THE SAME LETTER, AT THE BOTTOM, MRS. GALAMBOS
12 REFERS TO LANGE'S ACT OF MAJOR COERCION?

03:50:40PM

13 A. YES.

14 Q. WHEN YOU RECEIVED THIS LETTER IN 1988, WHAT
15 YOU DID THINK OF THAT STATEMENT? DO YOU RECALL?

03:51:34PM

16 A. WELL, I DON'T RECALL WHAT I THOUGHT ABOUT
17 IT AT THE TIME.

18 Q. DID YOU THINK THAT THAT WAS -- THAT THAT
19 STATEMENT WAS INAPPROPRIATE OR INACCURATE?

20 A. I DON'T RECALL WHAT I THOUGHT ABOUT IT WHEN
21 I GOT THIS.

03:51:48PM

22 Q. DO YOU RECALL WHETHER YOU ADVISED ANYONE AT
23 TUSPCO OR PROFESSOR GALAMBOS THAT THAT STATEMENT WAS
24 INAPPROPRIATE?

25 A. I DON'T RECALL.

03:52:07PM

1 MR. GOLDEN: IT'S A LEGAL CONCLUSION YOU'RE
2 ASKING FOR. IT'S UP TO THE COURT TO DECIDE THAT.
3 THE CONTRACT SPEAKS FOR ITSELF. IT'S AN
4 ARGUMENTATIVE QUESTION. YOU'RE TRYING TO GET HIM IN
5 A LEGAL ARGUMENT. SO HE'S NOT GOING TO ANSWER THOSE
6 KINDS OF QUESTIONS.

03:58:11PM

7 BY MS. SEKELY:

8 Q. AT THE TIME YOU DRAFTED THE PPSA, DID YOU
9 SEE ANY POTENTIAL CONFLICT?

10 A. BETWEEN WHO?

03:58:25PM

11 Q. BETWEEN YOU AND TUSPCO?

12 A. NO.

13 Q. AND BECAUSE YOU DIDN'T SEE ANY CONFLICT, DO
14 YOU RECALL -- DID YOU NOT SEEK A CONFLICT WAIVER?

15 A. AGAIN, I THINK THIS IS SOMETHING FOR THE
16 COURT TO DETERMINE, IF YOU CHOOSE TO MAKE AN ISSUE
17 OF IT. I SAW NO NEED TO DO THAT. I WASN'T DOING A
18 BUSINESS DEAL WITH MR. GALAMBOS. I WAS BUYING FOUR
19 BOOKS.

03:58:51PM

20 Q. SO YOU SAW NO NEED TO -- TO HAVE HIM SIGN A
21 CONFLICT WAIVER IN CONNECTION WITH THE PPSA. RIGHT?

03:59:04PM

22 A. RIGHT.

23 Q. OKAY. WELL, I CAN START A NEW LINE OF
24 QUESTIONING, OR WE COULD END?

25 MR. GOLDEN: IT'S 4:00 O'CLOCK. SO WE'RE

03:59:32PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, PATRICIA M. PORTER, A CERTIFIED SHORTHAND
REPORTER LICENSED BY THE STATE OF CALIFORNIA,
CERTIFY:

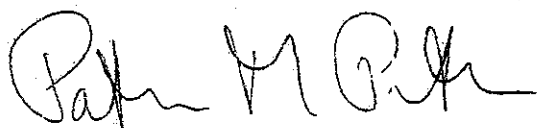
THAT THE FOREGOING DEPOSITION OF FREDERIC MARKS WAS
TAKEN BEFORE ME PURSUANT TO NOTICE

AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH
TIME THE WITNESS WAS PUT UNDER OATH BY ME;

THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS
MADE AT THE TIME OF THE EXAMINATION WERE RECORDED
STENOGRAPHICALLY BY ME AND WERE THEREAFTER
TRANSCRIBED;

THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY
AND OF ALL OBJECTIONS AT THE TIME OF THE
EXAMINATION.

IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS
18TH DAY OF FEBRUARY, 2007.



LICENSE NO. 3730

LAW OFFICE OF
WAYNE JOYNER
A PROFESSIONAL CORPORATION
PENTHOUSE SUITE
945 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212

WAYNE JOYNER
MICHAEL R. GARDINA
OF COUNSEL

AREA CODE (213)
276-3064

28 March 1988

Mrs. Jean Mollenhauer
3917 Caminito Del Mar Cove
San Diego, California 92130

Re: TUSPCO Trust

Dear Mrs. Mollenhauer:

I requested that the inquiry regarding your TUSPCO Trust account be sent to me for a response. All future communications in this matter should be directed to me, not Professor Galambos or TUSPCO.

No refunds will be made to subscribers of the Pre-publication Subscription Agreement (although the books will still be delivered if possible). There are both legal and moral reasons for the no refund policy.

The legal reasons are based on the Pre-publication Subscription Agreement terms. The obligation to make or guarantee a refund has ceased due to the occurrence of coercion (the theft of all trust funds by the Trustee, M. J. Lange). Paragraph 6.4 (Page 12) provides for refunds if certain delivery dates are not met. Refunds were to be paid by the Trust, and were guaranteed by TUSPCO (see Paragraph 4.3, Page 10). This same paragraph notes that M. J. Lange is one of the original Trustees.

M. J. Lange stole all the assets of the TUSPCO and FEI Trusts, except about \$800.00 in cashier's checks (a cruel joke). This theft and many others were first discovered on 1984, July 9. Mr. Lange was arrested, pled guilty, and was sentenced to four years in prison for the crime. I have filed a civil suit against Lange on behalf of Professor and Mrs. Galambos, TUSPCO Trust and all other FEI related entities from which he stole. No funds have been recovered at this time. Therefore, the Trust is still without assets with which to pay refunds.

1-11-88

EX.T /

Mrs. Jean Mollenhauer
28 March 1988
Page Two

Due to the above situation, Paragraph 6.5 (5) of the agreement is being invoked. This paragraph provides as follows:

"Notwithstanding anything to the contrary herein, if the assets of the trust fund are seized or made unavailable for the purposes of this agreement by any state, or by any coercive force, the obligation of TUSPCO to make or guarantee any refund to Subscriber shall cease, and shall be null and void".

Since the assets of the Trust were seized, there is no obligation to make refunds.

You were required by Professor Galambos to read all of the Pre-publication Subscription Trust before you signed it. Also, who could have known that Lange would steal when Mr. Galambos knew him and considered him a friend for 21 years (from 1963, March to 1984, July 9 when Mr. Galambos found out that Lange stole the Trusts). Mr. Lange worked for Mr. Galambos's companies from 1969 to 1984 and sent to Mr. Galambos falsified records while he was stealing from the Trusts until they were empty. As a Trustee, Lange was totally untrustworthy. How could a man who was befriended by Mr. Galambos and trusted by Mr. Galambos betray him and steal his life's work which could have improved the future of the world?

In addition to the absence of legal liability and lack of Trust funds with which to pay claims, there is a more important reason to not demand refunds. The biggest victims of Lange's theft are Professor and Mrs. Galambos, not the individual Trust Subscriber. Although not legally obligated to do so, Professor Galambos has undertaken to personally deliver on all obligations of the book and course Trusts. He immediately informed the enrollees of his courses (those who were present at the courses) when he found out that Lange stole the money of the Trusts and also from FEI and the natural estate of Mr. Galambos's father. The chaos left by Lange and the increased frustrations and demands on his time resulted in a coronary thrombosis to the Professor.

Gregg & Donna Rooten
1165 West Las Palmas Drive
Fullerton, California 92635

1992, June 5

Mr. or Mrs. Andrew J. Galambos
18211 Leafwood Lane
Santa Ana, California 92705

Dear Mr. or Mrs. Galambos:

We are writing this to request a refund for monies paid for books which have not been delivered. The time has long since passed for termination of the agreement by lapse of time pursuant to **Section 6.4 of the Pre-Publication Subscription Agreement.**

We had three such agreements: one dated 1978, July 29; another dated 1981, June 6, for Positive Victory books; and a third dated 1982, July 11, for additional copies of Book 3. We have copies of all contracts plus receipts and cancelled checks substantiating the total amounts paid as shown on the attached refund schedule chart. Furthermore, interest has been calculated at the contract rate of 6% per annum (pro-rated for partial years) for the time from which each contract was fully paid to the end of April of this year.

We hope to receive the refund that is due immediately and without need to resort to judicial remedies. We are fully aware of your previous unsuccessful attempts to avoid either making refunds or using the judicial system to defend against refund claims. However, since you have not hesitated to use the judicial system offensively, we are prepared and fully intend to pursue all legal remedies if the appropriate refund as indicated on the enclosed chart is not issued at once. We have allowed more than ample time for you to provide the product, and since you have failed to do so, our money can be more profitably used in other ways.

Sincerely,



Gregg Rooten



Donna Rooten

Attachment

Ex. U ✓

cc Invoice to Mr. Rooten
Kris 7/7

Law Office of
Wayne Joyner
A Professional Corporation

FAX
(310) 276-0403

Penthouse Suite
9454 Wilshire Boulevard
Beverly Hills, California 90212
(310) 276-0064

1992, July 9

Mr. & Mrs. Greg Rooten
1165 West Las Palmas Drive
Fullerton, California 92635

Dear Mr. & Mrs. Rooten:

I received your recent request for a refund under the terms of the Pre-Publication Subscription Agreement. Part of the requested refund was for "book 5", MORE LASTING THAN BRONZE. As you now know, this book was published in 1991. It was not delivered to you as no current address was available to the trust. Your "book 5" order is being shipped to you at this time. Therefore, no refund is due for this portion of your request.

The contract you entered into on 1981, June 6 was not a part of TUSPCO TRUST. Those funds are still available and a refund will be made pursuant to your request. You should expect to receive this refund check within two weeks.

As to the remainder of your request, I must inform you that no refund will be made (although the books will still be delivered if possible). There are legal reasons for the no refund policy. These reasons are based on the Pre-publication Subscription Agreement terms. Paragraph 6.4 (page 12) provides for refunds if certain delivery dates are not met. Refunds were to be paid by the Trust, and were guaranteed by TUSPCO (see paragraph 4.3, page 10). This same paragraph notes that M.J. Lange is one of the original trustees. This contractual obligation to make or guarantee a refund has ceased due to the occurrence of coercion (the theft of trust funds by the trustee, M.J. Lange).

M.J. Lange stole all the assets of the TUSPCO and FEI Trusts, except about \$800.00 in cashier's checks. This theft and many others were first discovered on 1984, July 9. Mr. Lange was arrested, pled guilty, and was sentenced to four years in prison for the crime (of which he only served two years). A civil suit against Lange resulted in a judgment exceeding \$1,500,000.00. Unfortunately, no funds have been recovered from Lange at this time. Therefore, the trust is without assets with which to pay refunds.

Ex. V ✓

1992, July 9
page two

Due to the above situation, paragraph 6.5 (5) of the agreement is being invoked. This paragraph provides that when the trust assets are seized by any coercive force, the refund obligation is null and void. You were required by Professor Galambos to read all of the trust agreement (including this paragraph) before you signed it. Since the assets of the Trust were seized, there is no obligation to make refunds.

We briefly discussed the "coercion clause" in earlier telephone conversations. You have indicated an intent to pursue legal remedies if your request for a refund was refused. Therefore, I should point out paragraph 7.3 on page 17 which required arbitration of any dispute. Mr. & Mrs. Rooten, I sincerely hope that you will not decide to arbitrate this matter in view of the theft and Professor Galambos' declining health. With more patience and understanding, you will still receive the products you purchased.

If you disagree, please contact me so that an arbitration can be arranged.

Very truly yours,

Wayne Joyner
WAYNE JOYNER

WJ/jlb

LEXSEE 234 F.2D 199

CITY OF FAIRVIEW, OKLAHOMA, and Dean Ranson, City Treasurer of Fairview, Oklahoma, Appellants, v. Ash NORRIS, Appellee

No. 5260

UNITED STATES COURT OF APPEALS TENTH CIRCUIT

234 F.2d 199; 1956 U.S. App. LEXIS 3687

May 18, 1956

COUNSEL: [**1]

Edward C. Montgomery, Fairview, Okl., for appellant.

Arnold T. Fleig, Oklahoma City, Okl., submitted brief for appellee.

JUDGES:

Before BRATTON, Chief Judge, and HUXMAN and PICKETT, Circuit Judges.

OPINION BY:

HUXMAN

OPINION:

[*201]

In 1939 a class action was filed in the District Court for the Western District of Oklahoma by the City of Fairview, Oklahoma, on relation of a holder of Paving District No. 7 bonds to foreclose delinquent assessments in order to provide a fund for payment of outstanding bonds of the paving district. The suit set out a number of causes of action, and judgments were rendered at various times in 1941 against the specific properties for the respective amounts due.

The City Clerk, J. C. Nicholson, and City Treasurer, J. W. A. Prescott, of Fairview, Oklahoma, were joined as party defendants in the suit, to enforce the duties incumbent upon those officials to register and receive the funds and to pay off the outstanding bonds. Each of the judgments contained a provision requiring the City Treasurer to pay the outstanding bonds in their regular numerical order, as funds became available, and subjecting him to citation for contempt in the [**2] event of a failure to perform the required duties. The judgment rendered on February 27, 1941, is set out in the record, and in this regard states:

and the sums so received by the City Treasurer shall be placed in the special separate fund for the retirement of the bonds and interest coupons issued in said district, and said City Treasurer shall first pay all outstanding and unpaid interest coupons, * * * and shall thereafter, as funds are available therefor, pay all outstanding and unpaid street improvement bonds in said district, or the participation certificates issued in lieu of said bonds, all in their regular numerical order, together with interest thereon at the rate of ten per cent (10%) per annum from maturity to date of payment as provided * * *.

It is further ordered that in the event the said public officials above mentioned or either of them shall fail to perform the acts and duties hereby required of them, within the time or times hereinabove provided, they, or either of them shall be subject to citation to appear and show cause why they should not be punished for their contempt for their failure to comply with the provisions of this judgment and decree [**3] * * *.

The case was submitted upon stipulated facts. These paving bonds are bearer bonds, transferrable by delivery only. The controversy at bar centers around one unpaid bond, Bond No. 10, which [*202] was first presented for payment in October 1954. It is agreed that funds became available for the payment of Bond No. 10 on December 24, 1940. At that time the total principal, coupons, and post-maturity interest due amounted to \$ 633. Notice was given by the City Treasurer to the last known holder of Bond No. 10 to present it for payment, but the bond was not presented for payment. The City Treasurer took no steps to determine the whereabouts of the owner of the bond, and he did not deposit the funds for the payment of Bond No. 10 with the clerk of the court or segregate the funds to await presentment. Instead, at some subsequent time the City Treasurer used the funds to pay the next bond of higher numerical order. And as funds continued to accumulate this payment of higher numerical order bonds continued through Bond

EX. W ✓

21, apparently the last outstanding bond except for Bond No. 10 and a participation certificate on Bond No. 8 in the amount of \$ 30.26 which [**4] likewise was never presented for payment. 1292 * 4 In 1945, after the payment of Bond No. 21, there was on hand the sum of \$ 372.89. In December, 1952 the City Council of Fairview by resolution directed a transfer of that balance to the Street and Alley Repair Fund of the city.

Thereafter, in October, 1954, Bond No. 10 was presented by Ash Norris, the owner thereof, to the then City Treasurer for payment, and payment was refused. Norris then filed in the District Court for the Western District of Oklahoma this application to require the incumbent City Treasurer of Fairview, Dean Ranson, to comply with the terms and provisions of the judgments rendered in the 1939 action. Relief was asked against the City Treasurer and the City of Fairview for a restoration of the allegedly wrongly converted funds and for payment of the \$ 633 due on Bond No. 10. The trial judge entertained the application and rendered judgment that the \$ 372.89 be reconveyed to the Paving Bond account and that the City Treasurer, Dean Ranson, and City of Fairview were liable for the full \$ 633 on the bond.

For reasons which shall presently appear, we are of the view that the personal judgment [**5] against the present City Treasurer, Dean Ranson, cannot stand and that the judgment against the City of Fairview in excess of \$ 372.89 must likewise be set aside.

The applicable Oklahoma Statutes n1 make the City Treasurer the custodian to receive funds paid in discharge of special improvement assessments and distribute them to the bondholders as required by law. I. W. A. Prescott was the City Treasurer at the time the original judgment was entered in the Federal court. The judgment was directed to him and he was the one originally liable to citation for contempt if he failed to comply with its provisions. In 1945 J. E. Bomgardner was City Treasurer and in 1952, when the City resolution directing the City Treasurer to transfer the balance of \$ 372.89 in the fund to the Street and Alley Repair Fund, Jesse Sutton was the City Treasurer, and it was he who transferred the funds. n2 In October, 1954 when Bond no. 10 was finally presented for payment, appellant Dean Ranson was the City Treasurer and refused payment because the fund had been transferred and no funds were on hand. We then have a situation where these funds were transferred by a predecessor of the present [**6] City Treasurer, Dean Ranson, the defendant below.

The City Treasurer in 1952, Jesse Sutton, held these funds as trustee for the bondholders. So long as there were bonds outstanding it was his duty to hold the funds for those to whom they belonged. The City had no lawful authority to require him to transfer them, and he vio-

lated his fiduciary responsibility in complying with the demand of the City.

[*20:] The law is without exception that a trustee is not liable to a beneficiary for a breach of trust committed by a predecessor trustee. n3 Since a violation of the trust relationship was committed by a predecessor city treasurer, Dean Ranson could not be cited for contempt of court. Neither could a personal judgment be rendered against him for acts of misfeasance by a predecessor. It also follows that since the fund was in the possession of the City prior to the time Ranson became City Treasurer he could not respond to the order of the court directing him to retransfer the \$ 372.89 without an order from the City which now has the fund.

While there are some confusing statements in the Oklahoma decisions, a careful perusal thereof makes it clear that the Treasurer [**7] and not the City stands in the relationship of a trustee to the bondholders, n4 and the City is not liable for the misfeasance of the bondholder's agent merely because he is also a city employee. The City is liable only where it profits from the trustee's misfeasance and then only to the extent it has received funds or property belonging to the bondholders. In *City of Okmulgee v. Young*, 189 Okl. 25, 113 P.2d 373, 375, the court said: 'Under the law the city is not liable for the mistakes, negligence or wrongful acts of its officers, where the city derived no benefit from such acts and retains no part of the money for its own use.' n5 Under the law of Oklahoma it was never the duty of the city to pay these bonds. There were not general obligations of the City and, as stated in *States ex rel. Southern Surety Co. v. Armstrong*, 13 P.2d 198, 201, 'The governing body of said city was not authorized to create by general indebtedness payment of this bond issue.' The City of Fairview could not by resolution directing transfer of the balance of the fund on hand create a general liability against the City for the payment of the full amount of Bond No. [**8] 10. The balance of this fund had remained unclaimed for many years by the holder of Bond No. 10. While the City apparently acted in good faith in directing the Treasurer to transfer the balance of the funds, such direction was nonetheless unauthorized and the transfer by the trustee pursuant thereto was an illegal act, and the City is liable to the extent it profited thereby. To that extent it must respond in judgment.

It is finally contended that appellee's action was barred by the five-year statute of limitation. n6 Bond No. 10 had a maturity date upon its face of October 1, 1939 and no presentment for payment was made by the holder until fifteen years later.

Such cases as *Miller v. Independent School Dist. No. 16*, 171 Okl. 136, 42 P.2d 125, and *Nordman v. School Dist. No. 43*, 190 Okl. 135, 121 P.2d 290, upon which

appellant relies to sustain this contention are in our opinion not decisive. The bonds involved in these cases were school bonds which were general obligations of the districts which issued them, and they contained definite due dates. Under those facts the court held that the five-year statute of limitation barred recovery. [**9] The Miller case specifically distinguished the situation where bonds are payable from a particular fund as money comes into that fund from a special source, and stated that a different rule applies in such cases.

It is without dispute that the fund from which these bonds, including Bond No. 10, were payable was a trust fund consisting of monies deposited with the City Treasurer from assessments and [*204] from foreclosures on delinquent assessments. While Bond No. 10 contains a maturity date of October 1, 1939, that is not a due date in the sense that the bond can be presented and collected at that date. It can only be paid if there are funds available at that time. The Oklahoma cases make it clear that where there is involved a trust fund created from collection of assessments the five-year statute of limitation does not apply. n7

In Oklahoma, as in general, the law is that the statute of limitation does not begin to run in favor of a trustee until the breach of trust is brought to the knowledge of the beneficiary. n8

There is no evidence that the owner of Bond No. 10 knew of the failure to set aside the sum to pay that bond or of a diversion to the Street [**10] and Alley Repair Fund, until he presented his bond for payment in October, 1954.

It is our view the court did not err in holding that the statute of limitation was not a bar to this action.

It is our conclusion that the court erred in rendering any judgment against Dean Ranson, the present City Treasurer of the City of Fairview and trustee of the balance of the fund, and that it also erred in rendering a personal money judgment against the City of Fairview, Oklahoma, in excess of \$ 372.98 plus interest from May 5, 1955, and costs.

The judgment against the City Treasurer, Dean Ranson, is reversed and the cause as to him is remanded with directions to proceed in conformity with the views expressed herein. The judgment against the City of Fair-

view, Oklahoma, is reduced to the sum of \$ 372.89 and interest and costs, as found by the court. The costs of this appeal are assessed in equal parts against the appellant, the City of Fairview, Oklahoma, and the appellee, Ash Norris.

n1. Okla.Stat. Ann. tit. 11, §§ 105 & 107.

n2. The record does not specifically reveal that Sutton transferred the funds. The order was directed to him and the City's statement in its brief that he did transfer the funds stands uncontradicted.

[**11]

n3. Restatement, Trusts, § 223; *Prager v. Hart*, 106 Kan. 14, 186 P. 1015; 90 C.J.S., Trusts, § 259, p. 599; 54 Am. Jur. 240.

n4. See *City of Okmulgee v. Young*, 189 Okl. 25, 113 P.2d 373; *State ex rel. Southern Surety Co. v. Armstrong*, 158 Okl. 290, 13 P.2d 198; *Moroney v. State ex rel. Southern Surety Co.*, 168 Okl. 69, 31 P.2d 926; *Federal Deposit Insurance Corp. v. Casady*, 10 Cir., 106 F.2d 784.

n5. Cf. *Brown-Crummer Investment Co. v. City of Miami, D.C.*, 40 F.2d 508.

n6. Okl.Stat. Ann. tit. 12, § 95.

n7. See *Nordman v. School Dist. No. 43, supra*; *Town of Shattuck v. Barcafer*, 192 Okl. 336, 137 P.2d 238; *Hollingsworth v. City of Guthrie*, 206 Okl. 634, 245 P.2d 1159.

n8. See *Exchange Bank of Perry v. Nichols*, 196 Okl. 283, 164 P.2d 867; *McNeal v. Steinberger*, 192 Okl. 283, 135 P.2d 490.

LEXSTAT 17 U.S.C. 106

UNITED STATES CODE SERVICE
 Copyright © 2007 Matthew Bender & Company, Inc.,
 one of the LEXIS Publishing (TM) companies
 All rights reserved

*** CURRENT THROUGH P.L. 110-11, APPROVED 3/07/2007 ***

TITLE 17. COPYRIGHTS
 CHAPTER 1. SUBJECT MATTER AND SCOPE OF COPYRIGHT

Go to Code Archive Directory for this Jurisdiction

17 USCS § 106

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122 [*17 USCS §§ 107 through 122*], the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

HISTORY:

(Oct. 19, 1976, P.L. 94-553, Title I, § 101, 90 Stat. 2546; July 3, 1990, P.L. 101-318, § 3(d), 104 Stat. 288; Dec. 1, 1990, P.L. 101-650, Title VII, § 704(b)(2), 104 Stat. 5134; Nov. 1, 1995, P.L. 104-39, § 2, 109 Stat. 336; Aug. 5, 1999, P.L. 106-44, § 1(g)(2), 113 Stat. 222; Nov. 2, 2002, P.L. 107-273, Div C, Title III, Subtitle B, § 13210(4)(A), 116 Stat. 1909.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

House Report No. 94-1476

General scope of copyright. The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106. These exclusive rights, which comprise the so-called "bundle of rights" that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made "subject to sections 107 through 118," and must be read in conjunction with those provisions.

LEXSEE 376 U.S. 225

SEARS, ROEBUCK & CO. v. STIFFEL COMPANY

No. 108

SUPREME COURT OF THE UNITED STATES

376 U.S. 225; 84 S. Ct. 784; 11 L. Ed. 2d 661; 1964 U.S. LEXIS 2365; 140 U.S.P.Q.
(BNA) 524

January 16, 1964, Argued
March 9, 1964, Decided

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

DISPOSITION:

313 F.2d 115, reversed.

SUMMARY:

The patentee of a floor-to-ceiling "pole lamp" brought a patent infringement and unfair competition suit in the United States District Court for the Northern District of Illinois against the retailer of substantially similar lamps. The District Court held the patents invalid for want of invention, but enjoined the retailer from unfairly competing by selling pole lamps identical to or confusingly similar to the patentee's lamps. The United States Court of Appeals for the Seventh Circuit affirmed on the ground that the likelihood of confusion as to the source of the products was sufficient to make out a case of unfair competition under Illinois law, without a showing that the retailer had palmed off its lamps as the patentee's lamps. (313 F.2d 115.)

On certiorari, the Supreme Court of the United States reversed. In an opinion by Black, J., expressing the views of eight members of the Court, it was held that while a state may require that precautionary steps be taken to prevent customers from being misled as to the source of products, it cannot prevent the copying of unpatentable articles, since to do so would conflict with the federal patent laws.

Harlan, J., concurred in the result, but expressed the view that states should be allowed to impose reasonable restrictions on copying itself where it is undertaken with

the dominant purpose and effect of palming off the copier's goods as those of another.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
PATENTS §1
COPYRIGHT §2
federal laws -- supremacy --
Headnote: [1]

Federal patent and copyright laws, like other laws of the United States enacted pursuant to constitutional authority, are the supreme law of the land.

[***LEdHN2]
PATENTS §9
COPYRIGHT §2
relative state and federal power --
Headnote: [2]

When state law touches upon the area of federal patent and copyright statutes, the federal policy may not be set at naught or its benefits denied by the state law, even if the state law is enacted in the exercise of otherwise undoubted state power.

[***LEdHN3]
PATENTS §5
nature --
Headnote: [3]

The grant of a patent is the grant of a statutory monopoly.

[***LEdHN4]
PATENTS §6
statutory foundation --

Headnote: [4]

Patent rights exist only by virtue of statute.

[***LEdHN5]

PATENTS §4

purpose --

Headnote: [5]

Patents are not given as favors, but are meant to encourage invention by rewarding the inventor with the right, limited to a term of years fixed by the patent, to exclude others from the use of his invention.

[***LEdHN6]

PATENTS §5

right against infringement --

Headnote: [6]

During the term of years fixed by a patent, no one may make, use, or sell the patented product without the patentee's authority.

[***LEdHN7]

PATENTS §1

protection of community --

Headnote: [7]

In rewarding useful invention by the issuance of patents, the rights and welfare of the community must be fairly dealt with and effectually guarded.

[***LEdHN8]

PATENTS §16

PATENTS §240

prerequisites -- limitations -- strict enforcement --

Headnote: [8]

In order to guard the rights and welfare of the community, the prerequisites to obtaining a patent are strictly observed, and when the patent has issued the limitations on its exercise are equally strictly enforced.

[***LEdHN9]

PATENTS §17

necessity for discovery or invention --

Headnote: [9]

To support a patent, a genuine invention or discovery must be demonstrated lest in the constant demand for new appliances the heavy hand of tribute be laid on each slight technological advance in an art.

[***LEdHN10]

PATENTS §190

PATENTS §240

strict construction -- use --

Headnote: [10]

Once a patent issues, it is strictly construed and cannot be used to secure any monopoly beyond that contained in the patent.

[***LEdHN11]

PATENTS §240

control of product --

Headnote: [11]

A patentee's control over the product when it leaves his hands is sharply limited.

[***LEdHN12]

RESTRAINTS OF TRADE, MONOPOLIES AND UNFAIR TRADE PRACTICES §55

patent monopolies --

Headnote: [12]

The patent monopoly may not be used in disregard of the antitrust laws.

[***LEdHN13]

PATENTS §15

rights after expiration --

Headnote: [13]

When a patent expires the monopoly created by it also expires, and the right to make the article, including the right to make it in precisely the shape it carried when patented, passes to the public.

[***LEdHN14]

PATENTS §1

patent system -- nature --

Headnote: [14]

The patent system is one in which uniform federal standards are carefully used to promote invention while at the same time preserving free competition.

[***LEdHN15]

PATENTS §9

state power --

Headnote: [15]

A state cannot, consistently with the supremacy clause of the Federal Constitution, extend the life of a patent beyond its expiration date or give a patent on an article which lacks the level of invention required for federal patents.

[***LEdHN16]
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §95
state regulation --
Headnote: [16A] [16B]

Just as a state cannot encroach upon the federal patent laws directly, it cannot, under some other law, such as that forbidding unfair competition, give protection of a kind that clashes with the objectives of the federal patent laws; hence, a state cannot by the use of its law of unfair competition prevent the copying of an article which represents too slight an advance to be patented.

[***LEdHN17]
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §94
unpatentable articles -- right to make and sell --
Headnote: [17]

An unpatentable article, like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so.

[***LEdHN18]
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §94
copying unpatentable articles --
Headnote: [18]

Under the federal patent laws, one may copy the design of an unpatentable article and sell articles almost identical to it, even though another person originated and popularized the unpatentable article.

[***LEdHN19]
WILL §1
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §94
sharing good will -- unpatented articles without trademarks --
Headnote: [19]

Sharing in the good will of an article unprotected by patent or trademark is the exercise of a right possessed by all, in the free exercise of which the consuming public is deeply interested.

[***LEdHN20]
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §99
copying unpatented articles --
Headnote: [20]

The mere inability of the public to tell two identical articles apart is not enough to support an injunction against copying or an award of damages for copying that which the federal patent laws permit to be copied.

[***LEdHN21]
PATENTS §9
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §19.5
products -- confusion as to source -- state regulation --
Headnote: [21]

A state may in appropriate circumstances require that goods, whether patented or unpatented, be labeled or that other precautionary steps be taken to prevent customers from being misled as to the source, just as it may protect businesses in the use of their trademarks, labels, or distinctive dress in the packaging of goods so as to prevent others, by imitating such markings, from misleading purchasers as to the source of the goods.

[***LEdHN22]
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §24
labeling -- Illinois law --
Headnote: [22]

Illinois does not impose liability on sellers who do not label their goods.

SYLLABUS:

Respondent, whose design and mechanical patents are invalid for want of invention, cannot under a state unfair competition law obtain an injunction against copying its product or an award of damages for such copying, as such use of state law conflicts with the exclusive power of the Federal Government to grant patents only to true inventions, and then only for a limited time. An unpatented article, being in the public domain, may be freely copied, though labeling or other precautions may be required by state law where appropriate to prevent deception as to source. Pp. 225-233.

COUNSEL:

Will Freeman argued the cause for petitioner. With him on the briefs were Frank H. Marks, D. D. Allegritti and George B. Newitt.

Warren C. Horton argued the cause for respondent. With him on the brief was Max R. Kraus.

Solicitor General Cox, Assistant Attorney General Orrick, Daniel M. Friedman and Lionel Kestenbaum filed a brief for the United States, as amicus curiae, urging reversal.

376 U.S. 225, *; 84 S. Ct. 784, **;
11 L. Ed. 2d 661, ***; 1964 U.S. LEXIS 2365

JUDGES:

Warren, Black, Douglas, Clark, Harlan, Brennan,
Stewart, White, Goldberg

OPINION BY:

BLACK

OPINION:

[*225] [***663] [**786] MR. JUSTICE
BLACK delivered the opinion of the Court.

The question in this case is whether a State's unfair competition law can, consistently with the federal patent laws, impose liability for or prohibit the copying of an article which is protected by neither a federal patent nor a copyright. The respondent, Stiffel Company, secured design and mechanical patents on a "pole lamp" -- a vertical [*226] tube having lamp fixtures along the outside, the tube being made so that it will stand upright between the floor and ceiling of a room. Pole lamps proved a decided commercial success, and soon after Stiffel brought them on the market Sears, Roebuck & Company put on the market a substantially identical lamp, which it sold more cheaply, Sears' retail price being about the same as Stiffel's wholesale price. Stiffel then brought this action against Sears in the United States District Court for the Northern District of Illinois, claiming in its first count that by copying its design Sears had infringed Stiffel's patents [***664] and in its second count that by selling copies of Stiffel's lamp Sears had caused confusion in the trade as to the source of the lamps and had thereby engaged in unfair competition under Illinois law. There was evidence that identifying tags were not attached to the Sears lamps although labels appeared on the cartons in which they were delivered to customers, that customers had asked Stiffel whether its lamps differed from Sears', and that in two cases customers who had bought Stiffel lamps had complained to Stiffel on learning that Sears was selling substantially identical lamps at a much lower price.

The District Court, after holding the patents invalid for want of invention, went on to find as a fact that Sears' lamp was "a substantially exact copy" of Stiffel's and that the two lamps were so much alike, both in appearance and in functional details, "that confusion between them is likely, and some confusion has already occurred." On these findings the court held Sears guilty of unfair competition, enjoined Sears "from unfairly competing with [Stiffel] by selling or attempting to sell pole lamps identical to or confusingly similar to" Stiffel's lamp, and ordered an accounting to fix profits and damages resulting from Sears' "unfair competition."

[*227] The Court of Appeals affirmed. n1 313 F.2d 115. That court held that, to make out a case of unfair competition under Illinois law, there was no need to show that Sears had been "palming off" its lamps as Stiffel lamps. Stiffel had only to prove that there was a "likelihood of confusion as to the source of the products" -- that the two articles were sufficiently identical that customers could not tell who had made a particular one. Impressed by the "remarkable sameness of appearance" of the lamps, the Court of Appeals upheld the trial court's findings of likelihood of confusion and some actual confusion, findings which the appellate court construed to mean confusion "as to the source of the lamps." The Court of Appeals thought this enough under Illinois law to sustain the trial court's holding of unfair competition, and thus held Sears liable under Illinois law for doing no more than copying and marketing an unpatented article. n2 [***665] We granted certiorari to consider whether this [*228] use of [**787] a State's law of unfair competition is compatible with the federal patent law. 374 U.S. 826.

n1 No review is sought here of the ruling affirming the District Court's holding that the patent is invalid.

n2 313 F.2d, at 118 and nn. 6, 7. At least one Illinois case has held in an exhaustive opinion that unfair competition under the law of Illinois is not proved unless the defendant is shown to have "palmed off" the article which he sells as that of another seller; the court there said that "the courts in this State do not treat the 'palming off' doctrine as merely the designation of a typical class of cases of unfair competition, but they announce it as the rule of law itself -- the test by which it is determined whether a given state of facts constitutes unfair competition as a matter of law. . . . The 'palming off' rule is expressed in a positive, concrete form which will not admit of 'broadening' or 'widening' by any proper judicial process." *Stevens-Davis Co. v. Mather & Co.*, 230 Ill. App. 45, 65-66 (1923). In spite of this the Court of Appeals in its opinions both in this case and in *Day-Brite Lighting, Inc., v. Compco Corp.*, 311 F.2d 26, rev'd, *post*, p. 234, relied upon one of its previous decisions in a trade-name case, *Independent Nail & Packing Co. v. Stronghold Screw Products*, 205 F.2d 921 (C. A. 7th Cir. 1953), which concluded that as to use of trade names the *Stevens-Davis* rule had been overruled by two subsequent Illinois decisions.

376 U.S. 225, *; 84 S. Ct. 784, **;
11 L. Ed. 2d 661, ***; 1964 U.S. LEXIS 2365

Those two cases, however, discussed only misleading use of trade names, not copying of articles of trade. One prohibited the use of a name so similar to that of another seller as to deceive or confuse customers, even though the defendant company did not sell the same products as the plaintiff and so in one sense could not be said to have palmed off its goods as those of a competitor, since the plaintiff was not a competitor. *Lady Esther, Ltd., v. Lady Esther Corset Shoppe, Inc.*, 317 Ill. App. 451, 46 N. E. 2d 165 (1943). The other Illinois case on which the Court of Appeals relied was a mandamus action which held that under an Illinois statute a corporation was properly denied registration in the State when its name was "deceptively similar" to that of a corporation already registered. *Investors Syndicate of America, Inc., v. Hughes*, 378 Ill. 413, 38 N. E. 2d 754 (1941). The Court of Appeals, by holding that because Illinois forbids misleading use of trade names it also forbids as unfair competition the mere copying of an article of trade without any palming off, thus appears to have extended greatly the scope of the Illinois law of unfair competition beyond the limits indicated in the Illinois cases and beyond any previous decisions of the Seventh Circuit itself. Because of our disposition of these cases we need not decide whether it was correct in doing so.

[**LEdHR1] [1] [**LEdHR2] [2] Before the Constitution was adopted, some States had granted patents either by special act or by general statute, n3 but when the Constitution was adopted provision for a federal patent law was made one of the enumerated powers of Congress because, as Madison put it in *The Federalist* No. 43, the States "cannot separately make effectual provision" for either patents or copyrights. n4 That constitutional provision is Art. I, § 8, cl. 8, which empowers Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Pursuant to this constitutional [*229] authority, Congress in 1790 enacted the first federal patent and copyright law, 1 Stat. 109, and ever since that time has fixed the conditions upon which patents and copyrights shall be granted, see 17 U. S. C. §§ 1-216; 35 U. S. C. §§ 1-293. These laws, like other laws of the United States enacted pursuant to constitutional authority, are the supreme law of the land. See *Sperry v. Florida*, 373 U.S. 379 (1963). When state law touches upon the area of these federal statutes, it is "familiar doctrine" that the federal policy "may not be set at naught, or its benefits

denied" by the state law. *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 176 (1942). This is true, of course, even if the state law is enacted in the exercise of otherwise undoubted state power.

n3 See I Walker, Patents (Deller ed. 1937), § 7.

n4 *The Federalist* (Cooke ed. 1961) 288.

[**LEdHR3] [3] [**LEdHR5] [5] [**LEdHR6] [6] [**LEdHR7] [7] [**LEdHR8] [8] [**LEdHR9] [9] [**LEdHR10] [10] [**LEdHR11] [11] [**LEdHR12] [12] [**LEdHR13] [13] The grant of a patent is the grant of a statutory monopoly; n5 indeed, [*788] the grant of patents in England was an explicit exception to the statute of James I prohibiting monopolies. n6 Patents are not given as favors, as [**666] was the case of monopolies given by the Tudor monarchs, see *The Case of Monopolies (Darcy v. Allein)*, 11 Co. Rep. 84 b., 77 Eng. Rep. 1260 (K. B. 1602), but are meant to encourage invention by rewarding the inventor with the right, limited to a term of years fixed by the patent, to exclude others from the use of his invention. During that period of time no one may make, use, or sell the patented [*230] product without the patentee's authority. 35 U. S. C. § 271. But in rewarding useful invention, the "rights and welfare of the community must be fairly dealt with and effectually guarded." *Kendall v. Winsor*, 21 How. 322, 329 (1859). To that end the prerequisites to obtaining a patent are strictly observed, and when the patent has issued the limitations on its exercise are equally strictly enforced. To begin with, a genuine "invention" or "discovery" must be demonstrated "lest in the constant demand for new appliances the heavy hand of tribute be laid on each slight technological advance in an art." *Cuno Engineering Corp. v. Automatic Devices Corp.*, 314 U.S. 84, 92 (1941); see *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U.S. 147, 152-153 (1950); *Atlantic Works v. Brady*, 107 U.S. 192, 199-200 (1883). Once the patent issues, it is strictly construed, *United States v. Masonite Corp.*, 316 U.S. 265, 280 (1942), it cannot be used to secure any monopoly beyond that contained in the patent, *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U.S. 488, 492 (1942), the patentee's control over the product when it leaves his hands is sharply limited, see *United States v. Univis Lens Co.*, 316 U.S. 241, 250-252 (1942), and the patent monopoly may not be used in disregard of the antitrust laws, see *International Business Machines Corp. v. United States*, 298 U.S. 131 (1936); *United Shoe Machinery Corp. v. United States*, 258 U.S. 451, 463-464

376 U.S. 225, *, 84 S. Ct. 784, **;
11 L. Ed. 2d 661, ***; 1964 U.S. LEXIS 2365

(1922). Finally, and especially relevant here, when the patent expires the monopoly created by it expires, too, and the right to make the article -- including the right to make it in precisely the shape it carried when patented -- passes to the public. *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 120-122 (1938); *Singer Mfg. Co. v. June Mfg. Co.*, 163 U.S. 169, 185 (1896).

writings but does not include published writings,
17 U. S. C. § 2.

n8 U.S. Const., Art. VI.

[***LEdHR4] [4]

n5 Patent rights exist only by virtue of statute. *Wheaton v. Peters*, 8 Pet. 591, 658 (1834).

n6 The Statute of Monopolies, 21 Jac. I, c. 3 (1623), declared all monopolies "contrary to the Laws of this Realm" and "utterly void and of none Effect." Section VI, however, excepted patents of 14 years to "the true and first Inventor and Inventors" of "new Manufactures" so long as they were "not contrary to the Law, nor mischievous to the State, by raising Prices of Commodities at home, or Hurt of Trade, or generally inconvenient" Much American patent law derives from English patent law. See *Pennock v. Dialogue*, 2 Pet. 1, 18 (1829).

[***LEdHR14] [14] [***LEdHR15] [15]
[***LEdHR16A] [16A] Thus the patent system is one in which uniform federal standards are carefully used to promote invention [*231] while at the same time preserving free competition. n7 Obviously a State could not, consistently with the Supremacy [**789] Clause [***667] of the Constitution, n8 extend the life of a patent beyond its expiration date or give a patent on an article which lacked the level of invention required for federal patents. To do either would run counter to the policy of Congress of granting patents only to true inventions, and then only for a limited time. Just as a State cannot encroach upon the federal patent laws directly, it cannot, under some other law, such as that forbidding unfair competition, give protection of a kind that clashes with the objectives of the federal patent laws.

n7 The purpose of Congress to have national uniformity in patent and copyright laws can be inferred from such statutes as that which vests exclusive jurisdiction to hear patent and copyright cases in federal courts, 28 U. S. C. § 1338 (a), and that section of the Copyright Act which expressly saves state protection of unpublished

[***LEdHR16B] [16B] [***LEdHR17] [17]
[***LEdHR18] [18] [***LEdHR19] [19] In the present case the "pole lamp" sold by Stiffel has been held not to be entitled to the protection of either a mechanical or a design patent. An unpatentable article, like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so. What Sears did was to copy Stiffel's design and to sell lamps almost identical to those sold by Stiffel. This it had every right to do under the federal patent laws. That Stiffel originated the pole lamp and made it popular is immaterial. "Sharing in the goodwill of an article unprotected by patent or trade-mark is the exercise of a right possessed by all -- and in the free exercise of which the consuming public is deeply interested." *Kellogg Co. v. National Biscuit Co.*, *supra*, 305 U.S., at 122. To allow a State by use of its law of unfair competition to prevent the copying of an article which represents [*232] too slight an advance to be patented would be to permit the State to block off from the public something which federal law has said belongs to the public. The result would be that while federal law grants only 14 or 17 years' protection to genuine inventions, see 35 U. S. C. §§ 154, 173, States could allow perpetual protection to articles too lacking in novelty to merit any patent at all under federal constitutional standards. This would be too great an encroachment on the federal patent system to be tolerated.

[***LEdHR20] [20] [***LEdHR21] [21] Sears has been held liable here for unfair competition because of a finding of likelihood of confusion based only on the fact that Sears' lamp was copied from Stiffel's unpatented lamp and that consequently the two looked exactly alike. Of course there could be "confusion" as to who had manufactured these nearly identical articles. But mere inability of the public to tell two identical articles apart is not enough to support an injunction against copying or an award of damages for copying that which the federal patent laws permit to be copied. Doubtless a State may, in appropriate circumstances, require that goods, whether patented or unpatented, be labeled or that other precautionary steps be taken to prevent customers from being misled as to the source, just as it may protect businesses in the use of their trademarks, labels, or distinctive dress

376 U.S. 225, *; 84 S. Ct. 784, **;
11 L. Ed. 2d 661, ***; 1964 U.S. LEXIS 2365

in the packaging of goods so as to prevent others, by imitating such markings, from misleading purchasers as to the source of the goods. n9 But because of the federal patent laws a State may not, [***668] when the article is unpatented and uncopyrighted, prohibit the [*233] copying of the article itself or award damages for such copying. Cf. *G. Ricordi & Co. v. Haendler*, 194 F.2d 914, 916 (C. A. 2d Cir. 1952). The judgment below did both and in so doing gave Stiffel the equivalent of a patent monopoly on its unpatented lamp. That was error, and Sears is entitled to a judgment in its favor.

[***LEdHR22] [22]

n9 It seems apparent that Illinois has not seen fit to impose liability on sellers who do not label their goods. Neither the discussions in the opinions below nor the briefs before us cite any Illinois statute or decision requiring labeling.

Reversed.

[For concurring opinion of MR. JUSTICE HARLAN, see *post*, p. 239.]

[*239contd] [**782contd]

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.] Mr. Justice Harlan's opinion was

published as part of the case *Compco Corp. v. Day-Brite Lightning, Inc.*, 376 U.S. 234, 84 S.Ct. 779.]

In one respect I would give the States more leeway in unfair competition "copying" [**783] cases than the Court's opinions would allow. If copying is found, other than by an inference arising from the mere act of copying, to have been undertaken with the dominant purpose and effect of palming off one's goods as those of another or of confusing customers as to the source of such goods, I see no reason why the State may not impose reasonable restrictions on the future "copying" itself. Vindication of the paramount federal interest at stake does not require a State to tolerate such specifically oriented predatory business practices. Apart from this, I am in accord with the opinions of the Court, and concur in both judgments since neither case presents the point on which I find myself in disagreement.

REFERENCES: Return To Full Text Opinion

Annotation References:

Rights and remedies (independently of patent laws) of one who makes an invention or discovery, or conceives an idea or plan, as against one who utilizes it industrially or commercially, or discloses it, or threatens to do so. 170 ALR 449.

10/1/64

LEXSEE 86 F.3D 1447

**PROCD, INCORPORATED, Plaintiff-Appellant, v. MATTHEW ZEIDENBERG
and SILKEN MOUNTAIN WEB SERVICES, INC., Defendants-Appellees.**

No. 96-1139

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

*86 F.3d 1447; 1996 U.S. App. LEXIS 14951; 39 U.S.P.Q.2D (BNA) 1161; Copy. L.
Rep. (CCH) P27,529; 29 U.C.C. Rep. Serv. 2d (Callaghan) 1109*

May 23, 1996, Argued

June 20, 1996, Decided

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Western District of Wisconsin. No. 95-C-0671-C. Barbara B. Crabb, Judge.

DISPOSITION: REVERSED AND REMANDED

COUNSEL: For PROCD, INCORPORATED, Plaintiff-Appellant: Michael J. Lawton, Kenneth B. Axe, LATHROP & CLARK, Madison, WI, USA. Thomas N. O'Connor, John T. Gutkoski, Lauren C. Parora, HALE & DORR, Boston, MA, USA.

For MATTHEW ZEIDENBERG, SILKEN MOUNTAIN WEB SERVICES, INCORPORATED, Defendants - Appellees: Keith Napolitano, Madison, WI, USA. David A. Austin, Madison, WI.

For INFORMATION INDUSTRY ASSOCIATION, AMERICAN MEDICAL ASSOCIATION, ASSOCIATION OF AMERICAN PUBLISHERS, Amicus Curiae: June M. Besek, Morton D. Goldberg, Jesse M. Feder, SCHWAB, GOLDBERG, PRICE & DANNAY, New York, NY.

For BUSINESS SOFTWARE ALLIANCE, Amicus Curiae: Christopher A. Meyer, Michael R. Klipper, MEYER & KLIPPER, Washington, DC.

For SOFTWARE PUBLISHERS ASSOCIATION, Amicus Curiae: Barry D. Weiss, Stuart Smith, Ronald Julian Palenski, GORDON & GLICKSON, Chicago, IL, USA. Kenneth A. Wasch, Mark Nebergall, SOFTWARE PUBLISHERS ASSOCIATION, INC., Washington, DC.

For AMERICAN COMMITTEE FOR INTEROPERABLE SYSTEMS, Amicus Curiae: Mark Alan Lemley, UNIVERSITY [**2] OF TEXAS

SCHOOL OF LAW, Austin, TX. Peter M.C. Choy, AMERICAN COMMITTEE FOR INTEROPERABLE SYSTEMS, Mountain View, CA.

JUDGES: Before COFFEY, FLAUM, and EASTERBROOK, Circuit Judges.

OPINION BY: EASTERBROOK

OPINION:

[*1448] EASTERBROOK, *Circuit Judge*. Must buyers of computer software obey the terms of shrink-wrap licenses? The [*1449] district court held not, for two reasons: first, they are not contracts because the licenses are inside the box rather than printed on the outside; second, federal law forbids enforcement even if the licenses are contracts. *908 F. Supp. 640 (W.D. Wis. 1996)*. The parties and numerous amici curiae have briefed many other issues, but these are the only two that matter--and we disagree with the district judge's conclusion on each. Shrinkwrap licenses are enforceable unless their terms are objectionable on grounds applicable to contracts in general (for example, if they violate a rule of positive law, or if they are unconscionable). Because no one argues that the terms of the license at issue here are troublesome, we remand with instructions to enter judgment for the plaintiff.

I

ProCD, the plaintiff, has compiled information from more than 3,000 telephone directories into a computer [**3] database. We may assume that this database cannot be copyrighted, although it is more complex, contains more information (nine-digit zip codes and census industrial codes), is organized differently, and therefore is more original than the single alphabetical directory at issue in *Feist Publications, Inc. v. Rural Telephone Ser-*

vice Co., 499 U.S. 340, 113 L. Ed. 2d 358, 111 S. Ct. 1282 (1991). See Paul J. Heald, *The Vices of Originality*, 1991 *Sup. Ct. Rev.* 143, 160-68. ProCD sells a version of the database, called SelectPhone (trademark), on CD-ROM discs. (CD-ROM means "compact disc--read only memory." The "shrinkwrap license" gets its name from the fact that retail software packages are covered in plastic or cellophane "shrinkwrap," and some vendors, though not ProCD, have written licenses that become effective as soon as the customer tears the wrapping from the package. Vendors prefer "end user license," but we use the more common term.) A proprietary method of compressing the data serves as effective encryption too. Customers decrypt and use the data with the aid of an application program that ProCD has written. This program, which is copyrighted, searches the database in response to users' criteria (such as [**4] "find all people named Tatum in Tennessee, plus all firms with 'Door Systems' in the corporate name"). The resulting lists (or, as ProCD prefers, "listings") can be read and manipulated by other software, such as word processing programs.

The database in SelectPhone (trademark) cost more than \$ 10 million to compile and is expensive to keep current. It is much more valuable to some users than to others. The combination of names, addresses, and sic codes enables manufacturers to compile lists of potential customers. Manufacturers and retailers pay high prices to specialized information intermediaries for such mailing lists; ProCD offers a potentially cheaper alternative. People with nothing to sell could use the database as a substitute for calling long distance information, or as a way to look up old friends who have moved to unknown towns, or just as a electronic substitute for the local phone book. ProCD decided to engage in price discrimination, selling its database to the general public for personal use at a low price (approximately \$ 150 for the set of five discs) while selling information to the trade for a higher price. It has adopted some intermediate strategies too: access [**5] to the SelectPhone (trademark) database is available via the America On-line service for the price America Online charges to its clients (approximately \$ 3 per hour), but this service has been tailored to be useful only to the general public.

If ProCD had to recover all of its costs and make a profit by charging a single price--that is, if it could not charge more to commercial users than to the general public--it would have to raise the price substantially over \$ 150. The ensuing reduction in sales would harm consumers, who value the information at, say, \$ 200. They get consumer surplus of \$ 50 under the current arrangement but would cease to buy if the price rose substantially. If because of high elasticity of demand in the consumer segment of the market the only way to make a profit

turned out to be a price attractive to commercial users alone, then all consumers would lose out--and so would the commercial clients, who would have to pay more for the listings because ProCD could not obtain any contribution toward costs from the consumer market.

[*1450] To make price discrimination work, however, the seller must be able to control arbitrage. An air carrier sells tickets for less to vacationers [**6] than to business travelers, using advance purchase and Saturday-night-stay requirements to distinguish the categories. A producer of movies segments the market by time, releasing first to theaters, then to pay-per-view services, next to the videotape and laserdisc market, and finally to cable and commercial tv. Vendors of computer software have a harder task. Anyone can walk into a retail store and buy a box. Customers do not wear tags saying "commercial user" or "consumer user." Anyway, even a commercial-user-detector at the door would not work, because a consumer could buy the software and resell to a commercial user. That arbitrage would break down the price discrimination and drive up the minimum price at which ProCD would sell to anyone.

Instead of tinkering with the product and letting users sort themselves--for example, furnishing current data at a high price that would be attractive only to commercial customers, and two-year-old data at a low price--ProCD turned to the institution of contract. Every box containing its consumer product declares that the software comes with restrictions stated in an enclosed license. This license, which is encoded on the CD-ROM disks as well [**7] as printed in the manual, and which appears on a user's screen every time the software runs, limits use of the application program and listings to non-commercial purposes.

Matthew Zeidenberg bought a consumer package of SelectPhone (trademark) in 1994 from a retail outlet in Madison, Wisconsin, but decided to ignore the license. He formed Silken Mountain Web Services, Inc., to resell the information in the SelectPhone (trademark) database. The corporation makes the database available on the Internet to anyone willing to pay its price--which, needless to say, is less than ProCD charges its commercial customers. Zeidenberg has purchased two additional SelectPhone (trademark) packages, each with an updated version of the database, and made the latest information available over the World Wide Web, for a price, through his corporation. ProCD filed this suit seeking an injunction against further dissemination that exceeds the rights specified in the licenses (identical in each of the three packages Zeidenberg purchased). The district court held the licenses ineffectual because their terms do not appear on the outside of the packages. The court added that the second and third licenses stand [**8] no different from the first, even though they are identical, because they

might have been different, and a purchaser does not agree to--and cannot be bound by--terms that were secret at the time of purchase. 908 F. Supp. at 654.

II

Following the district court, we treat the licenses as ordinary contracts accompanying the sale of products, and therefore as governed by the common law of contracts and the Uniform Commercial Code. Whether there are legal differences between "contracts" and "licenses" (which may matter under the copyright doctrine of first sale) is a subject for another day. See *Microsoft Corp. v. Harmony Computers & Electronics, Inc.*, 846 F. Supp. 208 (E.D. N.Y. 1994). Zeidenberg does not argue that Silken Mountain Web Services is free of any restrictions that apply to Zeidenberg himself, because any effort to treat the two parties as distinct would put Silken Mountain behind the eight ball on ProCD's argument that copying the application program onto its hard disk violates the copyright laws. Zeidenberg does argue, and the district court held, that placing the package of software on the shelf is an "offer," which the customer "accepts" by paying the asking price and leaving the store with the goods. *Peeters v. State*, 154 Wis. 111, 142 N.W. 181 (1913). In Wisconsin, as elsewhere, a contract includes only the terms on which the parties have agreed. One cannot agree to hidden terms, the judge concluded. So far, so good--but one of the terms to which Zeidenberg agreed by purchasing the software is that the transaction was subject to a license. Zeidenberg's position therefore must be that the printed terms on the outside of a box are the parties' contract--except for printed terms that refer to or incorporate other terms. But why would Wisconsin fetter the parties' choice in this [*1451] way? Vendors can put the entire terms of a contract on the outside of a box only by using microscopic type, removing other information that buyers might find more useful (such as what the software does, and on which computers it works), or both. The "Read Me" file included with most software, describing system requirements and potential incompatibilities, may be equivalent to ten pages of type; warranties and license restrictions take still more space. Notice on the outside, terms on the inside, and a right to return the software for a refund if the terms are [*10] unacceptable (a right that the license expressly extends), may be a means of doing business valuable to buyers and sellers alike. See E. Allan Farnsworth, 1 *Farnsworth on Contracts* § 4.26 (1990); *Restatement (2d) of Contracts* § 211 comment a (1981) ("Standardization of agreements serves many of the same functions as standardization of goods and services; both are essential to a system of mass production and distribution. Scarce and costly time and skill can be devoted to a class of transactions rather than the details of individual transactions."). Doubtless a state could forbid the use of stan-

dard contracts in the software business, but we do not think that Wisconsin has done so.

Transactions in which the exchange of money precedes the communication of detailed terms are common. Consider the purchase of insurance. The buyer goes to an agent, who explains the essentials (amount of coverage, number of years) and remits the premium to the home office, which sends back a policy. On the district judge's understanding, the terms of the policy are irrelevant because the insured paid before receiving them. Yet the device of payment, often with a "binder" (so that the insurance [*11] takes effect immediately even though the home office reserves the right to withdraw coverage later), in advance of the policy, serves buyers' interests by accelerating effectiveness and reducing transactions costs. Or consider the purchase of an airline ticket. The traveler calls the carrier or an agent, is quoted a price, reserves a seat, pays, and gets a ticket, in that order. The ticket contains elaborate terms, which the traveler can reject by canceling the reservation. To use the ticket is to accept the terms, even terms that in retrospect are disadvantageous. See *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 113 L. Ed. 2d 622, 111 S. Ct. 1522 (1991); see also *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 132 L. Ed. 2d 462, 115 S. Ct. 2322 (1995) (bills of lading). Just so with a ticket to a concert. The back of the ticket states that the patron promises not to record the concert; to attend is to agree. A theater that detects a violation will confiscate the tape and escort the violator to the exit. One could arrange things so that every concert-goer signs this promise before forking over the money, but that cumbersome way of doing things not only would lengthen queues and raise prices but also would scotch the [*12] sale of tickets by phone or electronic data service.

Consumer goods work the same way. Someone who wants to buy a radio set visits a store, pays, and walks out with a box. Inside the box is a leaflet containing some terms, the most important of which usually is the warranty, read for the first time in the comfort of home. By Zeidenberg's lights, the warranty in the box is irrelevant; every consumer gets the standard warranty implied by the UCC in the event the contract is silent; yet so far as we are aware no state disregards warranties furnished with consumer products. Drugs come with a list of ingredients on the outside and an elaborate package insert on the inside. The package insert describes drug interactions, contraindications, and other vital information--but, if Zeidenberg is right, the purchaser need not read the package insert, because it is not part of the contract.

Next consider the software industry itself. Only a minority of sales take place over the counter, where there are boxes to peruse. A customer pay place an order by phone in response to a line item in a catalog or a review

in a magazine. Much software is ordered over the Internet by purchasers who have never [**13] seen a box. Increasingly software arrives by wire. There is no box; there is only a stream of electrons, a collection of information that includes data, an application program, instructions, many limitations ("MegaPixel 3.14159 cannot be used with Byte-Pusher 2.718"), and the terms of [*1452] sale. The user purchases a serial number, which activates the software's features. On Zeidenberg's arguments, these unboxed sales are unfettered by terms--so the seller has made a broad warranty and must pay consequential damages for any shortfalls in performance, two "promises" that if taken seriously would drive prices through the ceiling or return transactions to the horse-and-buggy age.

According to the district court, the UCC does not countenance the sequence of money now, terms later. (Wisconsin's version of the UCC does not differ from the Official Version in any material respect, so we use the regular numbering system. *Wis. Stat. § 402.201* corresponds to *UCC § 2-201*, and other citations are easy to derive.) One of the court's reasons--that by proposing as part of the draft Article 2B a new *UCC § 2-2203* that would explicitly validate standard-form user licenses, the American Law Institute and [**14] the National Conference of Commissioners on Uniform Laws have conceded the invalidity of shrinkwrap licenses under current law, see *908 F. Supp. at 655-66*--depends on a faulty inference. To propose a change in a law's text is not necessarily to propose a change in the law's effect. New words may be designed to fortify the current rule with a more precise text that curtails uncertainty. To judge by the flux of law review articles discussing shrinkwrap licenses, uncertainty is much in need of reduction--although businesses seem to feel less uncertainty than do scholars, for only three cases (other than ours) touch on the subject, and none directly addresses it. See *Step-Saver Data Systems, Inc. v. Wyse Technology*, 939 F.2d 91 (3d Cir. 1991); *Vault Corp. v. Quaid Software Ltd.*, 847 F.2d 255, 268-70 (5th Cir. 1988); *Arizona Retail Systems, Inc. v. Software Link, Inc.*, 831 F. Supp. 759 (D. Ariz. 1993). As their titles suggest, these are not consumer transactions. *Step-Saver* is a battle-of-the-forms case, in which the parties exchange incompatible forms and a court must decide which prevails. See *Northrop Corp. v. Litronic Industries*, 29 F.3d 1173 (7th Cir. 1994) [**15] (Illinois law); Douglas G. Baird & Robert Weisberg, *Rules, Standards, and the Battle of the Forms: A Reassessment of § 2-207*, 68 *Va. L. Rev.* 1217, 1227-31 (1982). Our case has only one form; *UCC § 2-207* is irrelevant. *Vault* holds that Louisiana's special shrinkwrap-license statute is preempted by federal law, a question to which we return. And *Arizona Retail Systems* did not reach the question, because the court found that the

buyer knew the terms of the license before purchasing the software.

What then does the current version of the UCC have to say? We think that the place to start is § 2-204(1): "A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract." A vendor, as master of the offer, may invite acceptance by conduct, and may propose limitations on the kind of conduct that constitutes acceptance. A buyer may accept by performing the acts the vendor proposes to treat as acceptance. And that is what happened. ProCD proposed a contract that a buyer would accept by using the software after having an opportunity to read the license at leisure. This Zeidenberg [**16] did. He had no choice, because the software splashed the license on the screen and would not let him proceed without indicating acceptance. So although the district judge was right to say that a contract can be, and often is, formed simply by paying the price and walking out of the store, the UCC permits contracts to be formed in other ways. ProCD proposed such a different way, and without protest Zeidenberg agreed. Ours is not a case in which a consumer opens a package to find an insert saying "you owe us an extra \$ 10,000" and the seller files suit to collect. Any buyer finding such a demand can prevent formation of the contract by returning the package, as can any consumer who concludes that the terms of the license make the software worth less than the purchase price. Nothing in the UCC requires a seller to maximize the buyer's net gains.

Section 2-606, which defines "acceptance of goods", reinforces this understanding. A buyer accepts goods under § 2-606(1)(b) when, after an opportunity to inspect, he fails to make an effective rejection under § 2-602(1). ProCD extended an opportunity to reject if a buyer should find the license terms [*1453] unsatisfactory; Zeidenberg inspected the [**17] package, tried out the software, learned of the license, and did not reject the goods. We refer to § 2-606 only to show that the opportunity to return goods can be important; acceptance of an offer differs from acceptance of goods after delivery, see *Gillen v. Atlanta Systems, Inc.*, 997 F.2d 280, 284 n.1 (7th Cir. 1993); but the UCC consistently permits the parties to structure their relations so that the buyer has a chance to make a final decision after a detailed review.

Some portions of the UCC impose additional requirements on the way parties agree on terms. A disclaimer of the implied warranty of merchantability must be "conspicuous." *UCC § 2-316(2)*, incorporating *UCC § 1-201(10)*. Promises to make firm offers, or to negate oral modifications, must be "separately signed." *UCC §§ 2-205, 2-206(2)*. These special provisos reinforce the impression that, so far as the UCC is concerned, other

terms may be as inconspicuous as the forum-selection clause on the back of the cruise ship ticket in *Carnival Lines*. Zeidenberg has not located any Wisconsin case--for that matter, any case in any state--holding that under the UCC the ordinary terms found in shrinkwrap licenses require [**18] any special prominence, or otherwise are to be undercut rather than enforced. In the end, the terms of the license are conceptually identical to the contents of the package. Just as no court would dream of saying that SelectPhone (trademark) must contain 3,100 phone books rather than 3,000, or must have data no more than 30 days old, or must sell for \$ 100 rather than \$ 150--although any of these changes would be welcomed by the customer, if all other things were held constant--so, we believe, Wisconsin would not let the buyer pick and choose among terms. Terms of use are no less a part of "the product" than are the size of the database and the speed with which the software compiles listings. Competition among vendors, not judicial revision of a package's contents, is how consumers are protected in a market economy. *Digital Equipment Corp. v. Uniq Digital Technologies, Inc.*, 73 F.3d 756 (7th Cir. 1996). ProCD has rivals, which may elect to compete by offering superior software, monthly updates, improved terms of use, lower price, or a better compromise among these elements. As we stressed above, adjusting terms in buyers' favor might help Matthew Zeidenberg today (he already has [**19] the software) but would lead to a response, such as a higher price, that might make consumers as a whole worse off.

III

The district court held that, even if Wisconsin treats shrinkwrap licenses as contracts, § 301(a) of the Copyright Act, 17 U.S.C. § 301(a), prevents their enforcement. 908 F. Supp. at 656-59. The relevant part of § 301(a) preempts any "legal or equitable rights [under state law] that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103". ProCD's software and data are "fixed in a tangible medium of expression", and the district judge held that they are "within the subject matter of copyright". The latter conclusion is plainly right for the copyrighted application program, and the judge thought that the data likewise are "within the subject matter of copyright" even if, after *Feist*, they are not sufficiently original to be copyrighted. 908 F. Supp. at 656-57. *Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n*, 805 F.2d 663; [**20] 676 (7th Cir. 1986), supports that conclusion, with which commentators agree. E.g., Paul Goldstein, III *Copyright* § 15.2.3 (2d ed. 1996); Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* §

101[B] (1995); William F. Patry, II *Copyright Law and Practice* 1108-09 (1994). One function of § 301(a) is to prevent states from giving special protection to works of authorship that Congress has decided should be in the public domain, which it can accomplish only if "subject matter of copyright" includes all works of a type covered by sections 102 and 103, even if federal law does not afford protection to them. Cf. *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 103 L. Ed. 2d 118, 109 S. Ct. 971 (1989) (same principle under patent laws).

[*1454] But are rights created by contract "equivalent to any of the exclusive rights within the general scope of copyright"? Three courts of appeals have answered "no." *National Car Rental Systems, Inc. v. Computer Associates International, Inc.*, 991 F.2d 426, 433 (8th Cir. 1992); *Taquino v. Teledyne Monarch Rubber*, 893 F.2d 1488, 1501 (5th Cir. 1990); *Acorn Structures, Inc. v. Swantz*, 846 F.2d 923, 926 (4th Cir. 1988). The district court disagreed [**21] with these decisions, 908 F. Supp. at 658, but we think them sound. Rights "equivalent to any of the exclusive rights within the general scope of copyright" are rights established by law--rights that restrict the options of persons who are strangers to the author. Copyright law forbids duplication, public performance, and so on, unless the person wishing to copy or perform the work gets permission; silence means a ban on copying. A copyright is a right against the world. Contracts, by contrast, generally affect only their parties; strangers may do as they please, so contracts do not create "exclusive rights." Someone who found a copy of SelectPhone (trademark) on the street would not be affected by the shrinkwrap license--though the federal copyright laws of their own force would limit the finder's ability to copy or transmit the application program.

Think for a moment about trade secrets. One common trade secret is a customer list. After *Feist*, a simple alphabetical list of a firm's customers, with address and telephone numbers, could not be protected by copyright. Yet *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 40 L. Ed. 2d 315, 94 S. Ct. 1879 (1974), holds that contracts about trade secrets may be [**22] enforced--precisely because they do not affect strangers' ability to discover and use the information independently. If the amendment of § 301(a) in 1976 overruled *Kewanee* and abolished consensual protection of those trade secrets that cannot be copyrighted, no one has noticed--though abolition is a logical consequence of the district court's approach. Think, too, about everyday transactions in intellectual property. A customer visits a video store and rents a copy of *Night of the Lepus*. The customer's contract with the store limits use of the tape to home viewing and requires its return in two days. May the customer keep the tape,

on the ground that § 301(a) makes the promise unenforceable?

A law student uses the LEXIS database, containing public-domain documents, under a contract limiting the results to educational endeavors; may the student resell his access to this database to a law firm from which LEXIS seeks to collect a much higher hourly rate? Suppose ProCD hires a firm to scour the nation for telephone directories, promising to pay \$ 100 for each that ProCD does not already have. The firm locates 100 new directories, which it sends to ProCD with an invoice for [**23] \$ 10,000. ProCD incorporates the directories into its database; does it have to pay the bill? Surely yes; *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 59 L. Ed. 2d 296, 99 S. Ct. 1096 (1979), holds that promises to pay for intellectual property may be enforced even though federal law (in *Aronson*, the patent law) offers no protection against third-party uses of that property. See also *Kennedy v. Wright*, 851 F.2d 963 (7th Cir. 1988). But these illustrations are what our case is about. ProCD offers software and data for two prices: one for personal use, a higher price for commercial use. Zeidenberg wants to use the data without paying the seller's price; if the law student and Quick Point Pencil Co. could not do that, neither can Zeidenberg.

Although Congress possesses power to preempt even the enforcement of contracts about intellectual property--or railroads, on which see *Norfolk & Western Ry. v. Train Dispatchers*, 499 U.S. 117, 111 S. Ct. 1156, 113 L. Ed. 2d 95 (1991)--courts usually read preemption clauses to leave private contracts unaffected. *American Airlines, Inc. v. Wolens*, 130 L. Ed. 2d 715, 115 S. Ct. 817 (1995), provides a nice illustration. A federal statute preempts any state "law, rule, regulation, standard, or other provision . . . relating [**24] to rates, routes, or services of any air carrier." 49 U.S.C. App. § 1305(a)(1). Does such a law preempt the law of contracts--so that, for example, an air carrier need not honor a quoted price (or a contract to reduce the price by the value of frequent flyer miles)? The Court allowed that it is possible to read the statute that [*1455] broadly but thought such an interpretation would make little sense. Terms and conditions offered by contract reflect private ordering, essential to the efficient functioning of markets. 115 S. Ct. at 824-25. Although some principles that carry the name of

contract law are designed to defeat rather than implement consensual transactions, *id.* at 826 n.8, the rules that respect private choice are not preempted by a clause such as § 1305(a)(1). Section 301(a) plays a role similar to § 1301(a)(1): it prevents states from substituting their own regulatory systems for those of the national government. Just as § 301(a) does not itself interfere with private transactions in intellectual property, so it does not prevent states from respecting those transactions. Like the Supreme Court in *Wolens*, we think it prudent to refrain from adopting a rule that anything [**25] with the label "contract" is necessarily outside the preemption clause: the variations and possibilities are too numerous to foresee. *National Car Rental* likewise recognizes the possibility that some applications of the law of contract could interfere with the attainment of national objectives and therefore come within the domain of § 301(a). But general enforcement of shrinkwrap licenses of the kind before us does not create such interference.

Aronson emphasized that enforcement of the contract between *Aronson* and Quick Point Pencil Company would not withdraw any information from the public domain. That is equally true of the contract between ProCD and Zeidenberg. Everyone remains free to copy and disseminate all 3,000 telephone books that have been incorporated into ProCD's database. Anyone can add sic codes and zip codes. ProCD's rivals have done so. Enforcement of the shrinkwrap license may even make information more readily available, by reducing the price ProCD charges to consumer buyers. To the extent licenses facilitate distribution of object code while concealing the source code (the point of a clause forbidding disassembly), they serve the same procompetitive functions [**26] as does the law of trade secrets. *Rockwell Graphic Systems, Inc. v. DEV Industries, Inc.*, 925 F.2d 174, 180 (7th Cir. 1991). Licenses may have other benefits for consumers: many licenses permit users to make extra copies, to use the software on multiple computers, even to incorporate the software into the user's products. But whether a particular license is generous or restrictive, a simple two-party contract is not "equivalent to any of the exclusive rights within the general scope of copyright" and therefore may be enforced.

REVERSED AND REMANDED

11/11/95 10:00 AM

LEXSEE 489 U.S. 141

BONITO BOATS, INC. v. THUNDER CRAFT BOATS, INC.

No. 87-1346

SUPREME COURT OF THE UNITED STATES

489 U.S. 141; 109 S. Ct. 971; 103 L. Ed. 2d 118; 1989 U.S. LEXIS 629; 57
U.S.L.W. 4205; 9 U.S.P.Q.2D (BNA) 1847

December 5, 1988, Argued
February 21, 1989, Decided

PRIOR HISTORY:

CERTIORARI TO THE SUPREME COURT OF
FLORIDA.

DISPOSITION:

515 So. 2d 220, affirmed.

DECISION:

Florida statute prohibiting use of "direct molding process" to duplicate unpatented boat hulls, held to be pre-empted, under supremacy clause (Art VI, cl 2), by operation of federal patent system.

SUMMARY:

Beginning in 1976, a Florida corporation marketed a commercially successful, fiberglass, recreational boat for which the corporation had developed the hull design, although apparently no federal patent application was ever filed for the protection of (1) the utilitarian or design aspects of the hull, or (2) the process by which the hull was manufactured. In 1984, the Florida corporation filed an action against a Tennessee corporation in the Circuit Court of Orange County, Florida, for an injunction, an accounting of profits, damages, and attorney's fees, under a 1983 Florida statute which made it unlawful, without the consent of the manufacturer, to use the "direct molding process"--a form of reverse engineering--to duplicate for the purpose of sale any manufactured vessel hull or component part thereof, or knowingly to sell any such duplicates. The Circuit Court, however, granted the Tennessee corporation's motion to dismiss, on the ground that the Florida statute conflicted with the federal patent law and was thus invalid, under the Federal Constitution's supremacy clause (Art VI, cl 2). On appeal, the Circuit Court's decision was successively upheld, on essentially the same grounds, by the Florida

District Court of Appeal, Fifth District (487 So 2d 395), and the Florida Supreme Court (515 So 2d 220).

On certiorari, the United States Supreme Court affirmed. In an opinion by O'Connor, J., expressing the unanimous view of the court, it was held that, under the Federal Constitution's supremacy clause, the operation of the federal patent system pre-empted the Florida statute, because the Florida statute, by offering patent-like protection for ideas deemed unprotected under the federal scheme, substantially restricted the public's ability to exploit unpatented designs in general circulation and thus conflicted with the strong federal policy favoring free competition in ideas which do not merit patent protection.

LAWYERS' EDITION HEADNOTES:

[**LEdHN1]

COPYRIGHT AND LITERARY PROPERTY §3
PATENTS §4

state prohibition on use of process to duplicate boat hulls -- federal pre-emption -- protections -- policy --
Headnote:[1A][1B][1C][1D][1E][1F][1G]

Under the supremacy clause (Art VI, cl 2) of the United States Constitution, the operation of the federal patent system pre-empts a state statute which makes it unlawful, without the consent of the manufacturer, to use the "direct molding process"--a form of reverse engineering--to duplicate for the purpose of sale any manufactured vessel hull or component part thereof, or knowingly to sell any such duplicates, because the state statute, by offering patent-like protection for ideas deemed unprotected under the federal scheme, substantially restricts the public's ability to exploit unpatented designs in general circulation and thus conflicts with the strong federal policy favoring free competition in ideas which do not merit patent protection, for (1) a beneficiary of the state statute,

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

like a federal patentee, may prevent a competitor from (a) making the product in what is apparently the most efficient manner available, and (b) selling the product when it is produced in that fashion; (2) contrary to the careful federal protections of high standards of innovation and limited monopoly, the state statute offers protection for an unlimited number of years to all boat hulls and their component parts, without regard to (a) their ornamental or technological merits, or (b) any requirement of novelty or nonobviousness in either the end product or the process by which it is created; (3) the state statute provides protection for subject matter for which federal patent protection has been denied or has expired, as well as for designs which have been freely revealed to the consuming public by their creators; and (4) Congress (a) has refused to extend various forms of limited protection to industrial design through the copyright laws (*17 USCS 101*), and (b) has declined to relax the restrictions on the availability of federal design patents.

[***LEdHN2]
PATENTS §1
balance --
Headnote:[2]

The Federal Constitution's patent clause (Art I, 8, cl 8) reflects a balance between (1) the need to encourage innovation, and (2) the avoidance of monopolies which stifle competition without any concomitant advance in the progress of science and the useful arts.

[***LEdHN3]
PATENTS §2
power of Congress -- duration --
Headnote:[3]

The Federal Constitution's patent clause (Art I, 8, cl 8) contains both a grant of power to Congress and certain limitations on the exercise of that power; Congress may not create patent monopolies of unlimited duration, nor may Congress authorize the issuance of patents whose effects are to remove existent knowledge from the public domain or to restrict free access to materials already available.

[***LEdHN4]
PATENTS §29
design --
Headnote:[4]

To qualify for federal design patent protection under *35 USCS 171*, a design must (1) present an aesthetically pleasing appearance that is not dictated by function alone, and (2) satisfy the other criteria of patentability.

[***LEdHN5]
PATENTS §57
novelty -- prior knowledge --
Headnote:[5A].5B]

The novelty requirements of *35 USCS 102(a)* and *102(b)* (1) operate in tandem to exclude from consideration for federal patent protection knowledge which is already available to the public, and (2) express a congressional determination that the creation of a monopoly in such information would not only serve no useful purpose, but would in fact injure the public by removing existing knowledge from public use.

[***LEdHN6]
PATENTS §5
property -- dedication -- condition --
Headnote:[6]

The federal patent scheme creates a limited opportunity to obtain a property right in an idea; once an inventor has decided to lift the veil of secrecy from the inventor's work, the inventor must choose between the protection of a federal patent and the dedication of the inventor's idea to the public at large; thus, it is a condition upon the inventor's right to a patent that the inventor will not display the inventor's discovery competitively after the discovery is ready for patenting; the inventor must content himself or herself with either secrecy or legal monopoly.

[***LEdHN7]
PATENTS §19.1
novelty -- nonobviousness -- prior knowledge -- combinations --
Headnote:[7]

35 USCS 103 codifies the judicially developed nonobviousness requirement that, even if a particular combination of elements is "novel" in the literal sense of the term, the combination will not qualify for federal patent protection if the combination's contours are so traced by the existing technology in the field that the improvement is the work of the skillful mechanic, not that of the inventor; the nonobviousness requirement extends the field of unpatentable material beyond that which is known to the public, under the novelty requirements of *35 USCS 102*, to include that which could readily be deduced from publicly available material by a person of ordinary skill in the pertinent field of endeavor; taken together, the novelty and nonobviousness requirements express a congressional determination that the purposes behind the Federal Constitution's patent clause (Art I, 8, cl 8) are best served by free competition and exploitation of that which (1) is either already available to the public, or (2) may be readily discerned from publicly available material.

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

[***LEdHN8]

PATENTS §5

duration -- rights -- after expiration --

Headnote:[8]

The federal patent system embodies a carefully crafted bargain for encouraging the creation and disclosure of new, useful, and nonobvious advances in technology and design in return for the exclusive right to practice the invention for a period of years; an inventor may keep an invention secret and reap its fruits indefinitely, but, in consideration of the invention's disclosure and the consequent benefit to the community, a patent is granted, pursuant to which an exclusive enjoyment is guaranteed the inventor for 17 years, under 35 USCS 112, 154; upon expiration of that period, the knowledge of the invention inures to the people, who are thus enabled without restriction to practice it and to profit by its use.

[***LEdHN9]

PATENTS §1

general rule -- novelty -- nonobviousness --

Headnote:[9]

The novelty and nonobviousness requirements of federal patentability (35 USCS 102, 103) embody a congressional understanding, implicit in the Federal Constitution's patent clause (Art I, 8, cl 8), that free exploitation of ideas will be the rule, to which the protection of a federal patent is the exception.

[***LEdHN10]

PATENTS §4

purpose --

Headnote:[10]

The ultimate goal of the federal patent system is to bring new designs and technologies into the public domain through disclosure.

[***LEdHN11]

PATENTS §9

power of states --

Headnote:[11A][11B]

State law protection for techniques and designs whose disclosure has already been induced by market rewards under the federal patent system may conflict with the very purpose of the patent laws by decreasing the range of ideas available as the building blocks of further innovation; thus, state regulation of intellectual property must yield to the extent that state law clashes with a balance struck by Congress in federal patent laws; where it is clear how the federal patent laws strike the balance be-

tween the desire to freely exploit the full potential of inventive resources and the need to create an incentive to deploy those resources, that is not a judgment the states may second-guess.

[***LEdHN12]

PATENTS §9

rights after expiration -- states --

Headnote:[12]

On the expiration of a federal patent, the monopoly created by it ceases to exist, and the right to make the thing formerly covered by the patent becomes public property; the states cannot, where the public has paid the congressionally mandated price for disclosure, render the exchange fruitless by offering patent-like protection to the subject matter of the expired patent.

[***LEdHN13]

PATENTS §9

RESTRAINTS OF TRADE, MONOPOLIES, AND UNFAIR TRADE PRACTICES §95

state regulation -- consumer confusion -- designs --

Headnote:[13A][13B]

States may protect businesses in the use of their trademarks, labels, or distinctive dress in the packaging of goods so as to prevent others, by imitating such marking, from misleading purchasers as to the source of the goods; even though trade dress is potentially the subject matter of federal design patents, the states may place limited regulations on the circumstances in which such designs are used in order to prevent consumer confusion as to the source, even when such designs are unpatented; such a design result indicates an implicit recognition that all state regulation of potentially patentable but unpatented subject matter is not automatically pre-empted by the federal patent laws; thus, the fact that a particular item lies within the subject matter of the federal patent laws does not necessarily preclude the states from offering limited protection which does not impermissibly interfere with the federal patent scheme.

[***LEdHN14]

PRIVACY §1

right --

Headnote:[14]

A most fundamental human right, that of privacy, is threatened when industrial espionage is condoned or made profitable.

[***LEdHN15]

PATENTS §4

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

state protection -- operation and goal of federal system -
- novelty -- nonobviousness --
Headnote:[15]

Even under a pragmatic approach to the scope of federal pre-emption, under the Federal Constitution's supremacy clause (Art VI, cl 2), the states may not offer patent-like protection to intellectual creations which would otherwise remain unprotected as a matter of federal law, because (1) the efficient operation of the federal patent system depends upon a substantially free trade in publicly known, unpatented design and utilitarian conceptions, so that ideas once placed before the public without the protection of a valid patent are subject to appropriation without significant restraint; (2) both the novelty and nonobviousness requirements of federal patent law (35 USCS 102, 103) are grounded in the notion that concepts within the public grasp, or those so obvious that they could readily be, (a) are the tools of creation available to all, and (b) provide the baseline of free competition upon which the patent system's incentive to creative effort depends; (3) a state law that substantially interferes with the enjoyment of an unpatented utilitarian or design conception which has been freely disclosed by its author to the public at large impermissibly contravenes the ultimate goal of public disclosure and use which is the centerpiece of federal patent policy; and (4) through the creation of patent-like rights, the states could essentially redirect inventive efforts away from the careful criteria of patentability developed by Congress over 200 years.

[***LEdHN16]

PATENTS §9
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §95
STATUTES §102
state regulation -- unfair competition --
Headnote:[16A][16B]

With respect to a state statute which makes it unlawful, without the consent of a manufacturer, to use the "direct molding process"--a form of reverse engineering--to duplicate for the purpose of sale, or knowingly to sell, any manufactured vessel or knowingly to sell any such duplicates, the state statute does not operate to prohibit unfair competition in the usual sense that that term is understood, because the state statute, in contrast to the operation of unfair competition law, is aimed directly at preventing the exploitation of the design and utilitarian conceptions embodied in the product itself, where (1) the sparse legislative history surrounding the state statute's enactment indicates that the statute was intended to create an inducement for the improvement of boat hull designs; and (2) the state statute, in order to accomplish this goal, endows the original boat hull manufacturer with

rights against the world similar in scope and operation to the rights accorded a federal patentee.

[***LEdHN17]

PROPERTY AND PROPERTY RIGHTS §2
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §94
unfair competition --
Headnote:[17]

The law of unfair competition, which has its roots in the common-law tort of deceit, has a general concern with protecting consumers from confusion as to source; while the law's concern may result in the creation of quasi-property rights in communicative symbols, the focus is on the protection of consumers, not the protection of producers as an incentive to product innovation.

[***LEdHN18]

RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §98
what constitutes unfair competition --
Headnote:[18]

With some exceptions, the protection granted a particular design, under the law of unfair competition, is limited to one context in which consumer confusion is likely to result--protection against the copying of nonfunctional aspects of consumer products which have acquired a secondary meaning such that they operate as a designation of source; the design idea itself, however, may be freely exploited in all other contexts.

[***LEdHN19]

PATENTS §19.1
product of process -- novelty -- nonobviousness --
Headnote:[19A][19B]

With respect to a "product-by-process" federal patent, under which the product is defined at least in part in terms of the method or process by which the product is made, as long as the end product of the process is adequately defined and novel and nonobvious, a patent in the process may support a patent in the resulting product.

[***LEdHN20]

PATENTS §72
what constitutes prior use -- effect --
Headnote:[20]

Under 35 USCS 102(b), which generally prohibits the patentability of an invention which was in public use or on sale in the United States more than 1 year prior to the date of application for the patent in the United States, a fiberglass boat hull which has been freely exposed to

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

the public for a period in excess of 6 years (1) is unpatented and unpatentable; and (2) thus, stands in the same stead, for purposes of federal law, as an item for which a patent has expired or been denied.

[**LEdHN21]
PATENTS §1
common good --
Headnote:[21]

It is a federal policy that all ideas in general circulation be dedicated to the common good unless they are protected by a valid patent.

[**LEdHN22]
PATENTS §5
PROPERTY AND PROPERTY RIGHTS §6
RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §98
state regulation -- rights of patent holder -- unfair competition -- trade secrets --
Headnote:[22]

With respect to a state statute which makes it unlawful, without the consent of the manufacturer, to use the "direct molding process" to duplicate for the purpose of sale any manufactured vessel hull or component part thereof, or knowingly to sell any such duplicates, the fact that the state statute does not remove all means of reproduction and sale does not eliminate the state statute's conflict with the federal patent scheme, for (1) in essence, the state statute prohibits the entire public from engaging in a form of reverse engineering of a product in the public domain, a right which is vested in a federal patent holder, but has never been part of state protection under the law of unfair competition or trade secrets; (2) such reverse-engineering duplication of boat hulls may (a) be an essential part of innovation in the field of aquadynamic design, and (b) act as a spur to an inventor to develop inventions which meet the rigorous requirements of patentability; (3) while state trade secret law may dovetail with federal patent law during the developmental period when the protections of state trade secret law are most effective and patentability is an uncertain prospect, a would-be inventor, under the state statute, is aware at the outset of the inventor's efforts that rights against the public are available regardless of the inventor's ability to satisfy the rigorous standards of patentability; (4) even the most mundane and obvious changes in the design of a boat hull trigger the protections of the state statute; and (5) the prospect of all 50 states establishing similar protections for preferred industries without the rigorous requirements of patentability prescribed by Congress could pose a substantial threat to the patent system's ability to

accomplish its mission of promoting progress in the useful arts.

[**LEdHN23]
APPEAL §228
COURTS §724
PATENTS §4
state regulation -- federal purpose -- exclusive federal jurisdiction -- property --
Headnote:[23A][23B]

The federal purpose of nationwide uniformity in patent law--as evidenced by Congress' grants of exclusive jurisdiction to (1) the federal courts of actions arising under the patent laws (28 USCS 1338), and (2) the United States Court of Appeals for the Federal Circuit of all patent appeals (28 USCS 1295)--is frustrated by a state boat hull statute which blurs the clear federal demarcation between public and private property, by rendering uncertain the status of the design and utilitarian ideas embodied in the boat hulls protected by the state statute, where the statute makes it unlawful, without the consent of the manufacturer, to use the "direct molding process"--a form of reverse engineering--to duplicate for the purpose of sale any manufactured vessel hull or component part thereof, or knowingly to sell any such duplicates; given the inherently ephemeral nature of property in ideas, and the great power such property has to cause harm to the competitive policies which underlay the federal patent laws, the demarcation of broad zones of public and private right is the type of regulation that demands a uniform national rule, in order to prevent a state from effectively insulating favored home industries from competition from outside the state.

[**LEdHN24]
PATENTS §98
notice -- application -- defense to infringement action --
Headnote:[24]

The federal patent system provides a basis for the public to ascertain the status of the intellectual property embodied in any object in general circulation, where (1) through the application process of 35 USCS 111-114, detailed information concerning the claims of a federal patent holder is compiled in a central location, and (2) under 35 USCS 287, the availability of damages in a patent infringement action is made contingent on affixing a notice of patent to the protected article; the notice requirement (1) is designed for the information of the public, and (2) provides a ready means of discerning the status of the intellectual property embodied in an article of manufacture or design; the public may rely upon the lack of notice in exploiting shapes and designs accessible to all.

[**LEdHN25]
COPYRIGHT AND LITERARY PROPERTY §1
PATENTS §4
purpose --
Headnote:[25]

One of the fundamental purposes behind the Federal Constitution's patent and copyright clauses (Art I, 8, cl 8) is to promote national uniformity in the realm of intellectual property.

[**LEdHN26]
PATENTS §5
state protection -- federal rights -- expiration --
Headnote:[26]

The federal patent system protects more than the right of the public to contemplate the abstract beauty of an otherwise unprotected intellectual creation and assures the creation's efficient reduction to practice and sale in the marketplace, for it is difficult to conceive of a more effective method of creating substantial property rights in an intellectual creation than to eliminate the most efficient method for the creation's exploitation; appending the conclusionary label "unscrupulous" to such competitive behavior merely endorses a policy judgment which the patent laws do not leave the states free to make; where an item in general circulation is unprotected by patent, reproduction of a functional attribute is a legitimate competitive activity, for the federal patent laws create a right to copy and to use, in the cases of expired patents and potentially patentable ideas which are fully exposed to the public; the states are not free in this regard to offer equivalent protections to ideas which Congress has determined should belong to all.

[**LEdHN27]
COPYRIGHT AND LITERARY PROPERTY §1
PATENTS §9
state protection --
Headnote:[27]

The Federal Constitution's patent and copyright clauses (Art I, 8, cl 8) do not, by their own force or by negative implication, deprive the states of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions; thus, where Congress determines that neither federal protection nor freedom from restraint is required by the national interest, the states remain free to promote originality and creativity in their own domains.

[**LEdHN28]
PATENTS §9
PROPERTY AND PROPERTY RIGHTS §6

RESTRAINTS OF TRADE, MONOPOLIES, AND
UNFAIR TRADE PRACTICES §95
state prohibition -- unfair competition -- trade secrets --
Headnote:[28A][28B]

For purposes of determining whether there is pre-emption, under the Federal Constitution's supremacy clause (Art VI, cl 2), of state law by the federal patent system, a conclusion of longstanding co-existence of federal patent law and state law without congressional disapproval--as in the fields of unfair competition and trade secret protection--cannot be reached with respect to a 1983 state boat hull statute which offers protection beyond that available under the law of unfair competition or trade secret, without any showing of consumer confusion, or breach of trust or secrecy, where the state statute makes it unlawful, without the consent of the manufacturer, to use the "direct molding process"--a form of reverse engineering--to duplicate for the purpose of sale any manufactured vessel hull or component part thereof, or knowingly to sell any such duplicates.

[**LEdHN29]
STATES, TERRITORIES, AND POSSESSIONS §22
federal pre-emption -- tests --
Headnote:[29]

The case for federal pre-emption is particularly weak where Congress (1) has indicated its awareness of the operation of state law in a field of federal interest, and (2) has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.

[**LEdHN30]
PATENTS §9
power of states --
Headnote:[30]

The federal patent statute's careful balance between public right and private monopoly to promote certain creative activity is a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it.

[**LEdHN31]
PATENTS §2
designs -- Congress --
Headnote:[31]

It is for Congress to determine whether the present system of federal design and utility patents is ineffectual in promoting the useful arts in the context of industrial design.

SYLLABUS:

Petitioner developed a hull design for a fiberglass recreational boat that it marketed under the trade name Bonito Boat Model 5VBR. The manufacturing process involved creating a hardwood model that was then sprayed with fiberglass to create a mold. The mold then served to produce the finished fiberglass boats for sale. No patent application was filed to protect the utilitarian or design aspects of the hull or the manufacturing process by which the finished boats were produced. After the Bonito 5VBR had been on the market for six years, the Florida Legislature enacted a statute that prohibits the use of a direct molding process to duplicate unpatented boat hulls, and forbids the knowing sale of hulls so duplicated. Petitioner subsequently filed an action in a Florida Circuit Court, alleging that respondent had violated the statute by using the direct molding process to duplicate the Bonito 5VBR fiberglass hull and by knowingly selling such duplicates. Petitioner sought damages, injunctive relief, and an award of attorney's fees under the Florida law. The trial court granted respondent's motion to dismiss the complaint on the ground that the statute conflicted with federal patent law and was therefore invalid under the Supremacy Clause of the Federal Constitution. The Florida Court of Appeals and the Florida Supreme Court affirmed.

Held: The Florida statute is pre-empted by the Supremacy Clause. Pp. 146-168.

(a) This Court's decisions have made clear that state regulation of intellectual property must yield to the extent that it clashes with the federal patent statute's balance between public right and private monopoly designed to promote certain creative activity. The efficient operation of the federal patent system depends upon substantially free trade in publicly known, unpatented design and utilitarian conceptions. *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225; *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234. A state law that interferes with the enjoyment of such a conception contravenes the ultimate goal of public disclosure and use that is the centerpiece of federal patent policy. Moreover, through the creation of patent-like rights, the States could essentially redirect inventive efforts away from the careful criteria of patentability developed by Congress over the last 200 years. Pp. 146-157.

(b) By offering patent-like protection for ideas deemed unprotected under the federal patent scheme, the Florida statute conflicts with the "strong federal policy favoring free competition in ideas which do not merit patent protection." *Lear, Inc. v. Adkins*, 395 U.S. 653, 656. The Florida statute does not prohibit "unfair competition" in the usual sense of that term, but rather is aimed at promoting inventive effort by preventing the efficient exploitation of the design and utilitarian conceptions

embodied in the product itself. It endows the original boat manufacturer with rights against the world, similar in scope and operation to the rights accorded the federal patentee. This protection is made available for an unlimited number of years to all boat hulls and their component parts. Protection is available for subject matter for which patent protection has been denied or has expired, as well as for designs which have been freely revealed to the consuming public by their creators. In this case, the statute operates to allow petitioner to assert a substantial property right in a design idea which has already been available to the public for over six years. Pp. 157-160.

(c) That the Florida statute does not restrict all means of reproduction does not eliminate the conflict with the federal patent scheme. In essence, the statute grants the original manufacturer the right to prohibit a form of reverse engineering of a product in general circulation. This is one of the rights granted to the federal patent holder, but has never been part of state protection under the law of unfair competition or trade secrets. The study and recomposition of unpatented articles available to the public at large may lead to significant advances in technology and design. Moreover, the threat of reverse engineering of unpatented articles creates a significant spur to the achievement of the rigorous standards of patentability established by Congress. By substantially altering this competitive reality, the Florida statute and similar state laws may erect themselves as substantial competitors to the federal patent scheme. Such a result would contravene the congressional intent to create a uniform system for determining the boundaries of public and private right in utilitarian and design ideas. *Kewanee Oil Co. v. Sicron Corp.*, 416 U.S. 470, distinguished. Pp. 160-165.

(d) The Patent and Copyright Clauses of the Federal Constitution do not by their own force, or by negative implication, deprive the States of the power to adopt rules to promote intellectual creation within their own jurisdictions where Congress has left the field free of federal regulation. *Goldstein v. California*, 412 U.S. 546. Even as to design and utilitarian conceptions within the subject matter of the patent laws, the States may place limited regulations on the exploitation of unpatented ideas to prevent consumer confusion as to source or the tortious appropriation of trade secrets. Both the law of unfair competition and state trade secret law have coexisted harmoniously with federal patent protection for almost 200 years, and Congress has demonstrated its full awareness of the operation of state law in these areas without any indication of disapproval. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238. The same cannot be said of the Florida scheme at issue here, where Congress has explicitly considered the need for additional protections for industrial designs and declined to act. By according

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

patent-like protection to the otherwise unprotected design and utilitarian aspects of products in general circulation, the Florida statute enters a field of regulation which the patent laws have reserved to Congress and is therefore pre-empted by the Supremacy Clause of the Federal Constitution. Pp. 165-168.

COUNSEL:

Tomas Morgan Russell argued the cause for petitioner. With him on the briefs were Granger Cook, Jr., and John S. Schoene.

Charles E. Lipsey, by appointment of the Court, 487 U.S. 1231, argued the cause as amicus curiae in support of the judgment below. With him on the brief was Donald R. Dunner. *

* Briefs of *amici curiae* urging reversal were filed for Boston Whaler, Inc., by *Geoffrey S. Stewart, James L. Quarles III, and William F. Lee*; for Intellectual Property Owners, Inc., by *Donald W. Banner and Herbert C. Wamsley*; for the Marine Industries Association of South Florida et al. by *Julius F. Parker, Jr., Jack M. Skelding, Jr., James W. York*, Deputy Attorney General of Florida, and *Robert A. Butterworth*, Attorney General, *pro se*; and for the Orange County Patent Law Association et al. by *Randall Glenn Wick and J. Thomas McCarthy*.

Briefs of *amici curiae* urging affirmance were filed for the Aftermarket Body Parts Association et al. by *James F. Fitzpatrick, Melvin C. Garbow, and Peter T. Grossi, Jr.*; for the Certified Automobile Parts Association by Messrs. *Garbow and Fitzpatrick*; and for Xenetics Biomedical, Inc., by *Edward S. Irons*.

Alex Devience, Jr., filed a brief for Imos Italia and Torino Industries, Ltd., as *amicus curiae*.

JUDGES:

O'Connor, J., delivered the opinion for a unanimous Court.

OPINION BY:

O'CONNOR

OPINION:

[*143] [***130] [***974] JUSTICE O'CONNOR delivered the opinion of the Court.

[***LEdHR1A] [1A]We must decide today what limits the operation of the federal patent system places

on the States' ability to offer substantial protection to utilitarian and design ideas which the patent laws leave otherwise unprotected. In *Interpart [*144] Corp. v. Italia*, 777 F. 2d 678 (1985), the Court of Appeals for the Federal Circuit concluded that a California law prohibiting the use of the "direct molding process" to duplicate unpatented articles posed no threat to the policies behind the federal patent laws. In this case, the Florida Supreme Court came to a contrary conclusion. It struck down a Florida statute which prohibits the use of the direct molding process to duplicate unpatented boat hulls, finding that the protection offered by the Florida law conflicted with the balance struck by Congress in the federal patent statute between the encouragement of invention and free competition in unpatented ideas. 515 So. 2d 220 (1987). We granted certiorari to resolve the conflict, 486 U.S. 1004 (1988), and we now affirm the judgment of the Florida Supreme Court.

I

In September 1976, petitioner Bonito Boats, Inc. (Bonito), a Florida corporation, developed a hull design for a fiberglass recreational boat which it marketed under the trade name Bonito Boat Model 5VBR. App. 5. Designing the boat hull required substantial effort on the part of Bonito. A set of engineering drawings was prepared, from which a hardwood model was created. The hardwood model was then sprayed with fiberglass to create a mold, which then served to produce the finished fiberglass boats for sale. The 5VBR was placed on the market sometime in September 1976. There is no indication in the record that a patent application was ever filed for protection of the utilitarian or design aspects of the hull, or for the process by which the hull was manufactured. The 5VBR was favorably received by the boating public, and "a broad interstate market" developed for its sale. *Ibid*.

In May 1983, after the Bonito 5VBR had been available to the public for over six years, the Florida Legislature enacted Fla. Stat. § 559.94 (1987). The statute makes "[i]t . . . unlawful for any person to use the direct molding process to duplicate [*145] for the purpose of sale any manufactured vessel hull or component part of a vessel made by another without the written permission of that other person." § 559.94(2). The statute also makes it unlawful for a person to "knowingly sell a vessel hull or component part of a vessel duplicated in violation of subsection (2)" § 559.94(3). Damages, injunctive relief, and attorney's fees are made available to "[a]ny person who suffers injury or damage as the result of a violation" of the statute. § 559.94(4). The statute was made applicable to vessel hulls or component parts duplicated through the use of direct molding after July 1, 1983. § 559.94(5).

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

On December 21, 1984, Bonito filed this action in the Circuit Court of Orange County, Florida. The complaint alleged that respondent here, Thunder Craft Boats, Inc. (Thunder Craft), a Tennessee corporation, had [***131] violated the Florida statute by using the direct molding process to duplicate the Bonito 5VBR fiberglass hull, and had knowingly sold such duplicates in violation of the Florida statute. Bonito sought "a temporary and permanent injunction prohibiting [Thunder Craft] from continuing to unlawfully duplicate and sell Bonito Boat hulls or components," as well as an accounting of profits, treble damages, punitive damages, and attorney's fees. App. 6, 7. Respondent filed a motion to dismiss the complaint, arguing that under this Court's decisions in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 [**975] (1964), the Florida statute conflicted with federal patent law and was therefore invalid under the Supremacy Clause of the Federal Constitution. App. 8-9. The trial court granted respondent's motion, *id.*, at 10-11, and a divided Court of Appeals affirmed the dismissal of petitioner's complaint. 487 So. 2d 395 (1986).

On appeal, a sharply divided Florida Supreme Court agreed with the lower courts' conclusion that the Florida law impermissibly interfered with the scheme established by the federal patent laws. See 515 So. 2d 220 (1987). The majority, [*146] read our decisions in *Sears* and *Compco* for the proposition that "when an article is introduced into the public domain, only a patent can eliminate the inherent risk of competition and then but for a limited time." 515 So. 2d, at 222. Relying on the Federal Circuit's decision in the *Interpart* case, the three dissenting judges argued that the Florida antidirect molding provision "does not prohibit the copying of an unpatented item. It prohibits one method of copying; the item remains in the public domain." 515 So. 2d, at 223 (Shaw, J., dissenting).

II

[**LEdHR2] [2] [***LEdHR3] [3] Article I, § 8, cl. 8, of the Constitution gives Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The Patent Clause itself reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the "Progress of Science and useful Arts." As we have noted in the past, the Clause contains both a grant of power and certain limitations upon the exercise of that power. Congress may not create patent monopolies of unlimited duration, nor may it "authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available." *Gra-*

ham v. John Deere Co. of Kansas City, 383 U.S. 1, 6 (1966).

From their inception, the federal patent laws have embodied a careful balance between the need to promote innovation and the recognition that imitation and refinement through imitation are both necessary to invention itself and the very lifeblood of a competitive economy. Soon after the adoption of the Constitution, the First Congress enacted the Patent Act of 1790, which allowed the grant of a limited monopoly of 14 years to any applicant that [***132] "hath . . . invented or discovered [*147] any useful art, manufacture, . . . or device, or any improvement therein not before known or used." 1 Stat. 109, 110. In addition to novelty, the 1790 Act required that the invention be "sufficiently useful and important" to merit the 14-year right of exclusion. *Ibid.* Section 2 of the Act required that the patentee deposit with the Secretary of State, a specification and if possible a model of the new invention, "which specification shall be so particular, and said models so exact, as not only to distinguish the invention or discovery from other things before known and used, but also to enable a workman or other person skilled in the art or manufacture . . . to make, construct, or use the same, to the end that the public may have the full benefit thereof, after the expiration of the patent term." *Ibid.*

The first Patent Act established an agency known by self-designation as the "Commissioners for the promotion of Useful Arts," composed of the Secretary of State, the Secretary of the Department of War, and the Attorney General, any two of whom could grant a patent. Thomas Jefferson was the first Secretary of State, and the driving force behind early federal patent policy. For Jefferson, a central tenet of the patent system in a free market economy was that "a machine of which we were possessed, might be applied by every man to any use of which it is susceptible." 13 Writings of Thomas Jefferson 335 (Memorial [**976] ed. 1904). He viewed a grant of patent rights in an idea already disclosed to the public as akin to an *ex post facto* law, "obstruct[ing] others in the use of what they possessed before." *Id.*, at 326-327. Jefferson also played a large role in the drafting of our Nation's second Patent Act, which became law in 1793. The Patent Act of 1793 carried over the requirement that the subject of a patent application be "not known or used before the application." Ch. 11, 1 Stat. 318, 319. A defense to an infringement action was created where "the thing, thus secured by patent, was not originally discovered by the patentee, but had been in use, or had been described in some public work [*148] anterior to the supposed discovery of the patentee." *Id.*, at 322. Thus, from the outset, federal patent law has been about the difficult business "of drawing a line between the things which are worth to the public the embarrassment of an

exclusive patent, and those which are not." 13 Writings of Thomas Jefferson, *supra*, at 335.

[**LEdHR4] [4] [**LEdHR5A] [5A] Today's patent statute is remarkably similar to the law as known to Jefferson in 1793. Protection is offered to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U. S. C. § 101. Since 1842, Congress has also made protection available for "any new, original and ornamental design for an article of manufacture." 35 U. S. C. § 171. To qualify for protection, a design must present an aesthetically pleasing appearance that is not dictated by function alone, and must satisfy the other criteria of patentability. The novelty requirement of patentability is presently expressed in 35 U. S. C. §§ 102(a) and (b), which provide:

"A person shall be entitled to a patent unless --

[**133] "(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

"(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the date of application for patent in the United States"

[**LEdHR5B] [5B] Sections 102(a) and (b) operate in tandem to exclude from consideration for patent protection knowledge that is already available to the public. They express a congressional determination that the creation of a monopoly in such information would not only serve no socially useful purpose, but would in fact injure the public by removing existing knowledge from public use. From the Patent Act of 1790 to the present day, [*149] the public sale of an unpatented article has acted as a complete bar to federal protection of the idea embodied in the article thus placed in public commerce.

In the case of *Pennock v. Dialogue*, 2 Pet. 1 (1829), Justice Story applied these principles under the patent law of 1800. The patentee had developed a new technique for the manufacture of rubber hose for the conveyance of air and fluids. The invention was reduced to practice in 1811, but letters patent were not sought and granted until 1818. In the interval, the patentee had licensed a third party to market the hose, and over 13,000 feet of the new product had been sold in the city of Philadelphia alone. The Court concluded that the patent was invalid due to the prior public sale, indicating that,

"if [an inventor] suffers the thing he invented to go into public use, or to be publicly sold for use" "[h]is voluntary act or acquiescence in the public sale and use is an abandonment of his right." *Id.*, at 23-24. The Court noted that under the common law of England, letters patent were unavailable for the protection of articles in public commerce at the time of the application, *id.*, at 20, and that this same doctrine was immediately embodied in the first patent laws passed in this country. *Id.*, at 21-22.

[**LEdHR6] [6] As the holding of *Pennock* makes clear, the federal patent scheme creates a limited [*977] opportunity to obtain a property right in an idea. Once an inventor has decided to lift the veil of secrecy from his work, he must choose the protection of a federal patent or the dedication of his idea to the public at large. As Judge Learned Hand once put it: "[I]t is a condition upon the inventor's right to a patent that he shall not exploit his discovery competitively after it is ready for patenting; he must content himself with either secrecy or legal monopoly." *Metallizing Engineering Co. v. Kenyon Bearing & Auto Parts Co.*, 153 F. 2d 516, 520 (CA2), cert. denied, 328 U.S. 840 (1946).

[**LEdHR7] [7] In addition to the requirements of novelty and utility, the federal patent law has long required that an innovation not be [*150] anticipated by the prior art in the field. Even if a particular combination of elements is "novel" in the literal sense of the term, it will not qualify for federal patent protection if its contours are so traced by the existing technology [***134] in the field that the "improvement is the work of the skillful mechanic, not that of the inventor." *Hotchkiss v. Greenwood*, 11 How. 248, 267 (1851). In 1952, Congress codified this judicially developed requirement in 35 U. S. C. § 103, which refuses protection to new developments where "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art to which said subject matter pertains." The nonobviousness requirement extends the field of unpatentable material beyond that which is known to the public under § 102, to include that which could readily be deduced from publicly available material by a person of ordinary skill in the pertinent field of endeavor. See *Graham*, 383 U.S., at 15. Taken together, the novelty and nonobviousness requirements express a congressional determination that the purposes behind the Patent Clause are best served by free competition and exploitation of either that which is already available to the public or that which may be readily discerned from publicly available material. See *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) ("[T]he stringent requirements for patent protection seek to ensure that ideas in the public domain remain there for the use of the public").

[**LEdHR8] [8]The applicant whose invention satisfies the requirements of novelty, nonobviousness, and utility, and who is willing to reveal to the public the substance of his discovery and "the best mode . . . of carrying out his invention," 35 U. S. C. § 112, is granted "the right to exclude others from making, using, or selling the invention throughout the United States," for a period of 17 years. 35 U. S. C. § 154. The federal patent system thus embodies a carefully crafted bargain for encouraging [*151] the creation and disclosure of new, useful, and nonobvious advances in technology and design in return for the exclusive right to practice the invention for a period of years. "[The inventor] may keep his invention secret and reap its fruits indefinitely. In consideration of its disclosure and the consequent benefit to the community, the patent is granted. An exclusive enjoyment is guaranteed him for seventeen years, but upon expiration of that period, the knowledge of the invention inures to the people, who are thus enabled without restriction to practice it and profit by its use." *United States v. Dubilier Condenser Corp.*, 289 U.S. 178, 186-187 (1933).

[**LEdHR9] [9] [**LEdHR10] [10] [**LEdHR11A] [11A]The attractiveness of such a bargain, and its effectiveness in inducing creative effort and disclosure of the results of that effort, depend almost entirely on a backdrop of free competition in the exploitation of unpatented designs and innovations. The novelty and nonobviousness requirements of patentability embody a congressional understanding, implicit in the Patent Clause itself, that free exploitation of ideas will be the rule, to which the protection of a federal patent is the exception. Moreover, the [**978] ultimate goal of the patent system is to bring new designs and technologies into the public domain through disclosure. State law protection for techniques and designs whose disclosure [**135] has already been induced by market rewards may conflict with the very purpose of the patent laws by decreasing the range of ideas available as the building blocks of further innovation. The offer of federal protection from competitive exploitation of intellectual property would be rendered meaningless in a world where substantially similar state law protections were readily available. To a limited extent, the federal patent laws must determine not only what is protected, but also what is free for all to use. Cf. *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Comm'n*, 461 U.S. 375, 384 (1983) ("[A] federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left unregulated, [*152] and in that event would have as much pre-emptive force as a decision to regulate") (emphasis in original).

[**LEdHR11B] [11B] [**LEdHR12] [12]Thus our past decisions have made clear that state regulation

of intellectual property must yield to the extent that it clashes with the balance struck by Congress in our patent laws. The tension between the desire to freely exploit the full potential of our inventive resources and the need to create an incentive to deploy those resources is constant. Where it is clear how the patent laws strike that balance in a particular circumstance, that is not a judgment the States may second-guess. We have long held that after the expiration of a federal patent, the subject matter of the patent passes to the free use of the public as a matter of federal law. See *Coats v. Merrick Thread Co.*, 149 U.S. 562, 572 (1893) ("[P]laintiffs' right to the use of the embossed periphery expired with their patent, and the public had the same right to make use of it as if it had never been patented"); *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111 (1938); *Singer Mfg. Co. v. June Mfg. Co.*, 163 U.S. 169 (1896). Where the public has paid the congressionally mandated price for disclosure, the States may not render the exchange fruitless by offering patent-like protection to the subject matter of the expired patent. "It is self-evident that on the expiration of a patent the monopoly created by it ceases to exist, and the right to make the thing formerly covered by the patent becomes public property." *Singer, supra*, at 185.

In our decisions in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964), we found that publicly known design and utilitarian ideas which were unprotected by patent occupied much the same position as the subject matter of an expired patent. The *Sears* case involved a pole lamp originally designed by the plaintiff Stiffel, who had secured both design and mechanical patents on the lamp. Sears purchased unauthorized copies of the lamps, and was able to sell them at a retail price practically equivalent to the wholesale [*153] price of the original manufacturer. *Sears, supra*, at 226. Stiffel brought an action against Sears in Federal District Court, alleging infringement of the two federal patents and unfair competition under Illinois law. The District Court found that Stiffel's patents were invalid [**136] due to anticipation in the prior art, but nonetheless enjoined Sears from further sales of the duplicate lamps based on a finding of consumer confusion under the Illinois law of unfair competition. The Court of Appeals affirmed, coming to the conclusion that the Illinois law of unfair competition prohibited product simulation even in the absence of evidence that the defendant took some further action to induce confusion as to source.

This Court reversed, finding that the unlimited protection against copying which [**979] the Illinois law accorded an unpatentable item whose design had been fully disclosed through public sales conflicted with the federal policy embodied in the patent laws. The Court stated:

"In the present case the 'pole lamp' sold by Stiffel has been held not to be entitled to the protection of either a mechanical or a design patent. An unpatentable article, like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so. What Sears did was to copy Stiffel's design and sell lamps almost identical to those sold by Stiffel. This it had every right to do under the federal patent laws." 376 U.S., at 231.

A similar conclusion was reached in *Compco*, where the District Court had extended the protection of Illinois' unfair competition law to the functional aspects of an unpatented fluorescent lighting system. The injunction against copying of an unpatented article, freely available to the public, impermissibly "interfere[d] with the federal policy, found in Art. I, § 8, cl. 8, of the Constitution and in the implementing federal statutes, of allowing free access to copy whatever the federal patent and copyright laws leave in the public domain." *Compco, supra*, at 237.

[*154] The pre-emptive sweep of our decisions in *Sears* and *Compco* has been the subject of heated scholarly and judicial debate. See, e.g., Symposium, Product Simulation: A Right or a Wrong?, 64 *Colum. L. Rev.* 1178 (1964); *Lear, Inc. v. Adkins*, 395 U.S. 653, 676 (1969) (Black, J., concurring in part and dissenting in part). Read at their highest level of generality, the two decisions could be taken to stand for the proposition that the States are completely disabled from offering any form of protection to articles or processes which fall within the broad scope of patentable subject matter. See *id.*, at 677. Since the potentially patentable includes "anything under the sun that is made by man," *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980) (citation omitted), the broadest reading of *Sears* would prohibit the States from regulating the deceptive simulation of trade dress or the tortious appropriation of private information.

[***LEdHR13A] [13A] That the extrapolation of such a broad pre-emptive principle from *Sears* is inappropriate is clear from the balance struck in *Sears* itself. The *Sears* Court made it plain that the States "may protect businesses in the use of their trademarks, labels, or distinctive dress in the packaging of goods so as to prevent others, by imitating such markings, from misleading purchasers as to the source of the goods." *Sears, supra*, at 232 [***137] (footnote omitted). Trade dress is, of course, potentially the subject matter of design patents. See *W. T. Rogers Co. v. Keene*, 778 F. 2d 334, 337 (CA7 1985). Yet our decision in *Sears* clearly indicates that the States may place limited regulations on the circumstances in which such designs are used in order to prevent consumer confusion as to source. Thus, while *Sears*

speaks in absolutist terms, its conclusion that the States may place some conditions on the use of trade dress indicates an implicit recognition that all state regulation of potentially patentable but unpatented subject matter is not *ipso facto* pre-empted by the federal patent laws.

[*155] What was implicit in our decision in *Sears*, we have made explicit in our subsequent decisions concerning the scope of federal pre-emption of state regulation of the subject matter of patent. Thus, in *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), we held that state protection of trade secrets did not operate to frustrate the achievement of the congressional objectives served by the patent laws. Despite the fact that state law protection was available for ideas which clearly fell within the subject matter of patent, the Court concluded that the nature and degree of state protection did not conflict with the federal policies [**980] of encouragement of patentable invention and the prompt disclosure of such innovations.

[***LEdHR14] [14] Several factors were critical to this conclusion. First, because the public awareness of a trade secret is by definition limited, the Court noted that "the policy that matter once in the public domain must remain in the public domain is not incompatible with the existence of trade secret protection." *Id.*, at 484. Second, the *Kewanee* Court emphasized that "[t]rade secret law provides far weaker protection in many respects than the patent law." *Id.*, at 489-490. This point was central to the Court's conclusion that trade secret protection did not conflict with either the encouragement or disclosure policies of the federal patent law. The public at large remained free to discover and exploit the trade secret through reverse engineering of products in the public domain or by independent creation. *Id.*, at 490. Thus, the possibility that trade secret protection would divert inventors from the creative effort necessary to satisfy the rigorous demands of patent protection was remote indeed. *Ibid.* Finally, certain aspects of trade secret law operated to protect noneconomic interests outside the sphere of congressional concern in the patent laws. As the Court noted, "[A] most fundamental human right, that of privacy, is threatened when industrial espionage is condoned or is made profitable." *Id.*, at 487 (footnote omitted). There was no indication that Congress [*156] had considered this interest in the balance struck by the patent laws, or that state protection for it would interfere with the policies behind the patent system.

[***LEdHR15] [15] We have since reaffirmed the pragmatic approach which *Kewanee* takes to the pre-emption of state laws dealing with the protection of intellectual property. See *Aronson*, [***138] 440 U.S., at 262 ("State law is not displaced merely because the contract relates to intellectual property which may or may not be patentable; the states are free to regulate the use of

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

such intellectual property in any manner not inconsistent with federal law"). At the same time, we have consistently reiterated the teaching of *Sears* and *Compco* that ideas once placed before the public without the protection of a valid patent are subject to appropriation without significant restraint. *Aronson, supra, at 263.*

At the heart of *Sears* and *Compco* is the conclusion that the efficient operation of the federal patent system depends upon substantially free trade in publicly known, unpatented design and utilitarian conceptions. In *Sears*, the state law offered "the equivalent of a patent monopoly," 376 U.S., at 233, in the functional aspects of a product which had been placed in public commerce absent the protection of a valid patent. While, as noted above, our decisions since *Sears* have taken a decidedly less rigid view of the scope of federal pre-emption under the patent laws, e. g., *Kewanee, supra, at 479-480*, we believe that the *Sears* Court correctly concluded that the States may not offer patent-like protection to intellectual creations which would otherwise remain unprotected as a matter of federal law. Both the novelty and the nonobviousness requirements of federal patent law are grounded in the notion that concepts within the public grasp, or those so obvious that they readily could be, are the tools of creation available to all. They provide the baseline of free competition upon which the patent system's incentive to creative effort depends. A state law that substantially interferes with the enjoyment of an unpatented utilitarian or design conception [*157] which has been freely disclosed by its author to the public at large impermissibly contravenes the ultimate goal of public disclosure and use which is the centerpiece of federal patent policy. Moreover, through the creation of patent-like rights, the States could essentially redirect inventive efforts away from the careful criteria of patentability developed by Congress over the last 200 years. [**981] We understand this to be the reasoning at the core of our decisions in *Sears* and *Compco*, and we reaffirm that reasoning today.

III

[**LEdHR1B] [1B] [***LEdHR16A] [16A] [**LEdHR17] [17] We believe that the Florida statute at issue in this case so substantially impedes the public use of the otherwise unprotected design and utilitarian ideas embodied in unpatented boat hulls as to run afoul of the teaching of our decisions in *Sears* and *Compco*. It is readily apparent that the Florida statute does not operate to prohibit "unfair competition" in the usual sense that the term is understood. The law of unfair competition has its roots in the common-law tort of deceit: its general concern is with protecting consumers from confusion as to source. While that concern may result in the creation of "quasi-property rights" in communicative symbols, the focus is on the protection of consumers, not

the protection of producers as an incentive to product innovation. Judge Hand captured the distinction well in *Crescent Tool Co. v. Kilborn & Bishop Co.*, 247 F. 299, 301 (CA2 1917), where he wrote:

[***139] "[T]he plaintiff has the right not to lose his customers through false representations that those are his wares which in fact are not, but he may not monopolize any design or pattern, however trifling. The defendant, on the other hand, may copy plaintiff's goods slavishly down to the minutest detail: but he may not represent himself as the plaintiff in their sale."

[**LEdHR18] [18] With some notable exceptions, including the interpretation of the Illinois law of unfair competition at issue in *Sears* and [*158] *Compco*, see *Sears, supra, at 227-228, n. 2*, the common-law tort of unfair competition has been limited to protection against copying of nonfunctional aspects of consumer products which have acquired secondary meaning such that they operate as a designation of source. See generally P. Kaufmann, *Passing Off and Misappropriation*, in 9 *International Review of Industrial Property and Copyright Law, Studies in Industrial Property and Copyright Law* 100-109 (1986). The "protection" granted a particular design under the law of unfair competition is thus limited to one context where consumer confusion is likely to result; the design "idea" itself may be freely exploited in all other contexts.

[**LEdHR1C] [1C] [***LEdHR16B] [16B] [**LEdHR19A] [19A] In contrast to the operation of unfair competition law, the Florida statute is aimed directly at preventing the exploitation of the design and utilitarian conceptions embodied in the product itself. The sparse legislative history surrounding its enactment indicates that it was intended to create an inducement for the improvement of boat hull designs. See Tr. of Meeting of Transportation Committee, Florida House of Representatives, May 3, 1983, reprinted at App. 22 ("[T]here is no inducement for [a] quality boat manufacturer to improve these designs and secondly, if he does, it is immediately copied. This would prevent that and allow him recourse in circuit court"). To accomplish this goal, the Florida statute endows the original boat hull manufacturer with rights against the world, similar in scope and operation to the rights accorded a federal patentee. Like the patentee, the beneficiary of the Florida statute may prevent a competitor from "making" the product in what is evidently the most efficient manner available and from "selling" the product when it is produced in that fashion. Compare 35 U. S. C. § 154. * [*159] The Flor-

489 U.S. 141, *; 109 S. Cl. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS: 629

ida scheme offers this [**982] protection for an unlimited number of years to all boat hulls and their component parts, without regard to their ornamental [***140] or technological merit. Protection is available for subject matter for which patent protection has been denied or has expired, as well as for designs which have been freely revealed to the consuming public by their creators.

[***LEdHR1D] [1D] [***LEdHR19B]
[19B]

* In some respects, the protection accorded by the Florida statute resembles that of a so-called "product-by-process" patent. Such a claim "is one in which the product is defined at least in part in terms of the method or process by which it is made." D. Chisum, *Patents* § 8.05, p. 8-67 (1988). As long as the end product of the process is adequately defined and novel and nonobvious, a patent in the process may support a patent in the resulting product. See U. S. Patent and Trademark Office, Manual of Patent Examining Procedure § 706.03(e) (5th rev. ed. 1986) ("An article may be claimed by a process of making it provided it is definite"). The Florida statute at issue here grants boat hull manufacturers substantial control over the use of a particular process and the sale of an article created by that process without regard to the novelty or nonobviousness of either the end product or the process by which it was created. Under federal law, this type of protection would be unavailable to petitioner absent satisfaction of the requirements of patentability. See *In re Thorpe*, 777 F. 2d 695, 697 (CA Fed. 1985) (product-by-process patent properly denied where end result was indistinguishable from prior art).

[***LEdHR1E] [1E] [***LEdHR20] [20]
[***LEdHR21] [21] In this case, the Bonito 5VBR fiberglass hull has been freely exposed to the public for a period in excess of six years. For purposes of federal law, it stands in the same stead as an item for which a patent has expired or been denied: it is unpatented and unpatentable. See 35 U. S. C. § 102(b). Whether because of a determination of unpatentability or other commercial concerns, petitioner chose to expose its hull design to the public in the marketplace, eschewing the bargain held out by the federal patent system of disclosure in exchange for exclusive use. Yet, the Florida statute allows petitioner to reassert a substantial property right in the idea, thereby constricting the spectrum of useful public knowledge. Moreover, it does so without the careful protections of high standards of innovation and limited monopoly contained in the federal scheme.

We think it clear that such protection conflicts with the federal policy "that all ideas in general circulation be dedicated to the common good [*160] unless they are protected by a valid patent." *Lear, Inc. v. Adkins*, 395 U.S., at 668.

[***LEdHR22] [22] That the Florida statute does not remove all means of reproduction and sale does not eliminate the conflict with the federal scheme. See *Kellogg*, 305 U.S., at 122. In essence, the Florida law prohibits the entire public from engaging in a form of reverse engineering of a product in the public domain. This is clearly one of the rights vested in the federal patent holder, but has never been a part of state protection under the law of unfair competition or trade secrets. See *Kewanee*, 416 U.S., at 476 ("A trade secret law, however, does not offer protection against discovery by . . . so-called reverse engineering, that is by starting with the known product and working backward to divine the process which aided in its development or manufacture"); see also *Chicago Lock Co. v. Fanberg*, 676 F. 2d 400, 405 (CA5 1982) ("A lock purchaser's own reverse-engineering of his own lock, and subsequent publication of the serial number-key code correlation, is an example of the independent invention and reverse engineering expressly allowed by trade secret doctrine"). The duplication of boat hulls and their component parts may be an essential part of innovation in the field of hydrodynamic design. Variations as to size and combination of various elements may lead to significant advances in the field. Reverse engineering of chemical and mechanical articles in the public domain often leads to significant advances in technology. If Florida may prohibit this particular method of study and recombination of an unpatented article, we fail to see the principle that would prohibit a State from banning the use of chromatography in the reconstitution of unpatented chemical compounds, or the use of robotics in the duplication of machinery in the public domain.

Moreover, as we noted in *Kewanee*, the competitive reality of reverse engineering may act as a spur to the inventor, creating an incentive to develop inventions that [***141] meet the rigorous requirements of patentability. 416 U.S., at 489-490. [*161] The Florida statute substantially reduces this competitive incentive, thus eroding the general rule of free competition upon which the attractiveness of [**983] the federal patent bargain depends. The protections of state trade secret law are most effective at the developmental stage, before a product has been marketed and the threat of reverse engineering becomes real. During this period, patentability will often be an uncertain prospect, and to a certain extent, the protection offered by trade secret law may "dovetail" with the incentives created by the federal patent monopoly. See *Golcstein, Kewanee Oil Co. v. Bicron Corp.*:

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

Notes on a Closing Circle, 1974 S. Ct. Rev. 81, 92. In contrast, under the Florida scheme, the would-be inventor is aware from the outset of his efforts that rights against the public are available regardless of his ability to satisfy the rigorous standards of patentability. Indeed, it appears that even the most mundane and obvious changes in the design of a boat hull will trigger the protections of the statute. See Fla. Stat. § 559.94(2) (1987) (protecting "any manufactured vessel hull or component part"). Given the substantial protection offered by the Florida scheme, we cannot dismiss as hypothetical the possibility that it will become a significant competitor to the federal patent laws, offering investors similar protection without the *quid pro quo* of substantial creative effort required by the federal statute. The prospect of all 50 States establishing similar protections for preferred industries without the rigorous requirements of patentability prescribed by Congress could pose a substantial threat to the patent system's ability to accomplish its mission of promoting progress in the useful arts.

[***LEdHR23A] [23A] [***LEdHR24] [24] Finally, allowing the States to create patent-like rights in various products in public circulation would lead to administrative problems of no small dimension. The federal patent scheme provides a basis for the public to ascertain the status of the intellectual property embodied in any article in general circulation. Through the application process, detailed information [*162] concerning the claims of the patent holder is compiled in a central location. See 35 U. S. C. §§ 111-114. The availability of damages in an infringement action is made contingent upon affixing a notice of patent to the protected article. 35 U. S. C. § 287. The notice requirement is designed "for the information of the public," *Wine Railway Appliance Co. v. Enterprise Railway Equipment Co.*, 297 U.S. 387, 397 (1936), and provides a ready means of discerning the status of the intellectual property embodied in an article of manufacture or design. The public may rely upon the lack of notice in exploiting shapes and designs accessible to all. See *Devices for Medicine, Inc. v. Boehl*, 822 F. 2d 1062, 1066 (CA Fed. 1987) ("Having sold the product unmarked, [the patentee] could hardly maintain entitlement to damages for its use by a purchaser uninformed that such use would violate [the] patent").

[***LEdHR23B] [23B] [***LEdHR25] [25] The Florida scheme blurs this clear federal demarcation between public and private property. One of the fundamental purposes behind the Patent and Copyright [***142] Clauses of the Constitution was to promote national uniformity in the realm of intellectual property. See The Federalist No. 43, p. 309 (B. Wright ed. 1961). Since the Patent Act of 1800, Congress has lodged exclusive jurisdiction of actions "arising under" the patent

laws in the federal courts, thus allowing for the development of a uniform body of law in resolving the constant tension between private right and public access. See 28 U. S. C. § 1338; see also Chisum, *The Allocation of Jurisdiction Between State and Federal Courts in Patent Litigation*, 46 Wash. L. Rev. 633, 636 (1971). Recently, Congress conferred exclusive jurisdiction of all patent appeals on the Court of Appeals for the Federal Circuit, in order to "provide nationwide uniformity in patent law." H. R. Rep. No. 97-312, p. 20 (1981). This purpose is frustrated by the Florida scheme, which renders the status of the design and utilitarian "ideas" embodied in the boat hulls it protects uncertain. Given the inherently ephemeral nature [*163] of property in ideas, and the great power such property has to cause [**984] harm to the competitive policies which underlay the federal patent laws, the demarcation of broad zones of public and private right is "the type of regulation that demands a uniform national rule." *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 179 (1978). Absent such a federal rule, each State could afford patent-like protection to particularly favored home industries, effectively insulating them from competition from outside the State.

Petitioner and its supporting *amici* place great weight on the contrary decision of the Court of Appeals for the Federal Circuit in *Interpart Corp. v. Italia*. In upholding the application of the California "antidirect molding" statute to the duplication of unpatented automobile mirrors, the Federal Circuit stated: "The statute prevents unscrupulous competitors from obtaining a product and using it as the 'plug' for making a mold. The statute does not prohibit copying the design of the product in any other way; the latter if in the public domain, is free for anyone to make, use or sell." 777 F. 2d, at 685. The court went on to indicate that "the patent laws 'say nothing about the right to copy or the right to use, they speak only in terms of the right to exclude.'" *Ibid.*, quoting *Mine Safety Appliances Co. v. Electric Storage Battery Co.*, 56 C. C. P. A. (Pat.) 863, 864, n. 2, 405 F. 2d 901, 902, n. 2 (1969).

[***LEdHR26] [26] We find this reasoning defective in several respects. The Federal Circuit apparently viewed the direct molding statute at issue in *Interpart* as a mere regulation of the use of chattels. Yet, the very purpose of antidirect molding statutes is to "reward" the "inventor" by offering substantial protection against public exploitation of his or her idea embodied in the product. Such statutes would be an exercise in futility if they did not have precisely the effect of substantially limiting the ability of the public to exploit an otherwise unprotected idea. As *amicus* points out, the direct molding process itself has been in use since the early 1950's. See Brief for Charles [*164] E. Lipsey as *Amicus Curiae* 3, n. 2. Indeed, U. S. Patent No. 3,419,646, issued to

489 U.S. 141, *, 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

Robert L. Smith in 1968, explicitly discloses and claims a method for the direct molding of boat hulls. The specifications [***143] of the Smith Patent indicate that "[i]t is a major object of the present invention to provide a method for making large molded boat hull molds at very low cost, once a prototype hull has been provided." App. to Brief for Charles E. Lipsey as *Amicus Curiae* 15a. In fact, it appears that Bonito employed a similar process in the creation of its own production mold. See *supra*, at 144. It is difficult to conceive of a more effective method of creating substantial property rights in an intellectual creation than to eliminate the most efficient method for its exploitation. *Sears and Compco* protect more than the right of the public to contemplate the abstract beauty of an otherwise unprotected intellectual creation -- they assure its efficient reduction to practice and sale in the marketplace.

Appending the conclusionary label "unscrupulous" to such competitive behavior merely endorses a policy judgment which the patent laws do not leave the States free to make. Where an item in general circulation is unprotected by patent, "[r]eproduction of a functional attribute is legitimate competitive activity." *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 863 (1982) (White, J., concurring in result). See also *Bailey v. Logan Square Typographers, Inc.*, 441 F. 2d 47, 51 (CA7 1971) (Stevens, J.) ("[T]hat which is published may be freely copied as a matter of federal right").

Finally, we are somewhat troubled by the *Interpart* court's reference to the *Mine Safety* case for the proposition that the patent laws say "nothing about the right to copy or the right to use." As noted above, the federal standards for patentability, at a minimum, express the congressional determination that patent-like protection is unwarranted as to certain classes of intellectual property. The States are simply not [**985] free in this regard to offer equivalent protections to ideas [*165] which Congress has determined should belong to all. For almost 100 years it has been well established that in the case of an expired patent, the federal patent laws *do* create a federal right to "copy and to use." *Sears and Compco* extended that rule to potentially patentable ideas which are fully exposed to the public. The *Interpart* court's assertion to the contrary is puzzling and flies in the face of the same court's decisions applying the teaching of *Sears and Compco* in other contexts. See *Power Controls Corp. v. Hybrinetics, Inc.*, 806 F. 2d 234, 240 (CA Fed. 1986) ("It is well established . . . that an action for unfair competition cannot be based upon a functional design"); *Gemveto Jewelry Co. v. Jeff Cooper Inc.*, 800 F. 2d 256, 259 (CA Fed. 1986) (vacating injunction against copying of jewelry designs issued under state law of unfair competition "in view of the *Sears and Compco* decisions which

hold that copying of the article itself that is unprotected by the federal patent and copyright laws cannot be protected by state law").

[**LEdHR27] [27] Our decisions since *Sears and Compco* have made it clear that the Patent and Copyright Clauses do not, by their own force or by negative implication, deprive the States of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions. See *Aronson*, 440 U.S., at 262; *Goldstein v. California*, 412 U.S. 546, 552-561 (1973); *Kewanee*, 416 U.S., at 478-479. [***144] Thus, where "Congress determines that neither federal protection nor freedom from restraint is required by the national interest," *Goldstein*, *supra*, at 559, the States remain free to promote originality and creativity in their own domains.

[**LEdHR13B] [13B] [**LEdHR28A] [28A] Nor does the fact that a particular item lies within the subject matter of the federal patent laws necessarily preclude the States from offering limited protection which does not impermissibly interfere with the federal patent scheme. As *Sears* itself makes clear, States may place limited regulations on the use of unpatented designs in order to prevent consumer confusion as to source. In *Kewanee*, we found that [*166] state protection of trade secrets, as applied to both patentable and unpatentable subject matter, did not conflict with the federal patent laws. In both situations, state protection was not aimed exclusively at the promotion of invention itself, and the state restrictions on the use of unpatented ideas were limited to those necessary to promote goals outside the contemplation of the federal patent scheme. Both the law of unfair competition and state trade secret law have coexisted harmoniously with federal patent protection for almost 200 years, and Congress has given no indication that their operation is inconsistent with the operation of the federal patent laws. See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 144 (1963); *United States v. Bass*, 404 U.S. 336, 349 (1971).

[**LEdHR28B] [28B] [**LEdHR29] [29] Indeed, there are affirmative indications from Congress that both the law of unfair competition and trade secret protection are consistent with the balance struck by the patent laws. Section 43(a) of the Lanham Act, 60 Stat. 441, 15 U. S. C. § 1125(a), creates a federal remedy for making "a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same" Congress has thus given federal recognition to many of the concerns that underlie the state tort of unfair competition, and the application of *Sears and Compco* to nonfunctional aspects of a product which have been shown to identify source must take account of competing federal policies in this regard. Similarly, as Justice Marshall noted in his concurring opinion in *Kewanee*: "State

trade secret laws and the federal patent laws have co-existed for many, many, years. During this time, Congress has repeatedly demonstrated its full awareness [**986] of the existence of the trade secret system, without any indication of disapproval. Indeed, Congress has in a number of instances given explicit federal protection to trade secret information provided to federal agencies." *Kewanee, supra*, at 494 (concurring in result) (citation omitted). The case for [*167] federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to "stand by both concepts and to tolerate whatever tension there [is] between them." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984). The same cannot be said of the Florida statute at issue here, which offers [***145] protection beyond that available under the law of unfair competition or trade secret, without any showing of consumer confusion, or breach of trust or secrecy.

[***LEdHR1F] [1F] [***LEdHR30] [30]The Florida statute is aimed directly at the promotion of intellectual creation by substantially restricting the public's ability to exploit ideas that the patent system mandates shall be free for all to use. Like the interpretation of Illinois unfair competition law in *Sears and Compco*, the Florida statute represents a break with the tradition of peaceful coexistence between state market regulation and federal patent policy. The Florida law substantially restricts the public's ability to exploit an unpatented design in general circulation, raising the specter of state-created monopolies in a host of useful shapes and processes for which patent protection has been denied or is otherwise unobtainable. It thus enters a field of regulation which the patent laws have reserved to Congress. The patent statute's careful balance between public right and private monopoly to promote certain creative activity is a "scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[***LEdHR1G] [1G] [***LEdHR31] [31]Congress has considered extending various forms of limited protection to industrial design either through the copyright laws or by relaxing the restrictions on the availability of design patents. See generally Brown, Design Protection: An Overview, 34 *UCLA L. Rev.* 1341 (1987). Congress explicitly refused to take this step in the copyright laws, see 17 *U. S. C. § 101*; H. R. Rep. No. 94-1476, p. 55 (1976), and despite [*168] sustained criticism for a number of years, it has declined to alter the patent protections presently available for industrial design. See Report of the President's Commission on the Patent System, S. Doc. No. 5, 90th Cong., 1st Sess., 20-21 (1967); Lindgren, The Sanctity of the Design Patent:

Illusion or Reality?, 10 *Okl. City L. Rev.* 195 (1985). It is for Congress to determine if the present system of design and utility patents is ineffectual in promoting the useful arts in the context of industrial design. By offering patent-like protection for ideas deemed unprotected under the present federal scheme, the Florida statute conflicts with the "strong federal policy favoring free competition in ideas which do not merit patent protection." *Lear, Inc.*, 395 U.S., at 656. We therefore agree with the majority of the Florida Supreme Court that the Florida statute is preempted by the Supremacy Clause, and the judgment of that court is hereby affirmed.

It is so ordered.

REFERENCES: Return To Full Text Opinion

Go to Supreme Court Briefs Go to Oral Argument Transcript

60 *Am Jur 2d Patents* 1- 7, 67, 75

8 *Am Jur Trials* 359, Trademark Infringement and Unfair Competition Litigation; 14 *Am Jur Trials* 1, Action for Unfair Competition--Trade Secrets

USCS, Constitution, Art I, 8, cl 8; Art VI, cl 2; 35 *USCS* 1 et seq.

US L Ed Digest, Patents 9

Index to Annotations, Copies and Duplicates; Design of Products and Structures; Patents; Pre-Emption; Ships and Vessels; Supremacy Clause

Annotation References:

Supreme Court's views as to what constitutes copyright infringement. 78 *L Ed 2d* 957.

Supreme Court's views as to what is patentable subject matter under federal law as "process," "machine," "manufacture," or "composition of matter." 65 *L Ed 2d* 1197.

Meaning of term "on sale" in 35 *USCS* 102(b), denying patentability to invention which has been on sale for more than one year prior to date of patent application. 25 *ALR Fed* 486.

Application and effect of 35 *USCS* 103, requiring nonobvious subject matter, in determining validity of patents. 23 *ALR Fed* 236.

Disclosure of trade secret as abandonment of secrecy. 92 *ALR3d* 138.

489 U.S. 141, *; 109 S. Ct. 971, **;
103 L. Ed. 2d 118, ***; 1989 U.S. LEXIS 629

Practices forbidden by state deceptive trade practice
and consumer protection acts. 89 *ALR3d* 449.

Propriety of permanently enjoining one guilty of un-
authorized use of trade secret from engaging in sale or
manufacture of device in question. 38 *ALR3d* 572.

ALR3d 449

LEXSEE 991 F.2D 426

National Car Rental System, Inc., Appellee, v. Computer Associates International, Inc., Appellant.

No. 92-1683

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

991 F.2d 426; 1993 U.S. App. LEXIS 6926; 26 U.S.P.Q.2D (BNA) 1370; Copy. L. Rep. (CCH) P27,078

December 17, 1992, Submitted
April 6, 1993, Filed

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Minnesota. District No. CIV 3-91-321. Donald D. Alsop, U.S. District Judge.

COUNSEL:

For NATIONAL CAR RENTAL SYSTEM, INC., Plaintiff - Appellee: Sally A. Scoggin, Scott Gregory Knudson, BRIGGS & MORGAN, 322 Minnesota Street, 2200 First National Bank Building, St. Paul, MN 55101, 612-344-8551. Peter John Frazza, Leonard T. Nuara, 201-379-4800, Vincent John Proto, Donald P. Jacobs, BUDD & LARNER, 150 JFK Parkway, Short Hills, NJ 07078, 201-379-4800.

For COMPUTER ASSOCIATES INTERNATIONAL, INC., Defendant - Appellant: Polly Anne Maier, Bruce Howard Little, Allen Wayne Hinderaker, POPHAM & HAIK, 222 S. Ninth Street, 3300 Piper Jaffray Tower, Minneapolis, MN 55402, 612-333-4800.

JUDGES: Before MAGILL, Circuit Judge, HEANEY, Senior Circuit Judge, and BEAM, Circuit Judge.

OPINION BY: MAGILL

OPINION: [*427] MAGILL, Circuit Judge.

We here deal with the difficult question of the extent to which the Copyright Act preempts state breach of contract actions alleging that the licensee of computer software exceeded limitations on the use of computer software contained in the license agreements. Computer Associates International, Inc., appeals from the district court's order resolving a motion for judgment on the pleadings and dismissing its breach of contract claim against National Car Rental as preempted under the

Copyright Act. We conclude that the district court failed to grant Computer Associates all reasonable inferences from its pleadings, and hold that as properly construed, the cause of action as pled is not preempted. We reverse.

I. BACKGROUND

Computer Associates International, Inc. (CA), creates and licenses computer software. CA licensed its programs to the appellee, National Car Rental Systems, Inc. (National), to process National's data on National's hardware in Bloomington, Minnesota. The 1990 license agreement [**2] between CA and National provided, as did earlier licenses, that National may use the licensed programs "only for the internal operations of Licensee and for the processing of its own data." A separate order form, incorporated into the license agreement, [*428] similarly provided that "use of the Licensed Programs is restricted to the internal operations of Licensee and for the processing of its own data."

Sometime in 1990, National decided to cease its internal computer operations and contract with an independent computer services vendor for computer related information services. Ultimately, National retained Electronic Data Systems Corporation (EDS) to provide these services. In connection with this transaction, National, EDS, and CA entered into a supplement addendum, which provided that EDS could use the licensed programs to process National's data. The supplement addendum provided that EDS would use the programs for the benefit of National subject to the terms and conditions of the 1990 license agreement, and solely "to process data of Licensee and in no event for the processing of data . . . of any third party other than Licensee."

CA subsequently determined that National had been using [**3] the programs to process the data of third parties, including Lend Lease Trucks, Inc. (Lend Lease),

and Tilden Car Rental, Inc. (Tilden), in violation of the license agreement, and that such use had continued through EDS under the supplement addendum. CA threatened to sue National if such use did not stop. National then brought a declaratory judgment action in the district court. National admitted in its complaint that it "has used the Licensed Software in its business activities . . . including the activities relating to Tilden and Trucks [Lend Lease]," but requested a declaration that its use of the programs neither breached the license agreement nor infringed CA's copyright. CA asserted two counterclaims. In the first, it claimed that National's use of the programs, either individually or through EDS, for the benefit of Lend Lease and Tilden, breached the license agreement. In the second, CA claimed that National infringed its copyright by making an unauthorized copy of the software.

National moved for judgment on the pleadings under Rule 12(c), alleging that CA's first counterclaim was preempted under § 301(a) of the Copyright Act. In resolving the motion, the district court concluded [**4] that CA alleged a lease agreement between National and the third parties: National permitted them to use the software in exchange for payment. The district court concluded that this cause of action, as pled, was "equivalent" to the exclusive copyright right of distribution of copies of the work, and held it was preempted.

II. DISCUSSION

A. Standard of Review

We review a motion for judgment on the pleadings de novo. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1989). The standard is strict: judgment on the pleadings is not appropriate unless the moving party has "clearly established that no material issue of fact remains to be resolved and he is entitled to judgment as a matter of law." *Iowa Beef Processors, Inc. v. Amalgamated Meat Cutters*, 627 F.2d 853, 855 (8th Cir. 1980). This court must accept as true all facts pled by the non-moving party, and grant all reasonable inferences from the pleadings in the non-moving party's favor. *Id.* Thus, we must determine whether CA's first counterclaim, as pled, may reasonably be read only as a claim preempted by the Copyright Act.

The Copyright Act [**5] provides the exclusive source of protection for "all legal and equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 of the Copyright Act. See 17 U.S.C. § 301(a). Concomitantly, all non-equivalent rights are not preempted.

A state cause of action is preempted if: (1) the work at issue is within the subject matter of copyright as defined in §§ 102 and 103 of the Copyright Act, and (2) the state law created right is equivalent to any of the exclusive rights within the general scope of copyright as specified in § 106. n1 [**429] *Harper & Row, Publishers, Inc. v. Nation Enters.*, 723 F.2d 195, 200 (2d Cir. 1983).

n1 The Copyright Act, 17 U.S.C. § 106, states as follows:

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

[**6]

We cannot tell from the district court's memorandum opinion whether the district court concluded the cause of

action was preempted because the district court believed CA had alleged National actually distributed a copy of the program to Lend Lease and Tilden, or whether the district court concluded that the allegation of use by National for Lend Lease's and Tilden's benefit was preempted even absent an actual distribution. Therefore, we first examine CA's pleadings to determine whether the district court gave it the benefit of all reasonable inferences from the pleadings. On this standard, we determine that CA's pleadings cannot be read to allege that National actually distributed a copy of the program to Lend Lease or Tilden. Instead, CA's pleadings must be read to allege that National breached their contract by using the program itself, or through EDS, to process data for Lend Lease and Tilden. We then examine whether so construed, the cause of action is preempted.

B. Characterization of CA's Pleadings

Because the question here depends upon the proper interpretation of CA's first counterclaim, we set it out in some detail. In the first counterclaim, CA alleged, in pertinent [**7] part, that:

The authorization for use granted National [pursuant to the 1990 License Agreement] was for the internal operations of National and for the processing of its own data. (First Counterclaim, P 31)

Pursuant to the Supplement Addendum . . . it was agreed that the Licensed Programs would be used solely for the benefit of National and subject to the rights, obligations and benefits in all respects of the terms and conditions of the License Agreement. (First Counterclaim, P 32)

Pursuant to the Supplement Addendum . . . National and EDS further agreed, among other things, to use the Licensed Programs . . . solely to process data of National and in no event for the processing of data of any third party other than National. (First Counterclaim,

P 33)

. . . In none of the License Agreements was [National] granted any authorization to use the licensed programs for the benefit of any company other than itself. (First Counterclaim, P 35)

. . . National has used and permitted the use of the Licensed Programs for the processing of data for the benefit of third parties. This use of the Licensed Programs for the benefit of third parties includes the use [**8] for Lend Lease Trucks, Inc. and Tilden Car Rental, Inc. (First Counterclaim, P 36)

. . . National has been unjustly enriched by any fees or other compensation received from those third-parties for use of the Licensed Programs for their benefit. (First Counterclaim, P 37)

The district court noted that the computer software in question was within the subject matter of copyright, and thus focused on whether CA's breach of contract action sought to protect rights equivalent to the exclusive copyright rights. The court noted that National had not alleged which copyright right was equivalent to CA's action, but concluded that the distribution right was the only right potentially equivalent.

In resolving the preemption issue, the court concluded that "construed as true, CA's allegations reflect the existence of a [*430] lease arrangement between National and Lend Lease and Tilden: National has permitted Lend Lease and Tilden to use the licensed software in exchange for payment. The distribution right includes specifically the right to lease or lend." Mem. op. at 9-10. The court further concluded that the presence of a contract promise did not create a right qualitatively different from [**9] copyright, and stated: "In essence, CA alleges National breached the license agreement by infringing CA's copyrights in the licensed software." Id. at 10.

We believe that in reaching this conclusion, the district court either failed to give CA the benefit of all reasonable inferences from the pleadings or misinterpreted the law of copyright preemption. We first assume that the district court concluded an actual distribution had occurred.

Given our standard of review, we do not believe that CA's complaint may be read to allege that National actually distributed the program. The copyright holder's distribution right is the right to distribute copies. See 17 U.S.C. § 106(3). Section 106(3) grants the copyright owner the "exclusive right publicly to sell, give away, rent or lend any material embodiment of his work." 2 *Nimmer on Copyright* § 8.11[A], at 8-123 (emphasis added). An examination of CA's pleadings demonstrates that they cannot reasonably be read to complain about wrongful distribution. First, the contract provisions CA alleges are at issue place limits upon the way those in rightful possession of a copy of the program can use [**10] that copy. The provisions do not prohibit National or EDS from giving a copy of the program to anyone else. Second, CA does not specifically allege that National gave a copy of the program to Lend Lease or Tilden. CA alleges that "National has used and permitted the use of the Licensed Programs for the processing of data for the benefit of third parties." CA did not allege use by Lend Lease and Tilden, but instead alleged use for their benefit. n2

n2 CA moved for reconsideration of the initial decision on the pleadings. In the papers surrounding that motion, National admitted that it never gave a copy of the program to Lend Lease or Tilden, but rather processed data for those companies on its equipment. We have, however, decided to evaluate in this appeal the soundness of the initial decision to grant judgment on the pleadings. Because we hold that judgment on the pleadings was improperly granted, we do not consider the district court's disposition of the motion for reconsideration.

The only potential allegation [**11] of unauthorized distribution comes in CA's contention that National "permitted the use" of the programs. Because we must give CA the benefit of all reasonable inferences from the pleadings, we cannot conclude that an allegation that National "permitted the use" necessarily amounts to an allegation of the actual distribution of a copy of the program. Rather, we believe that such a pleading can be read, in context, to allege that National permitted EDS to use the programs for the benefit of Lend Lease and Tilden, with no copies ever going to Lend Lease and Tilden. EDS, however, was authorized under the supplement addendum to have a copy of the program. Thus, given our standard of review, we cannot read CA's pleadings to allege that National breached the contract by wrongfully distributing a copy of the program.

The district court's conclusion that the pleadings alleged a lease agreement does not change our conclusion.

The exclusive right to lease a copyrighted work is derivative of the right to distribute, which, as we noted, is the right to distribute copies. See 17 U.S.C. § 106; *Nimmer, supra*, at § 8.11[A]. Allegations of a lease agreement [**12] thus cannot expand that distribution right; the right to lease must be the right to lease a copy. Because the pleadings cannot properly be read to allege distribution of a copy, neither can they be read to allege a lease of a copy.

We thus conclude that CA's pleadings cannot be read to allege that National breached its contract by actually distributing a copy of the licensed program to either Lend Lease or Tilden.

C. Preemption of the Contractual Limitation on Use

The question then becomes whether CA's allegation that National breached [**431] their contract by using the program in a fashion not allowed under the contract protects a right equivalent to one of the exclusive copyright rights. We believe it does not.

We agree with the district court that the computer program in question is within the subject matter of copyright. Thus we focus on the second preemption issue: whether the right sought under state law is equivalent to the exclusive rights under copyright. We must consider whether a limitation on the uses to which a licensee may put a licensed work are preempted even though those uses do not involve the exclusive copyright rights. As noted above, courts and commentators have [**13] framed this inquiry as whether the right in question is "infringed by the mere act of reproduction, performance, distribution or display." 1 *Nimmer on Copyright* § 1.01[B], at 1-13. Section 301 preempts only those state law rights that "may be abridged by an act which, in and of itself, would infringe one of the exclusive rights" provided by federal copyright law." *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693, 716 (2d Cir. 1992) (citing *Harper & Row, Publishers, Inc. v. Nation Enters.*, 723 F.2d 155, 200 (2d Cir. 1983), rev'd on other grounds, 471 U.S. 539, 85 L. Ed. 2d 588, 105 S. Ct. 2218 (1985)). If an extra element is "required, instead of or in addition to the acts of reproduction, performance, distribution or display, in order to constitute a state-created cause of action, then the right does not lie 'within the general scope of copyright' and there is no preemption." 1 *Nimmer on Copyright* § 1.01[B], at 1-14-15 (footnotes omitted); see also *Harper & Row*, 723 F.2d at 200 (where state law right is predicated upon an act incorporating elements beyond mere reproduction or the like, [**14] the [federal and state rights] are not equivalent and there is no preemption).

We conclude that the alleged contractual restriction on National's use of the licensed programs constitutes an

extra element in addition to the copyright rights making this cause of action qualitatively different from an action for copyright.

National initially contends that any complaint alleging use of a copyrighted work that exceeds the uses allowable under the license must be brought as a copyright infringement claim; contract claims containing such allegations are preempted. In support of this proposition, National cites several cases finding copyright infringement when the licensee's "use" of a copyrighted and licensed work exceeded the uses allowed under the license. See *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1087 (9th Cir. 1989); *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851, 853 (9th Cir. 1988); *Gilliam v. American Broadcasting Cos., Inc.*, 538 F.2d 14, 20 (2d Cir. 1976); *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 512 (9th Cir. 1985); *Wolff v. Institute of Elec. & Elecs. Eng'rs, Inc.*, 768 F. Supp. 66, 69 (S.D.N.Y. 1991); [**15] *National Bank of Commerce v. Shaklee Corp.*, 503 F. Supp. 533, 544 (W.D. Tex. 1980).

We believe that National reads these cases too broadly. First, only one of these cases involved preemption. See *Wolff*, 768 F.2d at 69. In *Wolff*, the plaintiff alleged that the defendant had both infringed his copyright and breached their contract by republishing a photograph licensed for only one publication. The court held that the breach of contract cause of action was preempted because, as the court construed it, the plaintiff merely alleged that the defendant breached their contract by infringing his copyright. *Wolff*, 768 F. Supp. at 69. None of the other cases involved preemption; however, in each, the conduct claimed as infringing involved one of the exclusive copyright rights. See *S.O.S.*, 886 F.2d at 1087 (licensee made a copy of the program and prepared a modified version without authorization); *Cohen*, 845 F.2d at 852 (company with a right to record musical composition for film and display film on television also sold and rented [**16] videocassettes to general public); *Gilliam*, 538 F.2d at 18 (defendant televised edited version of program without authorization); *Frank Music*, 772 F.2d at 512 (defendant staged musical revue in manner not allowed under the license); *Shaklee*, 503 F. Supp. at 544 (defendant inserted [*432] unauthorized advertising material into published work). Rather than stating a rule that any use exceeding the license is infringing, these cases establish that engaging in one of the acts reserved to the copyright holder under § 106, without a license to do so, is infringing. Moreover, the *Wolff* case stands at most for the proposition that a breach of contract claim alleging nothing more than an act of infringement is preempted. Given that we cannot read CA to allege that National engaged in one of the acts reserved to CA under § 106, these cases are inapposite.

Because we find no general rule holding breach of contract actions such as this one preempted, we examine specifically whether this cause of action seeks to protect rights equivalent to the exclusive copyright rights. We conclude that the contractual [**17] restriction on use of the programs constitutes an additional element making this cause of action not equivalent to a copyright action.

National disagrees with this characterization and attempts to read the term "use" in the license agreement as synonymous with the rights given to the copyright holder. We believe it is not, as two recent cases make clear.

In a case very similar to this one, involving CA, the court held that a contractual restriction on use of a computer program was distinct from the exclusive copyright rights. In *Computer Assocs. v. State St. Bank & Trust*, 789 F. Supp. 470 (D. Mass. 1992), the parties had executed a license that provided, inter alia: "Customer agrees to refrain from using the Equipment . . . for other customer-sites or customers on a service basis." *Id.* at 475. CA argued that State Street violated the provisions of the license agreement by allowing customers direct access to the programs to gain information. Because of that alleged breach, Computer Associates claimed that it could cancel their maintenance contract. State Street moved for a preliminary injunction prohibiting CA from cancelling [**18] the maintenance contract. CA then claimed that the violation of the agreements constituted copyright infringement, preventing State Street from claiming irreparable harm. In denying this claim, the court stated:

infringement results only from the unauthorized copying of copyrighted material. A use of an authorized copy of copyrighted subject matter ordinarily is not infringing. . . . Therefore, applicable limitations on State Street's use of the programs, if any, must be derived initially from the license agreements, not copyright law.

Id. at 472.

The Ninth Circuit reached a similar conclusion in *G.S. Rasmussen & Assocs. v. Kalitta Flying Serv.*, 958 F.2d 896 (9th Cir. 1992). In *Kalitta*, the plaintiff had received from the FAA a certificate (STC) allowing him to modify a plane design. The defendant took the certificate from an existing, modified plane and used it to modify another plane, without paying the plaintiff for doing so. Plaintiff sued for unfair competition, and the defendant raised the defense of copyright preemption.

The court first noted that there was no allegation of copying. It went on to [**19] hold that:

n3 The FCC requires that all planes be of approved design. As a shortcut to examining every plane, the FCC approves a design for a class of planes. This requires significant testing. The FCC also approves modifications to existing approved design by issuing a certificate demonstrating that the modification is safe. Then, for any particular modified plane, a company can prove conformance by demonstrating that they have such a certificate and the design conforms to it.

Federal copyright law governs only copying. . . . Enforcement of Rasmussen's property right in his STC leaves Kalitta free to make as many copies of the certificate as it wishes; to the extent the manual supplement is not protected by the copyright laws, the same is true of it. That Kalitta is prevented from then using these copies to obtain an airworthiness certificate from the FAA does not interfere in any way with the operation of the copyright laws.

Id. at 904.

In both of these cases, the courts distinguished [**20] restrictions on use of a copyrightable [*433] work that did not involve "copying" from the exclusive rights in copyright. CA's situation is the same. CA does not claim that National is doing something that the copyright laws reserve exclusively to the copyright holder, or that the use restriction is breached "by the mere act of reproduction, performance, distribution or display." Instead, on this posture, CA must be read to claim that National's or EDS's processing of data for third parties is the prohibited act. None of the exclusive copyright rights grant CA that right of their own force. Absent the parties' agreement, this restriction would not exist. Thus, CA is alleging that the contract creates a right not existing under the copyright law, a right based upon National's promise, and that it is suing to protect that contractual right. The contractual restriction on use of the programs constitutes an extra element that makes this cause of action qualitatively different from one for copyright.

We believe that the legislative history of the Copyright Act supports this conclusion. In elaborating the meaning of the term "equivalent rights" the House committee report to the Copyright Act suggests [**21] that

breaches of contract were not generally preempted: "nothing in the bill derogates from the rights of parties to contract with each other and to sue for breaches of contract." See H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 132, reprinted in 1976 U.S.C.C.A.N. 5659, 5748. This is not the end of the inquiry, however.

National contends that while the bill as initially drafted might have excluded breaches of contract from preemption, the bill as passed did not. National notes that § 301(b)(3) n4 of the Copyright Act, as initially drafted and reported out of committee in the House, explicitly exempted breach of contract suits from preemption. This provision was then amended on the floor of the House to delete all the specific examples of non-preempted causes of action. National claims this action demonstrated congressional intent to remove the "safe harbor" from preemption for breach of contract actions. See, e.g., *Wolff v. Institute of Elec. & Elecs. Eng'rs, Inc.*, 768 F. Supp. 66 (S.D.N.Y. 1991) (deletion of safe harbor provision for breaches of contracts suggests that Congress did not intend generally to except them from preemption).

n4 Section 301(b)(3) initially provided that:

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to-

* * * *

(3) activities violating rights which are not equivalent to any of the exclusive rights within the general scope of copyright as specified by Section 106, including breaches of contract, breaches of trust, invasion of privacy, defamation, and deceptive trade practices such as passing off and false representation.

Sec. 301(b)(3), H.R. 4347, 89th Cong., 2d Sess. (1966).

[**22]

We disagree. Although the deletion of a provision from a final bill generally means that Congress intends to disavow what was formerly expressed, we believe in this case the facts surrounding the deletion of § 301(b)(3)

suggest Congress did not intend to reverse the presumption of non-preemption for the examples initially included in § 301(b)(3). Instead, it appears that certain members of the House were concerned about the subsequent addition of the tort of misappropriation to the list of non-preempted causes of action, and suggested deletion of the specific examples in order to prevent confusion about the scope of preemption. n5 We agree with Professor Nimmer [*434] that "it seems clear that the amendment that caused such deletion was not intended substantively to alter Section 301(b)(3) as regards [those examples originally included]." 1 *Nimmer on Copyright § 1.10*[B], at 1-22; See also *Mayer v. Josiah Wedgwood & Sons, Ltd.*, 601 F. Supp. 1523, 1533 (S.D.N.Y. 1985) (same); *Factors, Etc., Inc. v. Pro Arts, Inc.*, 496 F. Supp. 1090 (S.D.N.Y. 1980) (same). Thus, we believe, the better view is that the legislative history suggests a [**23] congressional intent not to preempt breach of contract actions such as this one. n6

n5 The version of the proposed Copyright Act sent to the House floor contained several additional items listed as immune from preemption. One of these created great controversy: "misappropriation not equivalent to any of such exclusive rights." The Department of Justice objected to this exemption, stating that "[it] is almost certain to nullify preemption." Letter to Hon. Robert Kastenmeier, July 27, 1976, cited in 1 *Nimmer on Copyright § 1.01*[B], at 1-22. The bill was then amended on the House floor to delete all the specific examples of non-preempted causes of action. Rep. Seiberling described the reasons for that action as follows:

Mr. Chairman, I offer an amendment [deleting all of the latter part of Section 301(b)(3) beginning with the word 'including,' followed by the examples of nonpreempted state created rights]. Mr. Chairman, my amendment is intended to save the 'Federal preemption' of State law section which is section 301 of the bill, from being inadvertently nullified because of the inclusion of certain examples in the exemptions from preemption. The amendment would simply strike the examples listed in section 301(b)(3). The amendment is strongly supported by the Justice Department, which believes that it would be a serious mistake to cite

as an exemption from preemption the doctrine of 'misappropriation.' The doctrine was created by the Supreme Court in 1922 and it generally has been ignored by the Supreme Court and the lower courts ever since. Inclusion of a reference to the misappropriation doctrine in this bill, however, could easily be construed by the courts as authorizing the States to pass misappropriation laws. We should not approve such enabling legislation, because a misappropriation law could be so broad as to render the preemption section meaningless.

122 Cong. Rec. H10910 (daily ed. Sept. 22, 1976).

We agree that these remarks suggest that Congress did not intend to remove the exemption from preemption for those causes of action initially listed in § 301(b)(3). Rep. Seiberling stated that his concern was over "certain examples," and then went on to note that his main concern was the misappropriation example, which was added after the bill was initially drafted. We thus read his amendment striking the examples merely to remove the specific reference to misappropriation.

[**24]

n6 We note that Nimmer has argued that the Wolff court was wrong to find preemption even though the act claimed to 'breach the contract involved one of the exclusive copyright rights. "Reverting to Wolff, the court could have required the plaintiff to adopt an election of remedies to the extent that the copyright and contract causes of action were deemed inconsistent. See § 10.15[A] infra. Alternatively, it could have determined that any damage for contract breach was already subsumed in the copyright recovery. See § 14.02[B] & n.53.1 infra. Both those devices might have accomplished the same goal without reaching an erroneous preemption holding." 1 *Nimmer on Copyright § 1.01*[B], at 1-16.1. According to Nimmer, then, if a license agreement contains a provision prohibiting the licensee from copying the program, the licensor could sue for breach of contract rather than for copyright infringement. Other courts have concluded, how-

ever, that breach of contract actions in which the alleged breach consists of the exercise of one of the exclusive copyright rights are preempted. See *Wolff*, 768 F. Supp. at 69; *Howard v. Sterchi*, 725 F. Supp. 1572, 1579 (N.D. Ga. 1989); *Brignoli v. Balch, Hardy & Scheinman, Inc.*, 645 F. Supp. 1201, 1205 (S.D.N.Y. 1986) (a breach of contract claim for "unauthorized use of copyrightable material falls squarely within § 301 and is thus preempted"). Because we decide that the specific contract right CA seeks to enforce is not equivalent to any of the copyright rights, we do not need to decide whether a breach of contract claim based on a wrongful exercise of one of the exclusive copyright rights is preempted.

[**25]

National contends, however, that such a conclusion fails to recognize the nature and value of computer software. According to National, computer software has value because it performs a function. National thus claims an allegation that it used the program for another is in fact an allegation that it distributed the "functionality" of the program. This argument fails. First, National cites to no authority in support of this position. Second, even with respect to computer software, the distribution right is only the right to distribute copies of the work. As Professor Nimmer has stated, "infringement of [the distribution right] requires an actual dissemination of either copies or phonorecords." 2 *Nimmer on Copyright* § 8.11[A], at 8-124.1. Finally, courts have specifically held that copyright protection in computer software does not extend to the software's function. See, e.g., *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693, 704 (2d Cir. 1992). Thus, even if CA could be said to have alleged that National "distributed the functionality" of its program, such a claim would not protect a right equivalent to one of the exclusive rights in [**26] copyright.

Finally, National claims that CA's requested relief demonstrates its cause of action is equivalent to the exclusive rights under copyright. First, National notes that CA requested damages for unjust enrichment, damages National claims are preempted under § 301. National is correct in noting that certain courts have held claims for unjust enrichment preempted when based upon allegations that the defendant [**435] engaged in one of the acts reserved to the copyright holder under § 106. We do not read CA to allege that National was unjustly enriched as a result of a wrongful exercise of one of the § 106 rights. Rather, we read this allegation of damage as a further explanation of the damages CA intends to prove arising from the breach of contract. CA alleges generally that it has been damaged in an amount to be proved at trial, and it will have to prove those damages. In this

context, we read its allegations of unjust enrichment as an attempt, albeit inartful, to allege that National received from Lend Lease and Tilden amounts that CA would have received had National not breached their contract. Second, National notes that CA requested return or destruction of any copies of its programs [**27] still in National's possession. It notes that the Copyright Act provides precisely that remedy, see 17 U.S.C. § 504, and claims that the request for destruction shows the claim is equivalent to a copyright claim. We disagree. The parties' contract specifically provides for the return or destruction of the licensed programs upon any breach of the license agreement. n7 This remedy would apply equally to this asserted breach (improper use) as to an action for breach of an agreement to pay royalties or license fees, which National admits would not be preempted. Furthermore, the copyright remedy of return or destruction applies even absent a preexisting relationship between the parties: it does not have to be stated in a contract or license agreement. We cannot conclude that this action is preempted simply because the parties' contract provides a remedy for breach identical to a remedy provided in copyright.

n7 The license agreement between CA and National provides that CA can terminate the license agreement immediately upon National's breach of any term of the agreement. J.A. at 27.

The license agreement between CA and National provides:

If this Agreement should terminate for any reason, Licensee [National] shall certify in writing to CA that all copies or partial copies of the Licensed Program have been either returned to CA or otherwise destroyed and deleted from any computer libraries or storage devices and are no longer in use by Licensee.

J.A. at 26.

[**28]

III. CONCLUSION

For all the foregoing reasons, we conclude that CA's cause of action, as pled, is not preempted by the Copyright Act. Therefore, we reverse the order of the district court dismissing CA's first counterclaim with prejudice

991 F.2d 426, *; 1993 U.S. App. LEXIS 6926, **;
26 U.S.P.Q.2D (BNA) 1370; Copy. L. Rep. (CCH) P27,078

and remand for further proceedings consistent with this opinion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LEXSEE 893 F.2D 1488

Weldon P. TAQUINO, Plaintiff-Appellant, v. TELEDYNE MONARCH RUBBER, et al., Defendants-Appellees. TELEDYNE MONARCH RUBBER, etc., Plaintiff-Appellee, v. Weldon P. TAQUINO and E.P.I., Inc., Defendant-Appellants. ADVANCED INDUSTRIAL AND MARINE SERVICES, INC. Plaintiff-Appellee, v. Weldon P. TAQUINO, Defendant-Appellant

No. 88-4740

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

893 F.2d 1488; 1990 U.S. App. LEXIS 1691

February 12, 1990

PRIOR HISTORY: [**1]

Appeals from the United States District Court for the Western District of Louisiana. No. CA-84-1999 c/w 87-0117, 84-1367, John M. Duhe, Jr., Judge.

DISPOSITION:

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

COUNSEL:

Attorneys for Appellants:

Pravel, Gambrell, Hewitt, Kimball & Krieger, N. Elton Dry, Houston, Texas, Charles C. Garvey, Jr., New Orleans, Louisiana.

Attorneys for Appellees:

Keaty & Keaty, Thomas S. Keaty, Phelps, Dunbar, Marks, Calverie & Sims, Rutledge C. Clement, Jr., Amelia J. Williams, New Orleans, Louisiana. Wright & Jensen, Lennon C. Wright, Houston, Texas.

JUDGES:

Garza, Williams and Davis, Circuit Judges.

OPINION BY:

WILLIAMS

OPINION:

[*1490] JERRE S. WILLIAMS, Circuit Judge:

This appeal stems from three consolidated civil suits. The suits arose out of the various business relation-

ships of appellants Weldon P. Taquino and E.P.I. Inc., and appellees Teledyne Monarch Rubber ("TMR") and Advanced Industrial Marine Services ("AIMS").

We state the facts only briefly. They are presented in detail in the opinion of the district court upon which we rely and which is attached as Appendix A. Taquino and TMR entered a contract (their third) under which Taquino, [**2] an independent contractor, undertook to serve as TMR's exclusive agent to sell offshore drilling rig rubber products, including energy absorbing cells, in the Gulf of Mexico region, and as manager of TMR's fabrication services (assembling components into the finished products). Taquino was to be paid on a commissions basis.

A year later, TMR terminated its fabrication operation, assigned Taquino's contract to AIMS, and made AIMS its sole distributor of TMR offshore rubber products. Taquino continued to take orders for TMR products which he sent directly to TMR rather than AIMS. He accepted payment, however, of certain commissions from AIMS. He resigned six months later.

During this same period, Taquino also engaged in several activities in preparation for manufacturing and marketing his own energy-absorbing cell which would compete with the TMR cell. He discussed the cell with potential customers, contacted several potential suppliers of component parts and services, and consulted a patent attorney who initiated a patent search.

Upon Taquino's resignation, TMR refused to pay certain commissions that Taquino claimed were due. TMR asserted that Taquino had breached the contract [**3] because he had used in his advertising for his company, E.P.I., some materials identical to TMR's materials. The allegation was that he had also made sales in direct competition with TMR/AIMS.

Appellants Taquino and E.P.I. sued appellees TMR and AIMS, seeking to collect the unpaid commissions allegedly due under contract. Appellee TMR separately sued appellants, claiming patent infringement, Lanham Act violations, breach of contract, unfair competition and deceptive trade practices in violation of the Louisiana Unfair Trade Practice statute, and misappropriation of trade secrets. Taquino and E.P.I. counterclaimed product disparagement and violations of federal antitrust law. AIMS filed a state court Petition and Application for Temporary Injunction against Taquino, which was removed to federal district court. These suits were consolidated into the present case.

The district court issued its Findings of Fact and Conclusions of Law on the issue of liability. It concluded that Taquino had breached his contract with TMR/AIMS, and had violated the Louisiana Unfair Trade Practice and Consumer Protection Law, La.R.S. 51:1401-18. After a later trial on damages, the court issued Supplemental [**4] Findings of Fact and Conclusions of Law as to the damages. The court awarded TMR lost profits amounting to \$ 17,511.62, and, pursuant to Louisiana law, \$ 136,213.75 in attorney's fees. The court also awarded AIMS \$ 10,000 in nominal damages.

We affirm on the basis of the carefully considered and thorough opinion of the district court on liability, attached as Appendix A. We also affirm all but one of the damage awards rendered later in the supplemental order as supported by the record. The one award we find in error is the \$ 10,000 nominal damages. We find the amount awarded is excessive. We vacate that award and remand for reconsideration of nominal damages not to exceed \$ 2000.

We consider briefly the nominal damages award. The district court awarded AIMS the nominal damages based upon its recognition that, although AIMS was [*1491] entitled to recover lost profits n1, AIMS failed to introduce any evidence of its profits or losses. *Louisiana Civil Code Article 1999* states that "when damages are insusceptible of precise measurement, much discretion shall be left to the court for the [**5] reasonable assessment of these damages." *La.C.C. Art. 1999*. There was no showing, however, that AIMS for some reason could not have produced evidence by which to measure its damages. Consequently, the district court properly concluded that an award of any amount except nominal damages would be pure speculation and conjecture. "Louisiana law is quite clear on this point: when items of damage are of a nature susceptible to proof of amount, and the plaintiff can prove them but does not, only nominal damages may be awarded." *Standard Plumbing Supply Co. v. U.S. Steel Corp.*, 703 F.2d 802, 804 (5th Cir.1983); *Fiesta Foods, Inc. v. Ogden*, 159 So. 2d 577 (La.App.1963); *Meyer v. Succession of McClellan*, 30

So. 2d 788 (La.App.1947). Any loss of profits that AIMS might have sustained falls into this category. See *Standard Plumbing Supply*, *supra* at 804.

n1 *La.C.C. Art. 1995* provides that damages in a breach of contract action "are measured by the loss sustained by the obligee and the profit of which he has been deprived."

[**6]

Although the court correctly held that it could award only nominal damages, we find the \$ 10,000 awarded AIMS to be excessive. While Louisiana law does not limit nominal damages to any specific or fixed amount, the cases do give us some guidance as to a suitable amount. In *Standard Plumbing Co.*, *supra*, 703 F.2d at 805, pursuant to Louisiana law, this court vacated the district court's award of \$ 50,000 "actual" but unproved damages for breach of contract, and remanded for an award of nominal damages not to exceed \$ 1000. The Louisiana court in *Fiesta Foods, Inc. v. Ogden*, *supra*, considered \$ 500 an appropriate award of nominal damages in a breach of contract action. In an action for breach of loan-servicing agreement in which plaintiff bank asserted damages of \$ 135,000, but offered no proof of actual loss, the court awarded \$ 5000 nominal damages. *A.E. Landvoigt, Inc. v. La. St. Emp. Ret. S.*, 337 So. 2d 881 (La.App.1976). See also *Lowe v. Jones*, 519 So. 2d 379 (La.App.1988) (court reduced award of \$ 4000 nominal damages [**7] for trespass to \$ 1000); *Ryland v. Taylor, Porter, Brooks & Phillips*, 496 So. 2d 536 (La.App.1986) (court awarded \$ 1500 nominal damages for injury to plaintiff's personal and professional reputation due to malicious civil prosecution).

Under the facts and circumstances of this case, in which TMR only recovered approximately \$ 17,000 actual damages, the district court's award of \$ 10,000 to AIMS is excessive as "nominal". We therefore vacate the \$ 10,000 damages award to AIMS and remand for reconsideration and entry of an award of nominal damages not in excess of \$ 2000.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

APPENDIX A

Civ. A. Nos. 84-1999 "L", 85-0117 "L" and 85-1367 "L"

United States District Court Western District of Louisiana Lafayette-Opelousas Division

Filed Nov. 19, 1987

Weldon P. Taquino v. Teledyne Monarch Rubber, et

al

CONSOLIDATED WITH:

Teledyne Monarch Rubber v. Weldon P. Taquino, et
al

CONSOLIDATED WITH:

Advanced Industrial & Marine Services, Inc. v.
Weldon P. Taquino

FINDINGS AND CONCLUSIONS

DUHE, District Judge.

These consolidated cases present an ever changing kaleidoscopic view of facts and [*1492] legal [**8] issues. Nine days of trial, scores of exhibits, and over three hundred pages of post-trial briefs (without table of contents or index) have done little to stop the motion of the kaleidoscope and define its pattern. The matter has been under advisement since August 27, 1986, and has received more time and attention than any other single case in this court. By these findings and conclusions, I shall attempt to stop the motion and firmly fix the pattern of this kaleidoscope.

Basically, the claims to be resolved are:

1. Nature and validity of the Taquino-TMR/AIMS contract.
2. Commissions, if any, due Taquino by AIMS an/or TMR.
3. Validity of U.S. Patent 4,363,474. (474).
4. Whether that patent, if valid, is unenforceable due to misuse.
5. Violation by TMR and AIMS of the Sherman Anti-Trust Act, § 1 and 2.
6. Infringement of U.S. Patent 4,363,474 by Taquino and EPI.
7. Violation of the Louisiana Unfair Competition Law (*La.Rev.Stat. Ann. 51:1401 et seq.*)
8. Violation by Taquino and EPI of § 43(a) of the Lanham Act (*15 U.S.C. 1125(a)*).
9. Appropriation of TMR trade secrets by Taquino in violation of his contract and the Louisiana [**9] Uniform Trade Secrets Act (*La.Rev.Stat. Ann. 51:1431 et seq.*)
10. Breach of the contract of January 1, 1983.
11. Product disparagement, by TRM and AIMS.

FINDINGS OF FACT

I. *The Parties*

Weldon P. Taquino ("Taquino") is an individual resident of Lafayette Parish, Louisiana.

E.P.I., Inc. ("EPI") is a Louisiana corporation domiciled in Lafayette Parish, organized in October 1983, owned and controlled by Taquino.

Teledyne Monarch Rubber ("TMR") is a division of Teledyne Industries, Inc., which is a California corporation with its principle place of business located outside Louisiana.

Advanced Industrial Marine Services, Inc. ("AIMS") is a Texas corporation with its principle place of business in Houston, Texas.

II. *The Relationships*

A. Taquino and TMR -- employee or contractor?

Taquino spent seventeen years employed by Teledyne Movable Offshore (another division of Teledyne Industries, Inc.) engaged in supervision of its work of constructing offshore platforms and related structures for the oil and gas industry. In late 1980, TMR began investigating the possibility of entering the offshore rubber products business. It was put in touch [**10] with Taquino who arranged for TMR executives to become acquainted with products then in use. After a period of study, TMR executives decided to begin manufacturing and selling a line of marine rubber products and, because of his extensive knowledge in the field, Taquino was released by Teledyne Movable Offshore so that he could become associated with TMR.

By contract dated May 15, 1981 (TMR Exhibit 1) Taquino and Lynnhart Corporation, the incorporated personality of Bob Hartley, became independent sales representatives for TMR in the United States Gulf of Mexico region, to sell the offshore rubber products of TMR for a period of two years on a commission basis. It provided further that they would be responsible for all costs of conducting their business, specifically including the compensation due any individuals employed by them. Taquino and Lynnhart were required to represent no other manufacturer of rubber products but could, and did, represent manufacturers of other than rubber products.

TMR contracted to indemnify and defend Taquino and Lynnhart against any patent infringement lawsuit and to extend all applicable [*1493] written and implied warranties of its products [**11] to Taquino's and Lynnhart's customers. Taquino concedes that, pursuant to this

agreement, he was an independent contractor and not an employee of TMR.

In June of 1982 the original contract was cancelled by mutual consent and a new contract was entered into between TMR and Taquino (TMR Exhibit 5) and TMR and Lynnhart. The Taquino contract retained him as exclusive agent in the Gulf of Mexico region and additionally required him to manage TMR's fabrication services. TMR had decided to not only sell component rubber products but also to assemble those components into finished products such as fendering systems for use offshore and to sell both components and completed systems.

The contract provided that Taquino would be compensated on a commission basis and he was guaranteed a monthly fee of \$ 3500 until commissions exceeded that amount on a monthly basis or until cumulative commissions exceeded \$ 42,000 in a calendar year. TMR further agreed to reimburse normal business expenses for the conduct of business by Taquino in accordance with the published rules of the company. In the rough drafts of this contract which were admittedly prepared by TMR, every reference to "employment" or [**12] to Taquino as an "employee" was deleted.

On January 1, 1983 TMR and Taquino entered into a final contract (TMR Exhibit 6, EPI Exhibit 99). Its provisions were basically the same as the contract entered into in 1982 except that more detail was spelled out concerning the reimbursement of expenses and the manner in which reimbursement was to be sought; the requirement that Taquino furnish a status report to Teledyne twice per month; a provision for payment of commissions under certain conditions *after* the termination of the contract by either party; and the removal of any reference to minimum commissions or to a draw against commission. The contract extended Taquino's appointment to additional territory and additional customers. Again any reference to employment was avoided.

In none of the contracts between TMR and Taquino was provision ever made for vacation time, withholding of taxes, fringe benefits, health or life insurance, or other matters which are normally the subject of employment contracts.

The final contract accorded Taquino the privilege of assigning his contract to a corporation owned by him which he did after his formation of EPI. The contract was silent as to [**13] any right of TMR to assign. n1

n1 This court has previously decided TMR had by law the right to assign the contract.

At the time the 1982 contract between TMR and Taquino was made, TMR officials discussed hiring Taquino as a direct employee and the decision was made not to do so.

It was TMR's policy to require employees to sign an "invention agreement" acknowledging that all inventions were the property of TMR and requiring certain confidentiality. Taquino was never asked to sign such an agreement.

Under both the 1982 and 1983 contracts Taquino was an independent contractor who was entitled to reimbursement of certain expenses. He was not an employee.

The 1983 contract between TMR and Taquino provided in pertinent part the following:

7. Taquino during the term of this Agreement shall not represent any other manufacturer of rubber products. If Taquino should initiate the termination of this Agreement, Taquino will refrain from selling any competitive rubber products or association with a competitive [**14] company for a two-year period. If Teledyne terminates this Agreement, Taquino is not bound by this clause.

* * *

11. Taquino shall not disclose any technical data, trade secrets, customer lists or other information relating to Teledyne's offshore product line received or developed by him from or through Teledyne by virtue of this Agreement [*1494] and not generally available to the public from other sources, except as any such disclosure may be consistent with the sales of such offshore product line or with the other regular operations of Taquino under this Agreement.

* * *

12. Either party on thirty (30) days written notice to the other shall be entitled to terminate this Agreement for just cause, but without prejudice to any rights of either party to monies due or to become due under this Agreement.

Upon termination of this Agreement, 50% of all commissions for sales on Taquino's account list regardless if sale was made

directly by Taquino or Teledyne will be paid by Teledyne to Taquino for a period of one (1) year.

* * *

16. Upon the termination of this Agreement, for any reason, Taquino shall discontinue the use of the Company's name, letterhead, [**15] business cards, trademarks, labels, copyrights, and other advertising materials and shall remove all signs and displays relating thereto; and, in the event of failure to do so, Teledyne may itself remove such articles at Taquino's expense.

B. Taquino and TMR and AIMS

In 1982, TMR contracted with AIMS establishing it as a representative to sell TMR's rubber products in Texas under a commission arrangement similar to that which it had with Taquino.

The offshore rubber products line represented only two to three percent of the sales of TMR and was not particularly profitable. As noted, TMR manufactured and sold component energy absorbing parts but also fabricated those parts into boat landings, barge bumpers and other completely fabricated systems. Fabrication presented numerous problems.

In October of 1983 George Caplea became vice-president of sales for TMR and resolved to do something about the low profit margin in the offshore rubber products line. He was of the opinion that fabrication of component parts into completed systems should be abandoned. Taquino advised to the contrary. In his view, TMR's best customer for these products Tenneco, Inc., would buy only completely [**16] fabricated systems. Additionally, it is noted that Taquino's commissions were substantially greater on the sale of fabricated products than on the sale of component parts.

TMR entertained proposals from Taquino and AIMS to take over the sales of the entire TMR offshore product line. Taquino submitted a proposal in September of 1983 which was revised in early December. AIMS submitted a proposal in early January 1984. TMR did not inform Taquino or AIMS of the other's proposal. The Taquino proposal required substantial financial commitments by TMR. The AIMS proposal did not.

After considering the proposals, TMR decided to terminate fabrication and to accept AIMS' proposal and

make it the sole distributor of TMR offshore rubber products. AIMS would also do, or cause to be done, all fabrication. When he learned of this, Taquino objected on the basis that AIMS did not offer sufficient technical ability and expertise to provide the necessary services to customers and that Tenneco would not deal with a distributor but had made it clear that it would deal only directly with TMR.

TMR then attempted to have AIMS and Taquino contract directly because it was interested in keeping Taquino [**17] involved. After numerous exchanges and discussions, no agreement could be worked out. On February 24, 1984, TMR assigned to AIMS Taquino's contract with it (TMR Exhibit 7). TMR then entered into a distributorship agreement with AIMS on March 1, 1984 (TMR Exhibit 11). While Taquino's contract provided that he was manager of fabrication and services, AIMS employed an engineer in May of 1984 to provide actual engineering services, new product development and technical sales. Taquino [*1495] is not a registered engineer. He did supervise some fabrication.

Following the assignment of his contract to AIMS, Taquino continued to sell TMR products but sent orders directly to TMR rather than through AIMS.

Effective on July 15, 1984 Taquino resigned.

III. Who Breached the Contract?

A. Possible Breaches Before July 15, 1984

Before Taquino left TMR on July 15, 1984, he did some conceptual drawings of an energy absorbing cell of his own, discussed it with several potential customers who were customers of TMR and contacted numerous potential suppliers of component parts preparing for the manufacture of a cell of his own. In early 1984, Mr. Gasser, then with Cooper Tire Company [**18] visited with Taquino and a Cooper Tire engineer. They discussed shock cells and the "donut concept" of shock absorption (which concept is used in the EPI product) and subsequently sent some drawings to Taquino.

Taquino discussed with Mr. Tenneyson of Tenneco, Inc. (TMR's best customer) the means and methods by which he could get EPI on Tenneco's approved vendor list in place of TMR and he submitted to Tenneco certain of the necessary documents to accomplish this. In late June of 1984, Mr. Tenneyson wrote to his superiors with Tenneco recommending EPI for inclusion on the approved vendor's list.

Taquino met with his patent attorney and showed him a sketch of the cell he intended to build and asked the attorney's advice regarding patentability. The attorney undertook to have a patent search conducted on June 4, 1984.

In May of 1984, Taquino discussed with representatives of Marc Tool Company the building of several component parts for his proposed device and had, before that time, an excellent idea of what the construction of such a product would cost. He contacted Colonial Rubber Company before July 15 regarding component rubber parts as well as had conversations with Bertin Rubber [**19] and several other suppliers or potential suppliers of component parts and services in May and June of 1984. At the same time EPI's employee Mr. McClendon was checking on laboratories which could perform tests on rubber products and in May of 1984 Taquino discussed with Pittsburgh Testing Laboratory the testing of a prototype product.

Further, Taquino conducted a market survey and made the information of that survey available to Mr. Gasser with Cooper Tire Company. He also discussed the results with Mr. Van Camp of TMR.

As above noted, TMR decided to cease fabrication before July 15, 1984 which had the potential to reduce Taquino's commissions and would do away with much of his duties as fabrication supervisor. While their contract made Taquino Manager of Fabrication, it had no express requirement that TMR remain in the fabrication business. Further, it assigned his contract to AIMS which then hired an engineer whose duties could duplicate much of Taquino's fabrication management responsibility. Additionally, some of Taquino's customers, notably the Aminol account, were transferred to AIMS on the basis that their places of business were in Houston. The Taquino-TMR contract provided [**20] for this. This matter was ultimately resolved, however, by a sharing of commissions between himself and AIMS.

There was some delay in the payment of commissions due Taquino. Additionally some commissions were reduced (Taquino Exhibit 134) but this was permitted by Paragraph 4 of their contract. TMR continued to accept Tenneco orders via Taquino for sales made in April and May of 1984. Payment was received by TMR after July 15, 1984 and it did not pay commission to Taquino because it considered he had violated the contract with it by being in competition with it.

B. After July 15, 1984

As above indicated, TMR has not paid certain commissions.

[*1496] Taquino used advertising materials and drawings identical to TMR materials and made sales of his product in direct competition with TMR.

IV & V. [The facts as to the Patent and the possible infringement involving the rival energy absorbing cells are omitted from this printing.]

VI. Test of EPI Cell

AIMS, through an intermediary, purchased an EPI shock cell and sent it to Pittsburgh Testing Laboratories where it ordered the cell subjected to a 400,000 pound axial load pushing inward on the inner pipe [**21] member or a deflection inward of the inner member of twelve inches, whichever first occurred. The laboratory report (EPI Exhibit 80, TMR Exhibit 53) indicates that the 400,000 limit was reached after ten and one-half inches of axial deflection. An inspection window was then cut in the outer cylinder of the cell by TMR, a rubber sample was taken from the compression rings inside and photographs were taken showing the cell, tears in the compression rings and some distortion of the rings as well as a bent steel plate. AIMS later circulated copies of these photographs to six persons in the industry contending that they were photographs of the EPI cell which had failed in normal use.

There was no evidence adduced of the specific loss of any given sale or opportunity to bid or any monetary damage resulting from the display of the photographs.

The court is convinced that the purpose of AIMS and TMR was to test the EPI cell to failure.

Taquino learned that the photographs were being circulated as depicting an EPI cell which failed in normal use and contacted an executive of TMR who agreed to have the practice stopped. He took steps to accomplish this and, after some time, the circulation [**22] of the photographs terminated. The photographs were only shown to representatives of Omega, Texas Eastern, CBS engineers, Kerr McGee, Service Machine and Supply Company, Inc., and Gulf Oil Corporation. It was not uncommon in the industry for pictures of competitors allegedly failed shock cells to be displayed to potential customers.

VII. Deceptive Advertising

TMR and AIMS contend that Taquino and EPI have been guilty of deceptive advertising.

The EPI sales brochure (TMR Exhibit 30) depicts the compression cell as containing a continuous cylinder of rubber. It in fact contains four rubber "donuts". There appears to be a discrepancy in the deflection limit between what is stated in the brochure and what is indicated in the graphs and load deflection curves in the brochure.

The drawing of a typical bridge slide pad and a typical isometric boat landing used by EPI and Taquino to solicit sales of these items appear to be exact or almost exact replicas of drawings TMR had done by McDermott

Engineering and Brown & Root and which came into Taquino's possession while he was employed by TMR.

There is no evidence that anyone in the industry has been significantly misled by [**23] any inaccuracy or apparent inaccuracy in EPI literature.

All the items advertised in the EPI brochure are not carried in stock. While this is not stated in the brochure, it is in the nature of the items that a customer would expect that the majority of them would be custom engineered to the customer's uses.

There is no evidence that EPI equipment sold to customers has not performed substantially in accordance with the specifications contained in the sales materials.

The evidence is unclear, and therefore TMR and AIMS have not borne the burden of proof, that the TMR Exhibit 45 dated June 27, 1983 of a typical bridge slide pad was in fact drawn in 1983 although it is typical of the device offered by TMR.

The boat landing drawing used by EPI is likewise typical of that previously offered by TMR. However, TMR no longer offers this product not because of any action by EPI, but because it is no longer licensed by Eddie Guilbeau, inventor of the "torque ring" to manufacture and sell that item. [*1497] The Teledyne drawing does not contain any notice of copyright and indeed there is no copyright thereof.

Finally, there is no showing that any misrepresentation, if indeed misrepresentations [**24] exist, or loss of any TMR customer to EPI is due to false advertising. There is no showing of material deception.

VIII. Conversion of Property

In addition to the findings previously made, the court finds that TMR was not deprived of any drawing or other property whatsoever. To the extent that such may have been used by Taquino and EPI, the use thereof was not thereby deprived to TMR and AIMS.

IX. Sherman Act

Taquino and EPI contend that TMR and AIMS have violated §§ 1 and 2 of the Sherman Act.

The only evidence as to the relevant market was testimony of Earl Spicer, International Vice President of Marine Sales for Regal Rubber Company, a competitor of TMR and EPI. He testified that in 1985 TMR had 50-55% of the Gulf market; Regal Rubber Company had 15-20%; Marine Rubber Company had 15-20%. The remaining percentage was presumably held by Taquino and EPI and any others who may be in the market. Worldwide he stated that Regal and Marine controlled the majority of the market and TMR the minority share.

No other evidence regarding relative market or market share was produced.

No evidence was produced as to damages caused by anti-trust violations, if indeed [**25] there were any, or loss of jobs or opportunity to bid jobs as a result thereof.

AIMS filed suit against Taquino and EPI in the state courts of Texas. Defendants removed to the United States District Court for the Southern District of Texas which then transferred to this court and this proceeding.

The other suits noted in the caption hereof by TMR are pending.

The previous findings made relative to the tests run on EPI's cell are relevant to this claim. Certain other patent infringement claims reflected by the pleadings herein have been voluntarily discontinued.

AIMS is an independent contractor and does not constitute a single economic entity with TMR.

X. Misappropriation of Trade Secrets

Although originally contending that Taquino misappropriated numerous trade secrets, these claims were, during the course of the trial, reduced to claims concerning the conductor guide stabilizer and that Taquino used his knowledge gained while under contract to TMR and AIMS of upcoming jobs in order to make competing bids for those jobs.

There is no evidence that other competitors of TMR did not have the same job information and were not able to and did not in fact bid the same [**26] jobs.

Likewise no evidence was presented showing that the conductor guide stabilizer was kept confidential from anyone outside TMR. In fact, Exxon personnel were intimately involved in its testing.

CONCLUSIONS OF LAW

This court is vested with jurisdiction because of the diversity of citizenship of the parties.

I. Nature and Validity of Taquino-TMR/AIMS Contract

Non-competition agreements are not enforceable against employees unless the employer has expended substantial sums training the employee, or unless the employer has so advertised the employee's relationship with the product or service as to make the purchasing public equate the two. La.Rev.Stat. Ann. art. 23:921 (West 1986); *Orkin Exterminating Co. v. Foti*, 302 So. 2d 593 (La.1974); *Commonwealth Life Ins. Co. v. Neal*, 669 F.2d 300 (5th Cir.1982).

However, Taquino was not an employee but was an independent contractor and such agreements are enforce-

able as to him [*1498] if not unreasonable [**27] in some respect. *Simpson v. Kelly Services*, 339 So. 2d 490 (2d Cir.1976); see also *Gold and Suckle, Inc. v. Suckle, et al*, 335 So. 2d 713 (2d Cir.1976), writ den. 338 So. 2d 700 (1976). Their contract provides that if TMR terminates the agreement Taquino is free to compete. However, if Taquino terminates he is precluded for a period of two years from selling any competitive rubber products and from associating with a competitive company. The two year period is reasonable. *Gold, supra*.

There is no territorial limitation in the non-competition clause. A restrictive covenant which contains no territorial limitation is unreasonable as written, and cannot be enforced in accordance with its terms. See *Moorman & Givens v. Parkerson*, 127 La. 835, 54 So. 47, 54 So. 47 (1911); accord *Merrill, Lynch, Pierce, Fenner & Smith v. Stidham*, 658 F.2d 1098, 1101 (5th Cir.1981) (Georgia law); *Kutka v. Temporaries, Inc.*, 568 F. Supp. 1527, 1536 (S.D.Tex.1983).

This finding makes [**28] it unnecessary to consider whether there is consideration for the agreement. See *Gold, supra*.

The provision of the contract prohibiting Taquino from competing with TMR/AIMS following termination is not enforceable.

II. Commissions Due Taquino

Issues of the amount which might be due Taquino under his contract with Teledyne/AIMS and all other questions of amount of damage were reserved for a latter date. Taquino's right to claim commissions is determined in connection with Item 10 hereof.

III. Validity of the 474 Patent

... The 474 patent is valid.

IV. Has the 474 Patent Been Misused?

Taquino/AIMS argue that the 474 patent is unenforceable because this suit for its infringement is baseless and constitutes misuse. The suit itself and the difficulty this court has had in sorting out the matter speak clearly that the claims of infringement of the 474 patent are not without ample foundation in fact and law. The bringing of this lawsuit does not constitute misuse of that patent.

V. Sherman Act Violations

a. Monopoly

Taquino/EPI contend that TMR/AIMS have prosecuted these claims of patent infringement and trade [**29] secret appropriation in bad faith in an attempt to monopolize the industry in violation of 15 U.S.C. § 1.

To be successful Taquino/EPI must prove specific intent of TMR/AIMS to monopolize; that they took steps to achieve this result; and that the scheme had a dangerous probability of success. *North Mississippi Communications, Inc. v. Jones*, 792 F.2d 1330 (5th Cir.1986); *Dimmitt Agri Industries, Inc. v. C.P.C. International, Inc.*, 679 F.2d 516 (5th Cir.1982) and cases cited therein. They must provide sufficient evidence to define the relevant geographic and product market. *Dimmitt, supra* at 525. This requirement relates to the "dangerous probability" factor. The evidence produced in this case relative to market (pps. 2119-2120 supra) falls far short of that goal. If anything, it shows that TMR/AIMS do not have the power to control price or to exclude competition.

Prosecution of this infringement claim as to the 474 patent, a valid patent, is not in bad faith (see § 6, *infra*). While two other patents were [**30] also originally included, the evidence has shown that claims relative to them were dropped from the suit within a reasonable time after discovery showed no offending device had been built. This can hardly be said to be in bad faith. Proof that the allegations were wrong falls far short of the proof of intimidation. The authority relied upon by Taquino/AIMS is application only to *unfounded* suits brought in *bad faith*. That is not the case here.

As to the allegation that TMR/AIMS brought the trade secret claims for the purpose of monopolizing the market the evidence is grossly insufficient. This Court finds that the claimed trade secrets are not in fact trade secrets. (See IX, [*1499] *infra*). But this alone is insufficient to establish a Sherman Act violation. As noted there is no evidence of intent to monopolize, and no evidence that such a scheme, if it existed, had a dangerous probability of success.

b. Restraint of Trade

Taquino/EPI contend that TMR/AIMS have conspired to restrain trade by the same basic actions they argue established an attempt to monopolize. No discussion of the law relative to this issue is found in the proposed conclusions of law submitted [**31] by counsel leading the court to believe that this contention has been abandoned. However, counsel have sought to raise, argue, and contend for every conceivable issue in this case so the failure to refer to the applicable law will be credited merely to oversight.

To prevail, Taquino/EPI must prove an agreement between TMR/AIMS which unreasonably restrains trade to their detriment. *J.T. Gibbons, Inc. v. Crawford Fitting Co.*, 704 F.2d 787, 791 (5th Cir.1983). The only agreement proven between TMR and AIMS makes AIMS distributor of TMR products and responsible for any fabrication. It is also proven they worked together in testing the EPI cell and in circulating the photos thereof. There

is absolutely no evidence that these concerted actions restrained trade. As noted above, the evidence of relative market is necessary and in this case insufficient. *Sports Center, Inc. v. Riddell, Inc.*, 673 F.2d 786, 790-791 (5th Cir.1982).

Claims of Sherman Act violations are not proved.

VI. Infringement

The devices are not equivalent. There is no infringement.

VII. Violation of Louisiana Unfair Trade Practices and Consumer Protection Law [**32]

All parties claim the other has violated the Louisiana Unfair Trade Practices and Consumer Protection Law (*La.Rev.Stat. Ann. 51:1401 et seq.* (West 1987)). The Taquino/EPI claim came by way of oral motion to amend made at the commencement of trial. There is no justification for raising this as a separate issue at the last moment and it will not be considered. *Earlie v. Jacobs*, 745 F.2d 342 (5th Cir.1984); *Ross v. Houston Independent School District*, 699 F.2d 218 (5th Cir.1983); *Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539 (5th Cir.1980); *Daves v. Payless Cashways, Inc.*, 661 F.2d 1022 (5th Cir.1981).

TMR/AIMS argue that Taquino was guilty of unfair trade practices when he, while still under contract with them, solicited their customers and developed his competing device. Taquino/EPI begged the question by arguing that he had the right to do these things after he terminated his contract.

Unfair trade practices are not defined by the statute. The definition is left to courts to be established on a case by case basis. *Dufau v. Creole Engineering, Inc.*, 465 So. 2d 752 (*La.App.*1985); *Roustabouts, Inc. v. Hamer*, 447 So. 2d 543 (*La.App.*1984). A practice is unfair when it offends established public policy, and when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. *Coffey v. Peoples Mortgage & Loan of Shreveport*, 408 So. 2d 1153 (*La.App.*1981). Therefore, TMR/AIMS must prove some element of fraud, misrepresentation, deception, or other unethical conduct on the part of Taquino. *Dufau supra* at 758. Taquino's action before July 15, 1984 looking toward developing his own competing product, getting his company on the Tenneco list of approved vendors, and patenting his own device, while perhaps not so egregious as the conduct in *Dufau* and *Roustabouts supra*, constitutes unethical, deceptive conduct and was a breach of his duty to his principals under their contract. While he may have had every right to do those things after his contract was terminated, he had no right to do so

before. He thereby violated *La.Rev.Stat. Ann. 51:1401, et seq.*

[*1500] [**34] VIII. Lanham Act Violations

TMR/AIMS contend that Taquino/EPI violated 15 U.S.C. § 1125(a) by making false descriptions or representations in their advertisements in that they:

- (1) Depict their device as having a single rubber cylinder when it in fact consists of four rubber donuts.
- (2) Depicted twelve inch deflection capability when eleven and one-half inches of deflection is the maximum possible.
- (3) Used Teledyne drawings to depict bridge slide pads and boat landings.
- (4) Over represented the number of products available.
- (5) Advertised TMR's customers as EPI customers.

To succeed it must be proved that:

- (1) Taquino/EPI made a false statement of fact about their product;
- (2) statements deceived or had the capacity to deceive a substantial segment of potential customers;
- (3) the deception is material, in that it is likely to influence the purchasing decision;
- (4) Taquino/EPI caused its products to enter interstate commerce, and
- (5) TMR/AIMS has been or is likely to be injured as a result. *Skil Corp. v. Rockwell International Corp.*, 375 F. Supp. 777, 783 (*N.D.Ill.*1974). [**35]

Assuming without deciding that the above five allegations were proved, this court finds that:

- A. The deceptions were not material in that they were not likely to influence the purchasing decision.
- B. The statements did not actually deceive nor did they have the capacity to deceive a substantial number of potential buyers.
- C. The alleged false and deceptive "advertising" is not the type of activity the Lanham Act was designed to prevent.

TMR/AIMS simply have not produced evidence to support the claims that potential buyers would be influenced by any of the alleged false advertising. The bridge slide pad and boat landing drawings are generic illustrations not design drawings of specific products. Each is custom built to the customers specifications. The buying public is aware of this. Additionally, no promise was made in the advertising material that all items were in

stock and on the shelf. Any buyer would have known that many items had to be fabricated on an order by order basis because of their nature. They were not, therefore, likely to be mislead. The fifth allegation refers to information given only to Tenneco and does not, in this court's opinion, constitute advertising [**36] as that term is used in the Lanham Act.

This court can find no Lanham Act violation.

IX. Appropriation of Trade Secrets

TMR/AIMS contend design and function of their conductor stabilizer and knowledge of jobs which would soon be let are trade secrets misappropriated by Taquino giving rise to a violation of *La.Rev.Stat. Ann. 51:1431 et seq.*

Trade secret is defined in § 1431, in pertinent part, as follows:

"Trade secret" means information . . . that:
 (a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Insofar as knowledge of which jobs would be coming up in the future for bid, TMR/AIMS have made no showing that others in the industry did not have the same information and were not in position to bid in competition with them. Nor have they made a showing of any efforts made by TMR/AIMS [**37] to keep this information confidential. This information, therefore, has not been shown to be a trade secret.

Likewise, no evidence establishes that information pertaining to the conductor guide stabilizer was the subject of any effort at all to maintain its secrecy. In fact, the evidence establishes that Exxon employees were intimately involved in the testing and perfection of the device and [*1501] there is an absolute void of evidence showing effort to maintain secrecy. Accordingly, this information is not a trade secret.

X. Breach of Contract

Taquino/EPI claim TMR/AIMS breached the contract of January 1, 1983 by assigning some of his customers to AIMS, by assigning his contract from TMR to

AIMS, by terminating fabrication, and by failure to pay commissions.

TMR/AIMS claim Taquino breached the contract by developing his competing product while under contract, by soliciting TMR customers while under contract, and by converting its trade secrets and other property to his use.

This court has earlier determined that assignment of the contract by TMR to AIMS was not a breach and finds nothing in the evidence presented at trial to cause it to change that opinion. [**38]

No provision of the contract obligated TMR to remain in the fabrication business and counsel points to no law which requires it. The contract expressly afforded the right to reassign customers and readjust commissions in the manner that was done.

As noted below, this court finds that Taquino breached the contract. Having done so, he cannot claim the benefits of it to afford himself commissions coming due following his breach.

The contract forbade Taquino from representing a competing company prior to termination. This is a valid provision. By designing and seeking to patent and build his own competing device, and by taking steps to have his company added to the approved vendor list of Tenneco, TMR's best customer, Taquino did breach his contract. *See, e.g., Dufau, supra.*

Further, Taquino used TMR drawings in his sales materials. The contract properly prohibited this. The right to claim this breach of contract is not preempted by the copyright laws. *Universal Gym Equipment, Inc. v. Atlantic Health & Fitness Products, 229 U.S.P.Q. (BNA) 335 (D.Md.1985).* [**39] 17 U.S.C. § 301 only preempts rights equivalent to the exclusive rights within the general scope of the copyright law. A right is equivalent if the mere act of reproduction, distribution, or display infringes it. 17 U.S.C. § 106; *Allied Artists Pictures Corp. v. Rhodes, 496 F. Supp. 408 (S.D. Ohio 1980), aff'd, 679 F.2d 656 (6th Cir.1982); Harper & Row Publishers, Inc. v. Nation Enterprises, 723 F.2d 195 (2nd Cir.1983).* This action for breach of contract involves an element in addition to mere reproduction, distribution or display: the contract promise made by Taquino, therefore, it is not preempted. *Smith v. Weinstein, 578 F. Supp. 1297 (S.D.N.Y.1984), aff'd 738 F.2d 419 (2nd Cir.1984); Nimmer, Nimmer on Copyright, 16.04[C] 1985).*

TMR/AIMS further contend that Taquino is guilty of the quasi offense of conversion because of his use of the engineering drawings in question. This claim would, however, appear to be preempted. There is no evidence that TMR was deprived physically of its property. The evidence is simply that the property was used [**40] by

Taquino/EPI in that they reproduced, distributed and displayed it. There is therein no element in addition to those covered by the copyright laws. 17 U.S.C. § 301, *Schuchart & Associates Professional Engineers, Inc. v. Solo Serve Corp.*, 540 F. Supp. 928 (W.D.Tex.1982).

XI. Product Disparagement

While originally contending a cause of action for product disparagement, counsel have sought to now make it into libel, slander and defamation. The facts found do not address themselves to issues other than the product itself.

The elements of the offense of product disparagement are publication, with malice, of false allegations concerning the property or product, and the causing of pecuniary harm. *System Operations v. Scientific Games Development Corp.*, 555 F.2d 1131 (3rd Cir.1977); *Re-*

statement (Second) of Torts, § 623(A); W. Prosser, *The Law of Torts*, 919-922 (4th Ed.1971).

In this case, there is no evidence of pecuniary harm. It is true that the issue of damages, if any, to any parties were [*1502] reserved for latter trial but this did not relieve of the burden to prove a nexus between the alleged [**41] disparagement and some loss of business, not necessarily in terms of dollars and cents. In fact, an attempt was made to establish this fact, but all that evidence showed was that the persons to whom the allegedly disparaging photographs were shown simply called on Taquino for an explanation. While it is clear to this court that an effort was made to disparage the product in that the product was tested to failure, in a manner which had nothing to do with whether or not it infringed upon the patent and photographs of the result were circulated accompanied by the statement that the cell had failed in normal use, there is no evidence of a nexus between this activity and any loss of business. . . .

LEXSEE 339 F.2D 823

T. B. HARMS COMPANY, Plaintiff-Appellant, v. Edward ELISCU and Ross Jungnickel, Inc., Defendants-Appellees

No. 93, Docket 28921

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

339 F.2d 823; 1964 U.S. App. LEXIS 3495; 144 U.S.P.Q. (BNA) 46

October 21, 1964, Argued
December 23, 1964, Decided

COUNSEL: [**1]

Gustave B. Garfield, New York City, for plaintiff-appellant.

Lewis A. Dreyer, New York City (Norma Hack, New York City, of counsel), for defendant-appellee Ross Jungnickel, Inc.

David Blasband, New York City (Linden & Deutsch, New York City), for defendant-appellee Edward Eliscu.

JUDGES:

Before FRIENDLY, KAUFMAN and ANDERSON, Circuit Judges.

OPINION BY:

FRIENDLY

OPINION:

[*824]

A layman would doubtless be surprised to learn that an action wherein the purported sole owner of a copyright alleged that persons claiming partial ownership had recorded their claim in the Copyright Office and had warned his licensees against disregarding their interests was not one 'arising under any Act of Congress relating to * * * copyrights' over which 28 U.S.C. § 1338 gives the federal courts exclusive jurisdiction. Yet precedents going back for more than a century teach that lesson and lead us to affirm Judge Weinfeld's dismissal of the complaint.

The litigation concerns four copyrighted songs; we shall state the nub of the matter as alleged in the complaint without going into details irrelevant to the jurisdictional issue. The music for the songs was composed by

[**2] Vincen: Youmans for use in a motion picture, 'Flying Down to Rio,' pursuant to a contract made in 1933 with RKO Studios, Inc. He agreed to assign to RKO the recordation and certain other rights relating to the picture during the existence of the copyrights and any renewals. RKO was to employ a writer of the lyrics and to procure the publishing rights in these for Youmans, who was to pay said lyric writer the usual and customary royalties on sheet music and mechanical records.' Subject to this, Youmans could assign the publication and small performing rights to the music and lyrics as he saw fit. In fact RKO employed two lyric writers, Gus Kahn and the defendant Edward Eliscu, who agreed to assign to RKO certain rights described in a contract dated as of May 25, 1933. Max Dreyfus, principal stockholder of the plaintiff Harms, which has succeeded to his rights, acquired Youmans' reserved rights to the music and was his designee for the assignment with respect to the lyrics. Allegedly -- and his denial of this is a prime subject of dispute -- Eliscu then entered into an agreement dated June 30, 1933, assigning his rights to the existing and renewal copyrights to Dreyfus in return [**3] for certain royalties.

When the copyrights were about to expire, proper renewal applications were made by the children of Youmans, by the widow and children of Kahn, and by Eliscu. The two former groups executed assignments of their rights in the renewal [*825] copyrights to Harms. But Eliscu, by an instrument dated February 19, 1962, recorded in the Copyright Office, assigned his rights in the renewal copyrights to defendant Ross Jungnickel, Inc., subject to a judicial determination of his ownership. Thereafter Eliscu's lawyer advised ASCAP and one Harry Fox -- respectively the agents for the small performing rights and the mechanical recording license fees -- that Eliscu had become vested with a half interest in the renewal copyrights and that any future payments which failed to reflect his interest would be made at their

own risk; at the same time he demanded an accounting from Harms. Finally, Eliscu brought an action in the New York Supreme Court for a declaration that he owned a one-third interest in the renewal copyrights and for an accounting.

Harms then began the instant action in the District Court for the Southern District of New York for equitable and declaratory [**4] relief against Eliscu and Jungnickel. Jurisdiction was predicated on 28 U.S.C. § 1338; plaintiff alleged its own New York incorporation and did not allege the citizenship of the defendants, which concededly is in New York. Defendants moved to dismiss the complaint for failure to state a claim on which relief can be granted and for lack of federal jurisdiction; voluminous affidavits were submitted. The district court dismissed the complaint for want of federal jurisdiction, 226 F.Supp. 337 (1964).

In line with what apparently were the arguments of the parties, Judge Weinfeld treated the jurisdictional issue as turning solely on whether the complaint alleged any act or threat of copyright infringement. He was right in concluding it did not. Infringement, as used in copyright law, does not include everything that may impair the value of the copyright; it is doing one or more of those things which § 1 of the Act, 17 U.S.C. § 1, reserves exclusively to the copyright owner. See Nimmer, Copyright §§ 100, 141 (1963). The case did not even raise what has been the problem presented when a defendant licensed to use a copyright [**5] or a patent on certain terms is alleged to have forfeited the grant; in such cases federal jurisdiction is held to exist if the plaintiff has directed his pleading against the offending use, referring to the license only by way of anticipatory replication, but not if he has sued to set the license aside, seeking recovery for unauthorized use only incidentally or not at all. See Chief Justice Taft's review of the cases in *Luckett v. Delpark*, 270 U.S. 496, 46 S.Ct. 397, 70 L.Ed. 703 (1926); and Hart & Wechsler, *The Federal Courts and the Federal System*, 754-58 (1953). Here neither Eliscu nor Jungnickel had used or threatened to use the copyrighted material; their various acts, as the district judge noted, sought to establish their ownership of the copyrights by judicial and administrative action, including notice to the parties concerned.

However, the jurisdictional statute does not speak in terms of infringement, and the undoubted truth that a claim for infringement 'arises under' the Copyright Act does not establish that nothing else can. Simply as a matter of language, the statutory phrasing would not compel the conclusion that an action to determine who owns a copyright [**6] does not arise under the Copyright Act, which creates the federal copyright with an implied right to license and an explicit right to assign.

But the gloss afforded by history and good sense leads to that conclusion as to the complaint in this case.

Although Chief Justice Marshall, construing the 'arising under' language in the context of Article III of the Constitution, indicated in *Osborn v. Bank of the United States*, 9 Wheat. 738, 22 U.S. 738, 822-827, 6 L.Ed. 204 (1824), that the grant extended to every case in which federal law furnished a necessary ingredient of the claim even though this was antecedent and uncontested, the Supreme Court has long given a narrower meaning to the 'arising under' language in statutes defining the jurisdiction of the lower federal courts. *Romero v. International [*826] Terminal Operating Co.*, 358 U.S. 354, 379 n. 51, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959); *Mishkin, The Federal 'Question' in the District Courts*, 53 *Colum.L.Rev.* 157, 160-63 (1953). If the ingredient theory of Article III had been carried over to [**7] the general grant of federal question jurisdiction now contained in 28 U.S.C. § 1331, there would have been no basis -- to take a well-known example -- why federal courts should not have jurisdiction as to all disputes over the many western land titles originating in a federal patent, even though the controverted questions normally are of fact or of local land law. Quite sensibly, such extensive jurisdiction has been denied. *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 20 S.Ct. 726, 44 L.Ed. 864 (1900).

The cases dealing with statutory jurisdiction over patents and copyrights have taken the same conservative line. The problem apparently first reached the Supreme Court in *Wilson v. Sanford*, 10 How. 99, 51 U.S. 99, 13 L.Ed. 344 (1850), under the Act of July 4, 1836, § 17, 5 Stat. 17, which allowed appeal to the Court, irrespective of the amount, in actions 'arising under' the patent laws. The suit aimed to prevent use of a patented invention by a licensee who allegedly had failed to comply with the terms of the license and thus had forfeited its rights. Chief Justice Taney, dismissing the appeal, held the statute inapplicable [**8] to a dispute as to license or contract rights which 'depended altogether upon the rules and principles of equity, and in no degree whatever upon any act of Congress concerning patent rights.' The same principle was applied, and sometimes stated less cautiously, in decisions construing later legislation granting the federal courts exclusive jurisdiction of all suits 'arising under' the patent or copyright laws of the United States. Act of July 8, 1870, §§ 55, 106, 16 Stat. 206, 215; Rev.Stat. §§ 629 Ninth and 711 Fifth (1875); Judicial Code of 1911, §§ 24 Seventh, 256 Fifth, 36 Stat. 1092, 1161. To take one of many examples, the Court said in *New Marshall Engine Co. v. Marshall Engine Co.*, 223 U.S. 473, 478, 32 S.Ct. 238, 239, 56 L.Ed. 513 (1912):

'The Federal courts have exclusive jurisdiction of all cases arising under the patent laws, but not of all ques-

tions in which a patent may be the subject-matter of the controversy. For courts of a state may try questions of title, and may construe and enforce contracts relating to patents. *Wade v. Lawder*, 165 U.S. 624, 627, 41 L.Ed. 852, 17 Sup.Ct.Rep. 425.

Just as with western land titles, the federal grant [**9] of a patent or copyright has not been thought to infuse with any national interest a dispute as to ownership or contractual enforcement turning on the facts or on ordinary principles of contract law. Indeed, the case for an unexpansive reading of the provision conferring exclusive jurisdiction with respect to patents and copyrights has been especially strong since expansion would entail depriving the state courts of any jurisdiction over matters having so little federal significance.

In an endeavor to explain precisely what suits arose under the patent and copyright laws, Mr. Justice Holmes stated that '(a) suit arises under the law that creates the cause of action'; in the case sub judice, injury to a business involving slander of a patent, he said, 'whether it is a wrong or not depends upon the law of the State where the act is done' so that the suit did not arise under the patent laws. *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260, 36 S.Ct. 585, 586, 60 L.Ed. 987 (1916). The Holmes 'creation' test explains the taking of federal jurisdiction in a great many cases, notably copyright and patent infringement actions, both clearly authorized by the [**10] respective federal acts, 17 U.S.C. § 101; 35 U.S.C. § 281, and thus unquestionably within the scope of 28 U.S.C. § 1338; indeed, in the many infringement suits that depend only on some point of fact and require no construction of federal law, no other explanation may exist.

[*827] Harms' claim is not within Holmes' definition. The relevant statutes create no explicit right of action to enforce or rescind assignments of copyrights, nor does any copyright statute specify a cause of action to fix the locus of ownership. To be sure, not every federal cause of action springs from an express mandate of Congress; federal civil claims have been 'inferred' from federal statutes making behavior criminal or otherwise regulating it. See, e.g., *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187 (1944); *Reitmeister v. Reitmeister*, 162 F.2d 691 (2 Cir. 1947); Note, Implying Civil Remedies From Federal Regulatory Statutes, 77 *Harv.L.Rev.* 285 (1963). Such statutes invariably impose a federal duty and usually create some express remedy as [**11] well, while the relevant copyright provision merely authorizes an assignment by written instrument, 17 U.S.C. § 28. It is true that although this difference carries the present case outside the classic doctrine of implied remedies, see Restatement, Torts § 286 (1934), expansion may not be foreclosed where appropriate, cf. *Wheeldin v. Wheeler*,

373 U.S. 647, 661-663, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963) (Brennan, J., dissenting); we would not be understood, for example, as necessarily agreeing with the implication of *Republic Pictures Corp. v. Security-First National Bank*, 197 F.2d 767, 770 (9 Cir. 1952), that federal jurisdiction would not exist if a complaint alleged that a state declined to enforce assignments of copyright valid under federal law. But no such case is here presented.

It has come to be realized that Mr. Justice Holmes' formula is more useful for inclusion than for the exclusion for which it was intended. Even though the claim is created by state law, a case may 'arise under' a law of the United States if the complaint discloses a need for determining the meaning or application of such a law. The path-breaking opinion [**12] to this effect was *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921), pointedly rendered over a dissent by Mr. Justice Holmes, 255 U.S. at 213-215, 41 S.Ct. 243. A recent application of this principle to 28 U.S.C. § 1538 is *De Sylva v. Ballentine*, 351 U.S. 570, 76 S.Ct. 974, 100 L.Ed. 1415 (1956), where the Supreme Court decided on the merits a claim to partial ownership of copyright renewal terms. Since there was no diversity of citizenship and no infringement, the only, and a sufficient, explanation for the taking of jurisdiction was the existence of two major questions of construction of the Copyright Act. But Harms likewise does not meet this test. The crucial issue is whether or not Eliscu executed the assignment to Dreyfus; possibly the interpretation of the initial May, 1933, contract is also relevant, but if any aspect of the suit requires an interpretation of the Copyright Act, the complaint does not reveal it. n2

Having thus found that appropriate pleading of a pivotal question of federal law may suffice to give federal jurisdiction even for a 'state-created' claim, [**13] we cannot halt at questions hinging only on the language of the Copyright Act. For a new and dynamic doctrine, taking its name from *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943), instructs us that even in the absence of express statute, federal law may govern [*828] what might seem an issue of local law because the federal interest is dominant. *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 175-176, 63 S.Ct. 172, 87 L.Ed. 165 (1942), is relevant here, not only for its holding that the radiations of the antitrust laws governed an estoppel question in a patent license case but also for the Court's unwillingness to say whether the estoppel rule would have been 'local' or 'federal' even if the antitrust laws had not been invoked -- a question which *Scott Paper Co. v. Marcalus Mfg. Co.*, 326 U.S. 249, 255, 66 S.Ct. 101, 90 L.Ed. 47 (1945), apparently settled in favor of federal principles. If this 'federal common law' governed some disputed aspect of

a claim to ownership of a copyright or for the enforcement [**14] of a license, federal jurisdiction might follow -- though one would wish to consider whether this might be founded on 28 U.S.C. § 1331 rather than on § 1338 and thus be concurrent and require a jurisdictional amount. But there is not the slightest reason to think that any legal question presented by Harms' complaint falls in the shadow of a federal interest suggested by the Copyright Act or any other source.

Mindful of the hazards of formulation in this treacherous area, we think that an action 'arises under' the Copyright Act if and only if the complaint is for a remedy expressly granted by the Act, e.g., a suit for infringement or for the statutory royalties for record reproduction, 17 U.S.C. § 101, cf. *Joy Music, Inc. v. Seeco Records, Inc.*, 166 F.Supp. 549 (S.D.N.Y.1958), or asserts a claim requiring construction of the Act, as in *De Sylva*, or, at the very least and perhaps more doubtfully, presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim. The [**15] general interest that copyrights, like all other forms of property, should be enjoyed by their true owner is not enough to meet this last test.

Something should be said as to cases in this circuit deciding on the merits copyright claims apparently not involving infringement. There has been discussion whether the assumption of jurisdiction in *Rossiter v. Vogel*, 134 F.2d 908 (2 Cir. 1943), was properly rested on a basis similar to that suggested in this opinion with respect to *De Sylva*, see *Cresci v. Music Publishers Holding Corp.*, 210 F.Supp. 253, 258-259 (S.D.N.Y.1962); *Nimmer*, Copyright § 131.12, at 570-571 (1963). But a glance at the complaint in that case, which relied on diverse citizenship as well as on what is now 28 U.S.C. § 1338, shows that the problem of federal jurisdiction was hardly troublesome and indicates why it went unmentioned. The equally undiscussed assumption of jurisdiction in *Venus Music Corp. v. Mills Music, Inc.*, 261 F.2d 577 (2 Cir. 1958), cannot be thus explained, since there was no diversity, see 156 F.Supp. 753 (S.D.N.Y.1957). But the jurisdictional problem was doubtless [**16] obscured by the insistence of both parties that this action was for copyright infringement, see 156 F.Supp. at 753, and by the surface similarity with *Rossiter v. Vogel*, *supra*, as that case stands in the reports. Whether or not the complaint in *Venus* presented questions of copyright law sufficient to meet the criteria we have outlined -- an issue on which we express no opinion -- the complaint here does not.

One more question remains. *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946), is often taken as indicating that if a complaint comes close enough to presenting a federal claim that the court has trouble in deciding that it doesn't, dismissal of that claim should be

for 'failure to state a claim upon which relief can be granted' rather than for lack of jurisdiction. Even if we were to assume that the district judge should have adopted the former ground in dismissing the claims allegedly created by federal law, his disposition ought nevertheless be affirmed. *Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 249-250, 71 S.Ct. 692, 95 L.Ed. 912 (1951). The only apparent consequence [**17] of *Bell v. Hood* as applied [*829] to this case n3 is that if the complaint is close enough to the line to give 'jurisdiction,' the court may have power to adjudicate a 'pendent' or 'ancillary' state claim. See 327 U.S. at 686, 71 S.Ct. at 778 (dissenting opinion of Chief Justice Stone). But a federal court need not try such a state claim when the non-existence of the federal claim has been determined on motion prior to trial on the merits, see *Hart & Wechsler*, *supra*, at 808 and decisions there cited -- and the case against its doing so is particularly strong when, as here, a prior suit for the same relief is pending in a state court.

Affirmed.

n1. Although the parties did not question federal jurisdiction and the Court did not mention it, the issue had been sharply raised by a dissent in the Court of Appeals, see 226 F.2d 623, 634 (9 Cir. 1955), and can hardly have passed unnoticed.

r2. Harms likewise does not bring itself within the test by reliance on the provision of § 24 of the Copyright Act that in the case of any work copyrighted 'by an employer for whom such work is made for hire the proprietor of the copyright shall be entitled' to the renewal rights. The allocation of rights under the May, 1933, contract is governed by the contract itself, and the complaint suggests no manner in which the construction of § 24 of the Copyright Act might be relevant.

[**18]

n3. There would seem to be no difference from the standpoint of *res judicata*. On either method of disposition the court would not have decided whether *Eliscu* had signed the alleged assignment or how his contract with RKO should be construed, but would have decided the insufficiency of the complaint to permit an inferior federal court to grant relief.

LEXSEE 846 F.2D 923

Acorn Structures, Inc., Plaintiff-Appellant, v. Robert F. Swantz, Defendant-Appellee, v. American Institute of Architects; National Society of Professional Engineers; Virginia Society of the AIA, Amici Curiae

No. 87-1039

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

846 F.2d 923; 1988 U.S. App. LEXIS 19453; 6 U.S.P.Q.2D (BNA) 1810; Copy. L. Rep. (CCH) P26,251

November 4, 1987, Argued
March 11, 1988, Decided

NOTICE: [1]**

Ordered Published.

PRIOR HISTORY: Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. James H. Michael, Jr., District Judge. C/A 86-15-C. Published as Table Case at: 1988 U.S. App. LEXIS 3063.

DISPOSITION:

Reversed and remanded with instructions.

COUNSEL:

John A. D. Gilmore (Nilda M. Navarro; Hill & Barlow on brief) for Appellant.

Graig Thomas Merritt (Robert Alfred Goulding; Christian, Barton, Epps, Brent & Chappell on brief) for Appellee.

JUDGES:

Russell and Phillips, Circuit Judges, and Haynsworth, Senior Circuit Judge.

OPINION BY:

PER CURIAM

OPINION:

[*924] CORRECTED OPINION

This action is brought by Acorn Structures, Inc., plaintiff/appellant, alleging breach of contract, conversion, and unjust enrichment for the unauthorized use of

its architectural plans which had been sold, subject to certain conditions, to the defendant/appellee, Robert F. Swantz. Subject matter jurisdiction rests on diversity of citizenship, 28 U.S.C. § 1332, plaintiff Acorn being a Massachusetts corporation, while defendant Swantz is a resident of Virginia. Defendant's motion to dismiss was [**2] granted by the district court on each of plaintiff's three causes of action. The court found that the claims for conversion and unjust enrichment failed to state a claim on which relief could be based. We agree. However, the court dismissed the breach of contract claim finding that it had been preempted by federal law, specifically, the Copyright Act of 1976, 17 U.S.C. § 301. The principal issue before us is whether the district court erred in its judgment that plaintiff's claim for breach of contract is preempted by federal copyright law. We reverse the judgment of the district court on this issue.

I.

The pertinent facts are not subject to dispute. Acorn Structures, Inc. (Acorn), designs homes and sells the building materials for those homes. On October 28, 1983, Swantz entered into a "design agreement" with Acorn which provided for the performance of architectural services by Acorn in consideration of \$ 750.00 paid by Swantz. The design agreement did not commit Swantz to purchase building materials from Acorn but it did provide an incentive to do so by offering to credit the \$ 750.00 paid for the architectural services toward the purchase of the building [**3] materials. If Swantz were to choose not to purchase the materials from Acorn, the agreement provided that he would be entitled to a \$ 100.00 refund for returning the drawings [**25] to Acorn. The design agreement provides in relevant part:

Signing this agreement does not commit you to purchase an Acorn house package, but does authorize Acorn to prepare for you at the costs indicated below . . . [design drawings, etc.]

. . . Acorn will prepare these design drawings for you as a prospective customer of an Acorn house package. All Acorn drawings are copyrighted and are its property, and may not be used or copied in any way, in whole or in part, without the written consent of Acorn. The design fee is not a license fee and does not authorize you to use or copy any drawings provided by Acorn.

All design fees may be applied to the price of an Acorn house package. If you do not purchase the house package, a refund of \$ 100 of the design fee will be made upon return of all drawings to Acorn.

Swantz neither purchased building materials from Acorn nor did he return the drawings. Rather, Swantz notified Acorn that there would be a delay in his purchase of building [**4] materials because of financial difficulties but then delivered the drawings to another architect who filed a copy of the drawings under his own seal with the Building Permits and Inspections Office which issued a building permit for the house and adjacent garage. The construction of the house and garage has now been completed.

II.

Acorn contends that Swantz breached the contractual provisions of the design agreement by using Acorn's plans without the consent of Acorn and without buying from Acorn any building materials for use in constructing the house and garage.

Swantz responds by arguing that this breach of contract claim has been preempted by federal law. Specifically, Swantz asserts that Section 301 of The Copyright Act of 1976 preempts Acorn's claim. 17 U.S.C. § 301 provides in relevant part:

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come [**5] within the subject matter of copyright as specified by sections 102 and 103, whether created be-

fore or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(t) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978; or

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106.

The district court found that Acorn's claim for breach of contract was within the subject matter of copyright and therefore was preempted by Section 301. The district court properly noted that "federal [**6] copyright law protects an author's expression, but does not protect the ideas underlying that expression." *Acorn Structures, Inc. v. Swantz*, 657 F. Supp. 70, 75 (W.D. Va. 1987) (citing *Mazer v. Stein*, 347 U.S. 201, 98 L. Ed. 630, 74 S. Ct. 460 (1954); *Baker v. Selden*, 101 (11 Otto) U.S. 99, 25 L. Ed. 841 (1879)). Thus, in the judgment of the district court, while Acorn's design agreement itself would be protected by copyright law, the ideas underlying that agreement would not be protected. The district court found on this basis that "a state law claim which would enforce a breach of contract action for the use of an idea would conflict with the implicit goals of the Copyright [**926] Act." *Acorn, supra*, at 75. We find that the district court erred in its analysis of plaintiff's complaint.

III.

Plaintiff's claim for breach of contract entails a distinct cause of action which is clearly not within the subject matter of copyright but arises out of the implicit contractual provisions of the design agreement. Swantz was not committed to purchase a house package from Acorn. However, Acorn prepared the plans for [**7] Swantz, only "as a prospective customer of an Acorn house package." Implicit in the contract between Acorn and Swantz was an agreement that while Swantz did not have to use Acorn's plans, if he did use Acorn's plans then he was obligated either to purchase the plans from Acorn or to purchase his building materials from Acorn. This agreement is clearly implied by the contract. Acorn's cause of action is based upon this implicit provision of the contract which does not arise out of the subject matter of copyright and is therefore a separate and distinct cause of action.

Accordingly, we hold that the district court erred in its judgment that plaintiff's claim for breach of contract is preempted by federal copyright law.

IV.

Acorn further argues that the district court erred in dismissing the claims for conversion and unjust enrichment.

In Virginia, the tort of conversion consists of "any distinct act of dominion wrongfully exerted over the property of another, and in denial of his rights or inconsistent therewith." *Universal C.I.T. Credit Corp. v. Kaplan*, 198 Va. 67, 76, 92 S.E.2d 359, 365 (1956). [**8] As noted by the district court, "Swantz had an absolute right to possession of the plans." 657 F. Supp. at 74. Although Acorn offered an inducement of one hundred dollars if the plans were returned, Swantz was under no obligation to return them. But Swantz did use the plans in the construction of his home, which the contract prohibited. Despite this the district court found that Swantz did not wrongfully exercise dominion over the property and dismissed the claim for conversion on that ground. It could be said under *Restatement of Torts, Second*, § 228 that such use, which was unauthorized under the con-

tract, constituted an actionable conversion. n1 Whether this would be true under Virginia law is a matter not considered below. We, however, find no occasion to resolve this matter here because at best conversion is only an alternative ground of action to that of breach of contract which we have sustained. A judgment on that claim would be dispositive of the conversion claim. We, therefore, find no error in the district court's disposition of this claim for these reasons. We may add that there does not appear any facts for an award of punitive damages in the breach of contract [**9] action under Virginia law. *Kamlar Corp. v. Haley*, 224 Va. 699, 299 S.E.2d 514 (1983).

r1 The pertinent language of the section is: One who is authorized to make a particular use of a chattel, and uses it in a manner exceeding the authorization, is subject to liability for conversion to another whose right to control the use of the chattel is thereby seriously violated.

Likewise, the district court committed no error in dismissing Acorn's claim for unjust enrichment. An action for unjust enrichment is quasi-contractual in nature and may not be brought in the face of an express contract. *In re Virginia Block Co.*, 16 Bankr. 771, 774 (W.D.Va. 1982). It is undisputed that here there is an express contract between Acorn and Swantz which has not been set aside by the courts. Because there is an express contract in this case, the district court acted properly in dismissing Acorn's claim [**10] for unjust enrichment.

Accordingly, we reverse the judgment of the district court on the ground that plaintiff's claim for breach of contract was preempted by federal law, and remand to the district court for disposition of plaintiff's breach of contract suit on its merits.

[*927] REVERSED and REMANDED WITH INSTRUCTIONS.

LEXSTAT 17 U.S.C. 301

UNITED STATES CODE SERVICE
Copyright (c) 2007 Matthew Bender & Company, Inc.,
one of the LEXIS Publishing (TM) Companies
All rights reserved

*** CURRENT THROUGH P.L. 110-14, APPROVED 3/21/2007 ***

TITLE 17. COPYRIGHTS
CHAPTER 3. DURATION OF COPYRIGHT

Go to Code Archive Directory for this Jurisdiction

17 USCS § 301

Review expert commentary from The National Institute for Trial Advocacy

§ 301. Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [17 USCS § 106] in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103 [17 USCS §§ 102 and 103], whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

- (1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103 [17 USCS §§ 102 and 103], including works of authorship not fixed in any tangible medium of expression; or
- (2) any cause of action arising from undertakings commenced before January 1, 1978;
- (3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [17 USCS § 106]; or
- (4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8) [17 USCS § 102(a)(8)].

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2067. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2067. Notwithstanding the provisions of section 303 [17 USCS § 303], no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2067.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.

(f) (1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 [17 USCS § 106A note], all legal or equitable rights that are equivalent to any of the rights conferred by section 106A [17 USCS § 106A] with respect to works of visual art to which the rights conferred by section 106A [17 USCS § 106A] apply are governed exclusively by section 106A [17 USCS § 106A] and section 113(d) [17 USCS § 113(d)] and the provisions of

17 USCS § 301

this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 [17 USCS § 106A note];

(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A [17 USCS § 106A] with respect to works of visual art; or

(C) activities violating legal or equitable rights which extend beyond the life of the author.

HISTORY:

(Oct. 19, 1976, P.L. 94-553, Title I, § 101, 90 Stat. 2572; Oct. 31, 1988, P.L. 100-568, § 6, 102 Stat. 2857; Dec. 1, 1990, P.L. 101-650, Title VI, § 605, Title VII, § 705, 104 Stat. 5131, 5134; Oct. 27, 1998, P.L. 105-298, Title I, § 102(a), 112 Stat. 2827.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

House Report No. 94-1476

Single Federal system. Section 301, one of the bedrock provisions of the bill, would accomplish a fundamental and significant change in the present law. Instead of a dual system of "common law copyright" for unpublished works and statutory copyright for published works, which has been the system in effect in the United States since the first copyright statute in 1790, the bill adopts a single system of Federal statutory copyright from creation. Under section 301 a work would obtain statutory protection as soon as it is "created" or, as that term is defined in section 101, when it is "fixed in a copy or phonorecord for the first time." Common law copyright protection for works coming within the scope of the statute would be abrogated, and the concept of publication would lose its all-embracing importance as a dividing line between common law and statutory protection and between both of these forms of legal protection and the public domain.

By substituting a single Federal system for the present anachronistic, uncertain, impractical, and highly complicated dual system, the bill would greatly improve the operation of the copyright law and would be much more effective in carrying out the basic constitutional aims of uniformity and the promotion of writing and scholarship. The main arguments in favor of a single Federal system can be summarized as follows:

(1) One of the fundamental purposes behind the copyright clause of the Constitution, as shown in Madison's comments in *The Federalist*, was to promote national uniformity and to avoid the practical difficulties of determining and enforcing an author's rights under the differing laws and in the separate courts of the various States. Today, when the methods for dissemination of an author's work are incomparably broader and faster than they were in 1789, national uniformity in copyright protection is even more essential than it was then to carry out the constitutional intent.

(2) "Publication," perhaps the most important single concept under the present law, also represents its most serious defect. Although at one time, when works were disseminated almost exclusively through printed copies, "publication" could serve as a practical dividing line between common law and statutory protection, this is no longer true. With the development of the 20th-century communications revolution, the concept of publication has become increasingly artificial and obscure. To cope with the legal consequences of an established concept that has lost much of its meaning and justification, the courts have given "publication" a number of diverse interpretations, some of them radically different. Not unexpectedly, the results in individual cases have become unpredictable and often unfair. A single Federal system would help to clear up this chaotic situation.

(3) Enactment of section 301 would also implement the "limited times" provision of the Constitution, which has become distorted under the traditional concept of "publication." Common law protection in "unpublished" works is now perpetual, no matter how widely they may be disseminated by means other than "publication"; the bill would place a time limit on the duration of exclusive rights in them. The provision would also aid scholarship and the dissemination of historical materials by making unpublished, undissemated manuscripts available for publication after a reasonable period.

1 **PROOF OF SERVICE**

2 [CCP, 1013A(3) CRC Rule 2006(d) - Revised 3/1/92]

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

4 I am employed in the County of Los Angeles, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 13547 Ventura Boulevard,
6 Sherman Oaks, CA 91423.

7 On **March 23, 2007**, I served the foregoing document described as: **APPENDIX OF**
8 **EXHIBITS AND DECLARATIONS OF CATHERINE L. SEKELY AND CHARLES**
9 **W. HAYES IN SUPPORT OF DEFENDANT HAYES'S MOTION FOR SUMMARY**
10 **JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION OF ISSUES** on
11 the interested parties in this action by placing a true copy thereof enclosed in sealed
12 envelope(s) addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14 **(BY MAIL)** I caused such envelope with postage thereon fully prepaid to be placed in
15 the U.S. mail at Glendale, California. I am "readily familiar" with the firm's practice
16 of collection and processing correspondence for mailing. It is deposited with U.S.
17 Postal Service on that same day in the ordinary course of business. I am aware that on
18 motion of a party served, service is presumed invalid if postal cancellation date or
19 postage meter date is more than 1 day after date of deposit for mailing in affidavit.

20 **(BY PERSONAL DELIVERY)** I delivered such envelope by hand to the office of the
21 addressee(s) on the attached service list.

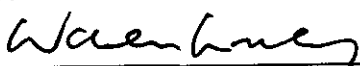
22 **(BY FACSIMILE TRANSMISSION)** I caused such document to be transmitted to the
23 addressee(s) facsimile number noted above. The facsimile machine I used complied
24 with Rule 2003(3) and the transmission was reported as complete and without error.
25 Pursuant to Rule 2005(I), I caused the machine to print a transmission record of the
26 facsimile transmission, a copy of which is attached to this declaration.

27 **(BY OVERNIGHT DELIVERY)** I caused such envelope(s) to be deposited in a box
28 or other facility regularly maintained by the Federal Express service carrier, or
delivered to an authorized courier or driver authorized by the express service carrier
with delivery fees paid or provided for, addressed to the person on whom it is to be
served, at the office address as last given by that person on any document filed in the
cause and served on the party making service.

Executed on **March 23, 2007**, Glendale, California.

[STATE] I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

[FEDERAL] I declare that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.



Warren Linley

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Re: Marks, et al., v. Joyner, et al.
LASC Case No. BC352639

Jonathan K. Golden, Esq. Attorney for Plaintiffs
1900 Avenue of the Stars, Suite 1900
Los Angeles, CA 90067
Phone No.: (310) 553-3830
Fax No.: (310) 553-1337

1 **PROOF OF SERVICE**

2 [CCP, 1013A(3) CRC Rule 2006(d) - Revised 3/1/92]

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

4 I am employed in the County of Los Angeles, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 315 West Arden Avenue, Suite
6 11, Glendale, CA 91203.

7 On **March 23, 2007**, I served the foregoing document described as: **APPENDIX OF**
8 **EXHIBITS AND DECLARATIONS OF CATHERINE L. SEKELY AND CHARLES**
9 **W. HAYES IN SUPPORT OF DEFENDANT HAYES'S MOTION FOR SUMMARY**
10 **JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION OF ISSUES** on
11 the interested parties in this action by placing a true copy thereof enclosed in sealed
12 envelope(s) addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14 **(BY MAIL)** I caused such envelope with postage thereon fully prepaid to be placed in
15 the U.S. mail at Glendale, California. I am "readily familiar" with the firm's practice
16 of collection and processing correspondence for mailing. It is deposited with U.S.
17 Postal Service on that same day in the ordinary course of business. I am aware that on
18 motion of a party served, service is presumed invalid if postal cancellation date or
19 postage meter date is more than 1 day after date of deposit for mailing in affidavit.

20 **(BY PERSONAL DELIVERY)** I delivered such envelope by hand to the office of the
21 addressee(s) on the attached service list.

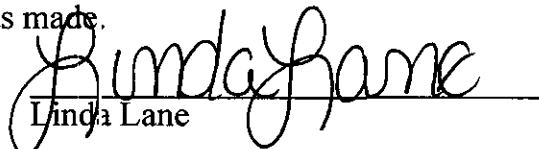
22 **(BY FACSIMILE TRANSMISSION)** I caused such document to be transmitted to the
23 addressee(s) facsimile number noted above. The facsimile machine I used complied
24 with Rule 2003(3) and the transmission was reported as complete and without error.
25 Pursuant to Rule 2005(I), I caused the machine to print a transmission record of the
26 facsimile transmission, a copy of which is attached to this declaration.

27 **(BY OVERNIGHT DELIVERY)** I caused such envelope(s) to be deposited in a box
28 or other facility regularly maintained by the Federal Express service carrier, or
delivered to an authorized courier or driver authorized by the express service carrier
with delivery fees paid or provided for, addressed to the person on whom it is to be
served, at the office address as last given by that person on any document filed in the
cause and served on the party making service.

Executed on **March 23, 2007**, Glendale, California.

[STATE] I declare under penalty of perjury under the laws of the State of California
that the above is true and correct and, that I am employed in the office of a member of
the bar of this court at whose direction the service was made.

[FEDERAL] I declare that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.


Linda Lane

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Re: Marks, et al., v. Joyner, et al.
LASC Case No. BC352639

John P. Godsil, Esq.
Freeman Freeman & Smiley, LLP
3415 Sepulveda Blvd., Suite 1200
Los Angeles, CA 90034
Phone No.: (310) 255-6100
Fax No.: (310) 391-4042

Attorney for Defendants Wayne Joyner,
The Universal Scientific Publications
Company Trust, The Universal Scientific
Publications Company, Inc., The Natural
Estate Trust