IN THE SUPREME COURT OF THE STATE OF NEVADA

LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC

Appellants

vs.

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI,

Respondents.

No. 56383

RESPONDENTS' PARTIAL OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL

KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.
LAW OFFICES

COME NOW, UI Supplies, UniNet Imaging (UI Supplies and UniNet Imaging are collectively referred to as "UniNet"), and Nestor Saporiti ("Mr. Saporiti") (UI, UniNet, and Mr. Saporiti are collectively referred to as the "Respondents"), by and through their attorneys of record, the law firm of Kravitz, Schnitzer, Sloane, & Johnson, Chtd., and hereby respectfully file this Partial Opposition ("Opposition") to Appellants' Lewis Helfstein ("Mr. Helfstein"), Madalyn Helfstein, Summit Laser Products, Inc. ("Summit"), and Summit Technologies, LLC. (also referred to as "Summit") (all collectively referred to as "Appellants") Motion to Stay Pending Appeal ("Motion"). This Opposition is made and based upon the accompanying Memorandum of Points and Authorities, any attached exhibits, affidavits, declarations, or other supporting documents, and any oral argument permitted at the time of the hearing. The Opposition refers to the remaining Parties as follows: the Ira and Edythe Seaver Family Trust; Ira Sever ("Mr. Seaver"); and Circle Consulting Corporation ("Circle Consulting"); and Ira and Edythe Seaver Family Trust, Mr. Seaver, and Circle Consulting as "Plaintiffs".

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Summary of Argument

Appellants are indispensable parties to this litigation. A stay may be permissible if the entire action is stayed - not just the cross-claims. As noted by the Motion, Respondents do

not have a relationship to Plaintiffs since Respondents never assumed Plaintiffs' Consulting Agreement with Appellants. Alternatively, if a stay is limited to the cross-claims only, then Appellants should be required to post a supercedeas bond for $2 Million. This represents Plaintiffs' potential damages that would be the subject of the cross-claims.

B. Statement of the Facts

The following facts are taken from Plaintiffs' Complaint. On or about August 12, 2004, Appellants entered into an agreement with Mr. Seaver to form Summit. *See* Complaint at ¶ 5. Appellants would manage and control Summit, but would need Mr. Seaver's approval on decisions concerning the capital structure of Summit. *Id.* For compensation, Mr. Seaver and/or the Seaver Trust were to receive $6,700 per month in distributions from Summit subject to a $55,000 pretax profit. *Id.* Furthermore, Summit's operating agreement required Summit to enter into the Consulting Agreement with Mr. Seaver for an annual fee of $120,000 with annual $5,000 increases. *Id.* On or about September 1, 2004, Appellants entered into an operating agreement with the Seaver Trust for the operations of Summit as a New York limited liability company ("Operating Agreement"). *Id.* at ¶ 6.

1. *Consulting Agreement*

On the same day of the execution of the Operating Agreement, Circle Consulting entered into an agreement with Summit that established Circle Consulting would provide consulting services, as agreed in the Operating Agreement, to Summit from January 1, 2005 to December 31, 2014 (previously referred to as "Consulting Agreement"). *See Id.*; *see also* Consulting Agreement attached as Exhibit "1" at ¶ 2 at IS0000104. In terms of the material provisions of the Consulting Agreement to the Motion, it contained a paragraph stating that:

> 14. Governing Law.
>
> The agreement shall be governed by and construed in accordance with the laws of the State of Nevada. If any provision of this agreement shall be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this agreement. In the event of any such action, proceeding or counterclaim brought by either party hereto in connection with or arising under this Agreement, the parties hereby agree to waive trial by jury in any such action or proceeding.

See Ex. 1 at ¶ 14 at IS 0000110-11.

2. *Agreement For Purchase and Sale of Assets*

On or about March 27, 2007, UI and Summit entered into the Agreement for Purchase and Sale of Assets by and between UI Supplies, INC., and SUMMIT TECHNOLOGIES, LLC ("Asset Purchase Agreement"). *See* Asset Purchase Agreement attached as Mot., Ex. C, Ex. A at 1. In terms of employment contracts and other benefits, the Asset Purchase Agreement specifically provided that:

> Employment Contracts and Benefits: "**Exhibit E** attached is a list of all Seller's employment contracts, collective bargaining agreements, and pension, bonus, profit sharing, stock options, or other agreements providing for employee remuneration or benefits. To the best of Seller's knowledge, as of the date of this Agreement, Seller is not in default under any of these agreements, nor has any event occurred that with notice, lapse of time, or both, would constitute a default by Seller of any of these agreements. **Seller's obligations under these agreements shall cease as of the Closing Date**, and Seller makes no representations as to the assignability of such agreements."

See *Id.* at ¶ 7.6 (emphasis added). "Exhibit E" explicitly states that "CONSULTING AGREEMENT WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED." *See* Mot., Ex. C, Ex. A. Thus, the Consulting Agreement automatically terminated as of the Closing Date. *Id.*

Furthermore, on November 10, 2009, Mr. Helfstein provided a Declaration regarding the Consulting Agreement. He wrote that:

> I was responsible for negotiating and approving the [Asset Purchase Agreement] on behalf of Summit. As part of the [Asset Purchase Agreement], Uninet negotiated ***replacement*** consulting agreements between Uninet, myself and Mr. Seaver. I executed a ***replacement*** consulting agreement with Uninet on my own behalf. There were negotiations between Uninet and Seaver for a ***replacement*** agreement, but to the best of my knowledge was (sic) no such agreement was signed.

See Declaration of Lewis Helfstein attached as Exhibit "2" at ¶ 7. Thus, the Asset Purchase Agreement clearly establishes that Respondents did not assume the Consulting Agreement. Nevertheless, Plaintiffs have brought a frivolous lawsuit against Respondents under the terms of the Consulting Agreement.

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a. *Warranties From Appellants to Respondents*

The Asset Purchase Agreement provided Respondents with a series of warranties, which are directly applicable to Respondents' right to seek indemnification from Appellants for the claims alleged by Plaintiffs. Summit represented that it had the approval and authority of all members to enter into the Asset Purchase Agreement. *See* Ex. 2 at ¶ 6.1. Similarly, Summit asserted that it had full power and authority to enter into the Asset Purchase Agreement "without any conflict with any other restriction or limitation, whether imposed by or contained in Seller's management agreement or by or in any law, legal requirement, or otherwise." *Id.*

Additionally, Summit also represented that there were no potential claims or threats of litigation involving the assets it was selling other than ACM Technologies v. Summit Technologies LLC. *See* Mot., Ex. C, Ex. A at ¶ 6.6. It provided a general disclosure that:

> Seller does not know, or have reason to know, of any matters, occurrences, or other information that has not been disclosed to Buyer and that would materially and adversely affect the Acquired Assets purchased by Buyer or its conduct of the business involving such Acquired Assets. Moreover, no representations or warranty by Seller in this Agreement, or any documents furnished to Buyer by Seller, **contains or will contain any untrue statement of a material fact**, or omit to state a material fact necessary to make the statements contained in these sources accurate.

Id. (emphasis added).

Additionally, the Asset Purchase Agreement also stated that:

> The execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following: (a) a default or an event that, with notice, lapse of time, or both, would be a default, breach, or violation of the management agreement of Seller or any lease, license, promissory note, conditional sales contract, commitment, indenture, or other agreement, instrument, or arrangement to which Seller is a party or by which any of them or any asset or properties of any of them is bound . . . ."

Id. at ¶ 7.9. The Asset Purchase Agreement also provided that it had the necessary right, power, legal capacity, and authority to enter into the agreement, and "no approvals or consents of any person other than the Seller [was] necessary in connection with the sale" of Summit's assets. *Id.* at ¶ 7.10.

Finally, and most importantly, Summit stated that:

> to the best of Seller's knowledge, none of the representations and warranties made by Seller in this Agreement, or in any certificate or memorandum furnished or to be furnished, contains or will contain any untrue statement of material fact, or omits to state a material fact necessary to prevent the statement from being misleading.

Id. at ¶ 7.12.

In total, Appellants provided several warranties to Respondents that: (1) the Consulting Agreement was terminated; (2) it had the necessary authority and consent to terminate the Consulting Agreement; (3) there were no potential claims or threats of litigation; (4) there would not be a breach of the Consulting Agreement from the Asset Purchase Agreement; and (5) there were no misrepresentations of material fact that would make any of the foregoing misleading.

b. *Respondents Relied on Helfstein Defendants' Representation that the Consulting Agreement Was not Being Assigned*

Appellants induced Respondents into executing the Asset Purchase Agreement based on their representation that the Consulting Agreement was not being assigned through the Asset Purchase Agreement. Respondents did not want the Consulting Agreement. They merely wanted the technology and assets owned by Summit. Exhibit "E" and the Declaration of Mr. Helfstein all demonstrate that the Asset Purchase Agreement did not assign the Consulting Agreement. These are key facts that support Respondents' claims for indemnification from Appellants as to the Plaintiffs' claims. Moreover, it shows that Appellants status as indispensable parties.

C. Statement of Procedure

On April 3, 2009, Plaintiffs filed a Complaint against both Appellants and Respondents. In the Complaint, Plaintiffs assert ten causes of action: (1) Breach of Circle Consulting Contract (against all Defendants); (2) Breach of Summit Technologies Formation Agreement (against Helfstein Defendants Only); (3) Breach of Summit Technologies Operating Agreement (against Helfstein Defendants and Summit Only); (4) Breach of Fiduciary Duty (against Helfstein Defendants Only); (5) Promissory Estoppel (against

UniNet Defendants Only); (6) Unjust Enrichment (against UniNet Defendants Only); (7) Accounting (against Summit and Helfstein Defendants Only); (8) Declaratory Relief (against All Defendants); (9) Breach of Implied Covenant of Good Faith and Fair Dealing (against All Defendants); and (10) Alter Ego (against All Defendants). However, on November 23, 2009, Plaintiffs executed a voluntary dismissal of Appellants. Notably, all of Plaintiffs' claims arise under the Consulting Agreement.

In turn, on January 19, 2010, Respondents filed a Cross-Claim against Appellants. The Cross-Claim asserts twelve claims against Appellants: (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Unjust Enrichment; (4) Fraud; (5) Fraudulent Misrepresentation; (6) Intentional Misrepresentation; (7) Negligent Misrepresentation; (8) Breach of Express and Implied Warranties; (9) Implied Indemnity; (10) Express Indemnity; (11) Apportionment; and (12) Equitable Estoppel.[1]

Plaintiffs are asserting claims for alleged breach of the Consulting Agreement against Respondents. *See* Compl. at ¶¶ 24-27, 48-53. However, Respondents were not a party to that contract. Only Appellants were parties to both the Consulting Agreement and the Asset Purchase Agreement. *See* Mot., Ex. C, Ex. A; Ex. 1. In that light, they are "indispensable" to the adjudication of the dispute over the Consulting Agreement, and to Respondents' defense from Plaintiffs' frivolous litigation. Similarly, Appellants are liable to Respondents under a theory of indemnification for any damages they may incur as a result of the claims arising under the Consulting Agreement.

On April 20, 2010, Appellants filed a Motion to Stay or Dismissal and to Compel Arbitration ("Compel Motion"). On May 25, 2010, the District Court heard oral arguments in support of the legal briefs from the Parties regarding the Compel Motion. After entertaining all Parties, it denied the Compel Motion. It found that:

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[1] In terms of classifying the cross-claims, the first eight claims arise under Nevada Rule of Civil Procedure 13(h). The remaining claims arise under Nevada Rule of Civil Procedure 14(a) based on a theory of indemnification, which constitute third-party claims.

> Cross-Claimants' cross claims against Cross-Defendants do not arise under the 2007 Agreement for Purchase and Sale of Assets by and between UI Supplies, INC., and SUMMIT TECHNOLOGIES, LLC. ("Asset Purchase Agreement"). As such, the binding arbitration clause, choice of forum, and choice of law provisions of the Asset Purchase Agreement do not apply.

See Mot., Ex. D. On July 16, 2010, Respondents entered this Order. Thereafter, on July 7, 2010, Appellants filed a Notice of Appeal, Case Appeal Statement, and this instant Motion.

II. DISCUSSION

Appellants seek to stay the cross-claim asserted against them pending their appeal. In support, the Motion asserts that the "only relationship between [Appellants] and [Respondents] is the relationship arising out of the [Consulting Agreement]. They have no other relationship." Mot. at 3:17-18. Appellants argue that the "claims asserted against [Appellants] by [Respondents] 'arise out of' and are 'relating to' the [Asset Purchase Agreement]." *Id.* at 3:19-20. However, Appellants fail to address that Plaintiffs, the parties instigating the frivolous litigation, brings their claims out of the Consulting Agreement. Furthermore, they fail to acknowledge that Appellants seek to preserve their right to indemnification as to those claims. Nevertheless, Respondents agree that a complete stay of the underlying action may be appropriate until Appellants' appeal is resolved. In the alternative, if a complete stay is warranted, then Appellants should be required to post a supercedeas bond of at least $2 Million to protect Respondents.

In support, the following Discussion is organized into four Parts. Part A sets forth the standard for seeking a motion to stay pending appeal. Part B states the factors that this Honorable Court considers in requiring a supercedeas bond. Finally, Part C asserts that a stay of the entire case may be appropriate.

A. Standard for a Motion to Stay Pending Appeal

Nevada Revised Statute §38.247(1)(a) allows an appeal of an order denying a motion to compel arbitration. "'[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *In re Smith*, 389 B.R. 902, 917 (Bkrtcy. D.

Nev. 2008) (quoting *Landis v. North American Co.*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). In *Landis*, the United States Supreme Court stated that the exercise of this power "can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254-55, 57.

The *Smith* Court further took notice that, in terms of staying adversary proceedings:

> "[w]here it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed. Among those competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay."

In re Smith, 389 B.R. at 917 (quoting *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir.2005)).

Similarly, Nevada has guidelines that a court should in weighing considering whether to issue a stay. In terms of appeals, courts consider the following factors: (1) whether the object of the appeal will be defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits in the appeal. Nev. R. App. Pro. 8©; *see also Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000). Nevertheless, if one or two factors are especially strong, they may counterbalance other weak factors. *Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987.

1. *Whether the Object of the Appeal Will be Defeated if the Stay is Denied*

Appellants assert that a stay is appropriate so that they "will not be deprived of the bargained-for-benefits of arbitration." Mot. at 5:14-15. However, the mandatory provisions of the Asset Purchase Agreement are inapplicable to the claims that arise out of the Consulting Agreement. As such, Appellants' appeal is immaterial to the cross-claims, and the purpose of the appeal will be unaffected. Nevertheless, a complete stay of the entire underlying action may be appropriate pending resolution of this appeal. Notwithstanding that

point, a partial stay of the underlying action is inappropriate given Appellants' position as an indispensable party. As such, a partial stay would be highly prejudicial to Respondents.

2. *Whether Appellant Will Suffer Irreparable or Serious Injury if the Stay is Denied*

Appellants did not provide any argument regarding any potential irreparable or serious injury if a stay was denied. However, *in arguendo*, it is fairly clear that Plaintiffs' damages as it relates to breach of the Consulting Agreement, if any, are against Appellants only. Thus, a complete stay of the underlying action is appropriate as it would not unduly prejudice Respondents. Furthermore, Appellants will not likely suffer any irreparable or serious injury if this Honorable Court issued a complete stay. However, as noted earlier, a partial stay would highly prejudice Respondents.

3. *Whether Respondent Will Suffer Irreparable or Serious Injury if the Stay is Granted*

Appellants are indispensable parties to Plaintiffs' claims under the Consulting Agreement. As a practical matter, Appellants' absence from this litigation impairs and impedes Respondents' ability to protect their interests. Similarly, there is a substantial risk of inconsistent outcomes if Respondents are obligated to defend this action without the presence of Appellants. Thus, Respondents respectfully request that this Honorable Court consider the extent that a judgment rendered without Appellants will prejudice Respondents. Additionally, they also request that the Court consider the extent that a judgment under the Consulting Agreement can actually be rendered without Appellants when Respondents were never a party nor assumed it.

In terms of the Consulting Agreement, it contains a Governing Law provision that makes Nevada the choice of law and the forum for any disputes arising thereunder. *See* Ex. 1 at ¶ 14 at IS 0000110-11. Plaintiffs are suing Respondents for breach of the Consulting Agreement. Under the Governing Law provision, the Eighth Judicial District Court is the proper forum for disputes arising out of or connected to the Consulting Agreement. Evidence of this is Plaintiffs' original action that named Appellants as defendants. This

demonstrates that Appellants are indispensable parties to the Consulting Agreement, which allows Respondents to join them to this litigation under Nevada Rule of Civil Procedure 13(h).

Furthermore, this Honorable Court should take notice that Appellants' active fault actually and proximately caused 100% of Plaintiffs' alleged damages. Appellants were contractually obligated to Circle Consulting through the Consulting Agreement. Thus, they had a legal obligation to abide by those terms and avoid materially breaching the Consulting Agreement. In terms of the Asset Purchase Agreement, Mr. Helfstein attempted to terminate the Consulting Agreement.

Respondents are entitled to indemnification from Appellants. The undisputed facts demonstrate that the only defendants culpable for Plaintiffs' alleged damages are Appellants. Overwhelming evidence demonstrates that Respondents did not want to assume the Consulting Agreement. *See* Ex. 2. Respondents do not have any legal obligation to Plaintiffs. As such, any liability borne by Respondents arising out of the Consulting Agreement should be completely shifted to Appellants. *See* Nev. R. Civ. Pro. 14(a). In total, the Nevada Rules of Civil Procedure demand that Appellants remain parties to this action in Nevada for so long as Respondents have to defend Plaintiffs' frivolous lawsuit. The cross-claims and third-party claims do not arise against Appellants solely based on the Asset Purchase Agreement. They arise directly out of the Consulting Agreement itself. Under that contract, it specifically provides that Nevada is the proper forum. Therefore, a stay pending appeal would only be proper if it stayed the entire action, not just the cross claims.

4. *Whether Appellant is Likely to Prevail on the Merits in the Appeal*

a. *Standard of Review*

"Whether a dispute arising under a contract is arbitrable is a matter of contract interpretation, which is a question of law that we review de novo." *State ex rel. Masto v. Second Judicial Dist. Court ex rel. County*, 125 Nev. 5, ___, 199 P.3d 828, 832 (2009) (citing *Clark Co. Public Employees v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990); *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990)). Here, this Honorable

Court found that:

> Cross-Claimants' cross claims against Cross-Defendants do not arise under the 2007 Agreement for Purchase and Sale of Assets by and between UI Supplies, INC., and SUMMIT TECHNOLOGIES, LLC. ("Asset Purchase Agreement"). As such, the binding arbitration clause, choice of forum, and choice of law provisions of the Asset Purchase Agreement do not apply.

See Mot. Ex. D. The arbitration clause in the Asset Purchase Agreement is inapplicable. On the other hand, the Consulting Agreement clearly sets Nevada as the proper jurisdiction for claims arising out of it. *See* Ex. 1 at IS 0000110-11. Plaintiffs are prosecuting a case based on the Consulting Agreement. *See* Compl. Respondents are defending Plaintiffs' claims that arise under the Consulting Agreement. Similarly, they are asserting cross-claims that arise out of Plaintiffs' Complaint. Even in undertaking a *de novo* review of this Court's Order, the arbitration provision does not apply. As such, Appellants are unlikely to prevail on the merits of their appeal. However, in fairness to Appellants, a complete stay of the underlying case may be appropriate until this issue is resolved.

B. Requirement for a Supercedeas Bond

Under Nevada Rule of Civil Procedure 62(d), the appellant may obtain a stay by giving a supercedeas bond after the time the notice of appeal is filed. The stay is effective when the supersedeas bond is filed. *Id.* The purpose of the supercedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment. *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). However, District Courts retain the power to grant a stay in the absence of a full bond. *Nelson v. Heer*, 121 Nev. 832, 833, 112 P.3d 1253 (2005) (citation omitted). The District Court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security. *Id.* at 837, 122 P.3d at 1254.

The Nevada Supreme Court adopted the Seventh Circuit's approach determining when the courts may waive the supercedeas bond requirement. This approach includes five factors: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has

in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *Id.* (citing *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988)).

1. *The Complexity of the Collection Process*

Appellants reside in New York. Thus, to collect a Judgment against them would be difficult. Collection would involve obtaining an Exemplified Judgment from the Clark County Clerk and domesticating that Judgment in New York. Thus, domesticating a Judgment rendered against Appellants would be relatively difficult. As such, a bond would protect Respondents in the event that the trier-of-fact determines that Appellants are liable under the cross-claims if this Honorable Court orders a partial stay.

2. *The Amount of Time Required to Obtain a Judgment After it is Affirmed on Appeal*

This factor is not applicable.

3. *The Degree of Confidence That the District Court has in the Availability of Funds to Pay the Judgment*

Previously, Plaintiffs claimed that Appellants were insolvent. *See* Motion for Determination of Good Faith Settlement attached as Exhibit "3". Upon information and belief, Plaintiffs obtained this information from Mr. Helfstein. Thus, this Honorable Court should have zero confidence in Appellants' ability to fund any Judgment rendered against them. Therefore, a supercedeas bond is appropriate if a partial stay is warranted.

4. *Whether the Defendant's Ability to pay the Judgment is so Plain That the Cost of a Bond Would be a Waste of Money*

The Motion for Determination of Good Faith Settlement demonstrates that Appellants will not have the ability to pay a Judgment rendered against them. *See* Ex. 3. Therefore, Appellants will not be able to prove that their ability to pay a Judgment would make the cost of a bond economically wasteful if a partial stay is warranted.

5. *Whether the Defendant is in Such a Precarious Financial Situation That the Requirement to Post a Bond Would Place Other Creditors of the Defendant in an Insecure Position*

There is no evidence that there are other creditors of Appellants at risk for an insecure position.

C. The Entire Case Should Be Stayed Pending Appeal

Appellants are indispensable parties to this action. As asserted at length in Section II(A)(3), the absence of Appellants from the main litigation will impede Respondents to protect their interest. As such, a partial stay of the cross-claims only is improper. In weighing the competing interests of Respondents, Appellants, and Plaintiffs, staying the entire action would maintain an even balance as identified by the United States Supreme Court. *Landis v. North American Co.*, 299 U.S. 248, 254-55, 57, S.Ct. 163, 81 L.Ed. 153 (1936). It would cause great hardship to Respondents if it were required to defend against Plaintiffs' claims without the presence of Appellants in this litigation. As such, Respondents respectfully request that this Honorable Court stay the entire action during the pendency of the appeal.

III. CONCLUSION

Staying the entire underlying action may be appropriate pending the resolution of Appellants' appeal. However, a partial stay of the cross-claims instead of the entire action would result in manifest injustice to Respondents. Appellants are indispensable parties to Plaintiffs' litigation arising under the Consulting Agreement. Substantial evidence demonstrates that Appellants are critical to help the trier-of-fact assess Plaintiffs' claims and the potential liabilities of both Appellants and Respondents. As such, a partial stay is improper and the entire litigation should be stayed pending appeal.

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Alternatively, if this Honorable Court determines that a partial stay is proper, Appellants should be required to post a supercedeas bond in the amount of $2 Million. Appellants' residence in a foreign jurisdiction illustrates that both Plaintiffs and Respondents will have a difficult time collecting any judgments rendered against them. In that light, a supercedeas bond would address those concerns. Thus, imposing a supercedeas bond in the amount of $2 Million would be appropriate if this Court was inclined to grant the Motion for a partial stay.

DATED this 8 day of September, 2010.

KRAVITZ, SCHNITZER SLOANE, & JOHNSON, CHTD.

GARY E. SCHNITZER, ESQ. (NSB 395)
MICHAEL B. LEE, ESQ. (NSB 10122)
8985 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Telephone: (702) 222-4142
Facsimile: (702) 362-2203
Attorneys for Defendants UI Supplies, UniNet Imaging and Nestor Saporiti

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the **RESPONDENTS' PARTIAL OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL** in the above-entitled and captioned matter and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 27, which requires every assertion regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying Motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8 day of September, 2010.

KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.

MARTIN J. KRAVITZ, ESQ.
Nevada Bar No. 83
MICHAEL B. LEE, ESQ.
Nevada Bar No. 10122
8985 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorneys for Respondents

LAW OFFICES
KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of September, 2010, I placed a copy of the foregoing **RESPONDENTS' PARTIAL OPPOSITION TO APPELLANTS' MOTION FOR STAY PENDING APPEAL** in the United States mail, postage pre-paid, and addressed as follows:

Jeffrey R. Albregts, Esq. (NBN 0066)
SANDORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Tel: (702) 791-0308
Fax: (702) 791-1912
jalbregts@nevadafirm.com
Attorneys for Plaintiffs

Byron L. Ames, Esq. (NBN 7581)
Jonathan D. Blum, Esq. (NBN 9515)
THARPE & HOWELL
3425 Cliff Shadows Parkway, Suite 150
Las Vegas, Nevada 89129
Tel: (702) 562-3301
Fax: (702) 562-3305
bames@tharpe-howell.com
jblum@tharpe-howell.com
Attorneys for Plaintiffs

J. Michael Oakes, Esq.
Foley & Oakes, PC
850 East Bonneville Avenue
Las Vegas, NV 89101
Tel: 702-384-2070
Fax: 702-384-2128
mike@foleyoakes.com

Wendy Cosby

An employee of KRAVITZ, SCHNITZER, SLOANE, & JOHNSON, CHTD.

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EXHIBIT "1"

EXHIBIT "1"

CONSULTING & NON-COMPETITION AGREEMENT

This AGREEMENT, dated as of September 1, 2004, is made between Summit Technologies, LLC ("Company"), a New York limited liability corporation and Circle Consulting Corporation ("Consultant"), a Nevada corporation, having a place of business at 2407 Ping Drive, Henderson, NV 89074.

WITNESSETH:

WHEREAS, the Company has, pursuant to a certain Agreement of Contribution dated September 9, 2004, acquired certain assets of National Data Center, Inc. ("NDC") and,

WHEREAS, the principal of Consultant is thoroughly familiar with the business operations of NDC; and

WHEREAS, as a condition of contribution of the business and assets of NDC to the Company, the Company agreed to retain the services of the Consultant for a fixed fee over a period of time and the Consultant has agreed to render such services to the Company; and

WHEREAS, the Company wishes to retain Consultant to render such services to the Company and its affiliates and the Consultant wishes to render such services, all on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto agree as follows:

IS 0000103

1. Engagement.

The Company hereby engages Consultant and Consultant's hereby accept such engagement upon the terms and conditions hereinafter set forth.

2. Term.

The Consultant will be bound by this on the date first above written and payment pursuant to this agreement shall commence Jan 1, 2005 and shall continue until December 31, 2014, unless otherwise terminated pursuant to Section 9.

3. Compensation.

3.1 For all services rendered and covenants given by Consultant under this Agreement, the Company shall pay Consultant an initial annual fee of $125,000, paid monthly. The payment shall be increased by the Federal Employment tax expense as indicated in Schedule A. This fee shall be increased $5,000 each year, beginning on January 1, 2006, and annually on January 1 each year thereafter.

3.2 In addition to the annual fee, the consultant will be reimbursed by the LLC for certain other reasonable expenses, including cell phone usage, auto, insurance and medical coverage.

3.3 In addition to the above, LLC will pay Consultant 05 cents for each chip and 02 cents for resets the company has manufactured and sold up to 40,000 per month, and 02 cents for each one sold thereafter. There shall be an average profit, by the LLC, of at least $1.50 on each chip or $1.00 for reset for the incentive to be paid. The monthly profit shall be based upon the average of profit for the previous calendar month. This payment will be made to Consultant quarterly. The LLC will calculate chip sales first, arriving at maximum units of 40,000 per month, in calculating payments.

3.4 Additional payments. A payment of ten thousand dollars per month shall be made until a total of $_____ is made.

4. Services to be Rendered.

Consultant shall be engaged in rendering consulting services to the Company and to the Managers of the Company, in connection with the operations the business acquired by the Company from NDC, including improvement on existing formulations and developing new formulations for new toner printing devices, Also included shall be the supervision , research and development of microchip technology as it relates to toner printing devices.

The Consultant has entered into an agreement with Ira Seaver for his exclusive service for a term to run concurrent with this Agreement and will furnish the services of Ira Seaver to perform the services required by this contract.

5. Extent of Services.

Consultant, shall from time to time, make available to the Company, the Consultant's employees, including its President, Ira Seaver on an exclusive basis, to the extent reasonably necessary to enable Consultant to render the services required hereby. Consultant and its employees, if any, shall devote such portion of their business time, attention, and energies to the business of the Company and its affiliates as shall be necessary to render services hereunder, as determined by Consultant in its reasonable discretion.

6. Disclosure of Information.

Consultant, recognizes and acknowledges that the trade secrets of the Company and its affiliates and their proprietary information and procedures, as they may exist from time to time, are valuable, special, and unique assets of the

Company's business, access to and knowledge of which are essential to performance of the Consultant's duties hereunder. Except to the extent required in order for the Consultant to carry out and perform the terms of this Agreement, Consultant, will not, at any time during the term of this Agreement disclose, in whole or in part, such secrets, information or processes to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, nor shall they make use of any such property their own purposes of benefit of any firm person or corporation, or other entity (except the Company) under any circumstances during the term of this Agreement; provided, that these restrictions shall not apply to such secrets , information, and processes which are in public domain (provided that Consultant was not responsible, directly or indirectly, for such secrets, information or processes entering the public domain after the date hereof without the Company's written consent). Consultant agrees to hold as the Company's property, all memoranda, books, papers, letters, and other data, and all copies thereof and there from, in any way relating to the Company's business and affairs, whether made by him or otherwise coming into his possession, and on termination of his employment, or on demand of the Company, at any time, to deliver the same to the Company.

7. 7. Agreement not to Aid Competition.

7.1 Consultant acknowledges and agrees that during the term of this Agreement, it will not in any way, directly or indirectly, whether for its account or for the account of any other person, firm, or company engage in, represent, furnish consulting services to, be employed by, or have any interest in (whether as owner, principal, director, officer, partner, agent, consultant, stockholder, otherwise) any business which manufacturers, sells or distributes parts and supplies for the

remanufacturing of business machine toner cartridges in competition with the Company or refills business machines toner cartridges. Further, Consultants shall knowingly induce or attempt to induce any person or entity which is a customer of the Company or any of its subsidiaries at any time during the term of this Agreement to cease doing business, in whole or in part, with the Company or such subsidiary, or solicit or endeavor to cause any employee of the Company or its subsidiaries to leave the employ of the Company or such subsidiary.

For the sole purposes of Sections 6 and 7 of this Agreement, the term "Consultant" shall include Consultant, and Ira Seaver individually, and any other person who hereafter renders services to the Company on behalf of Consultant. Consultant agrees that the covenant set forth in this Section 7 is reasonable with respect to its duration, geographic area and scope. If any particular portion of this Section 7 deemed amended to reduce in scope and/or duration the portion thus adjudicated to be invalid or unenforceable to the extend necessary to render it valid or enforceable, such amendment to apply only with respect to the operation of this Section 7 in particular jurisdiction(s) in which adjudication is made.

7.2 The Consultant is exempt with regards to this paragraph for the following activity: Consulting with Tangerine Express, so long as their activity remain on the retail level, Raven Industries, Laserstar Distribution Corporation and the collecting of commissions from Coates Toner manufacturers.

8. **Remedies by Company.**

If there be a breach or threatened breach of any provision(s) of Sections 6 or 7 of this Agreement the Company should be entitled to seek temporary and permanent injunctive relief restraining Consultant from such breach without the necessity of

proving actual damage. Subject to the payment obligations set forth in Section 3 hereof, which are unconditional, nothing herein shall be construed as prohibiting the Company from pursuing a claim for monetary damages resulting from such breach or threatened breach, or other relief. Any claim by the Company alleging any violation or breach by the Consultant under Sections 6 or 7 hereof shall be brought by way of a separate action, and not by way of offset or counterclaim as to the monies due or payments required to be made to the Consultant under this Agreement. Notwithstanding the foregoing, in the event the Company obtains a money judgment against consultant or Seaver for a breach of section 6 or 7 hereof, and such judgment is not bonded, vacated or the enforcement thereof otherwise stayed, then such judgment may be satisfied by way of offset against the monies to be paid to Consultant hereunder, to the extent of such money judgment. The restrictions and covenants contained in Sections 6 and 7 hereof, shall be ipso facto, null and void, in the event of uncured default, beyond any applicable grace periods, on the part of the Company herein.

9. **Terminatioin:**

9.1. Disability: The Company may terminate Consultant's contract upon the total disability of Ira Seaver. Ira Seaver shall be deemed to be totally disabled if (i) he is unable to perform his duties under this Agreement by reason of mental or physical illness or accident for a period of ninty (90) consecutive days or (ii) he is unable to perform his duties under this Agreement by reason of mental or physical illness or accident for one hundred twenty (120) days in any twelve (12) month period, or (iii) Ira Seaver files an application for to receive permanent disability benefits. Upon termination by reason of the Ira Seaver's disability, the

Corporation's sole and exclusive obligation will be to pay the Consulting fee for a 6 month period from the original date of disability. In the event, within 24 months of disability, Ira Seaver can resume his duties then the termination shall be void and the Consultant will not receive compensation for four month.

9.2. The Company may terminate this contract in the event of Ira Seaver's death during the term of this Agreement. The Company's sole and exclusive obligation will be to pay the Consulting fee for a period of 6 months from the date of his death, plus the amounts set forth in Section 3.4 above.

10. Assignment.

This Agreement may not be assigned by any party hereto.

11. Notices.

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, or by overnight (next weekday) delivery via FedEx, U.P.S. or Airborne Express to the respective party at:

If to Consultant:

Ira Seaver
2407 Ping Drive
Henderson, NV 89074

with a copy to:

Irwin Groner
21021 Ventura Blvd. Suite 200
Woodland Hills, CA 91364

If to the Company:

Summit Technologies
95 Orville Drive
Bohemia, NY 11716

with a copy to:

Lewis Helfstein
10 Meadowgate East
St. James, New York 11780

Notices delivered by Federal Express, U.P.S. or Airborne Express delivery service shall constitute delivery as of the next day of the dispatch. Notices sent by hand shall be deemed effective upon delivery by hand as of the next business day after dispatch. Notices sent by hand shall be deemed effective upon delivery and notices sent by registered or certified mail, return receipt requested shall be deemed effective five days after mailing. Either party may change its address by notice given in accordance with this Section. All such notices shall be deemed made regardless of whether or not the intended recipient refuses or fails to accept delivery thereof.

12. Waiver or Breach.

A waiver by either party of a breach of any provision of this Agreement by the other party shall not be effective unless in writing and shall not operate or be construed as a waiver of any other or subsequent breach by the other party.

13. Entire Agreement.

This instrument contains the entire agreement of the parties. It may be changed only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

14. Governing Law.

The agreement shall be governed by and construed in accordance with the laws of the State of Nevada. If any provision of this agreement shall be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this agreement. In the event of any action, proceeding or

counterclaim brought by either party hereto in connection with or arising under this Agreement, the parties hereby agree to waive trial by jury in any such action or proceeding.

15. Binding Effect.

Upon execution and delivery of this Agreement, this Agreement shall be binding upon and inure to the benefit to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

16. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

17. Attorney's Fees.

In the event that either party to this Agreement commences a litigation to enforce its rights hereunder, the prevailing party in any such party shall be entitled to reimbursement by the other party of the reasonable fees and expenses of the prevailing party's attorneys.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE COMPANY
Summit Technologies, LLC

By: _____
Lewis B. Helfstein, Tax Manager

CONSULTANT

By: _____
Ira Seaver, President

The undersigned acknowledges the applicability of and agrees to be bound individually to the provisions of Sections 6, 7 and 8 above.

_____
Ira Seaver

EXHIBIT "2"

EXHIBIT "2"

DECLARATION OF LEWIS HELFSTEIN

I, Lewis Helfstein, hereby declare as follows:

1. I have personal knowledge of all matters stated herein and am competent to testify to the same.

2. I am an attorney and am admitted to practice in all courts in the State of New York, and am a Defendant in *Ira and Edythe Family Trust v. Helfstein et al.*, Nevada District Court Case No. A587003, in Department XI. I am also the managing agent of Summit Technologies LLC. ("Summit")

3. In 2004, I negotiated the purchase of certain assets, including intellectual property, ("Business Assets") owned and developed by Plaintiffs, which were exchanged for an interest in Summit Technologies, LLC ("2004 Sale"). The parties entered into a series of agreements, in which among other things, Plaintiff's transferred their assets from National Data Center, Inc. to Summit Technologies LLC. This resulted in Mr. Seaver obtaining an ownership interest in Summit and a separate Consulting and Non-Competition Agreement. ("Consulting Agreement")

4. The Consulting Agreement and the attendant relationship with Seaver were considered an asset of Summit. It provided Summit a business advantage because it provided Summit access to Mr. Seaver's intellectual expertise and reputation in the imaging industry; it restricted Mr. Seaver's abilities to disseminate information about the company and its products; and, it kept Mr. Seaver from competing with Summit. I entered into a similar Consulting Agreement with Summit.

5. I was responsible for the drafting of the Consulting Agreement. The consulting agreement was never an Employment Agreement, and at no time was Seaver

ever an employee of Summit.

6. The anti-assignment provision in the Consulting Agreements was for the benefit of Seaver and Summit, and Summit waives any claims with respect to the enforcement of it.

7. In 2007, an agreement was entered into between the Uninet Defendants and Summit Technologies, wherein Uninet purchased the assets of Summit. (The "2007 Sale") I was responsible for negotiating and approving the Agreements for the 2007 Sale on behalf of Summit. As part of the 2007 Sale, Uninet negotiated replacement consulting agreements between Uninet, myself and Mr. Seaver. I executed a replacement consulting agreement with Uninet on my own behalf. There were negotiations between Uninet and Seaver for a replacement agreement, but to the best of my knowledge was no such agreement was signed.

8. It is my understanding, that subsequent to the 2007 Sale to the Uninet Defendants, Seaver has communicated directly with Uninet, and that Uninet promoted their acquisition of Summit, including Summit's relationship with Seaver. To the best of my knowledge, Seaver has upheld his obligations under the Consulting Agreement to Summit and to Uninet.

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

Lewis B. Helfstein

LEWIS HELFSTEIN
SUMMIT TECHNOLOGIES LLC.

11/10/09
DATE

Robert / Helfstein dec.

EXHIBIT "3"

EXHIBIT "3"

2-19

MDGF
Byron L. Ames, Esq.
Nevada Bar No.: 7581
Jonathan D. Blum, Esq.
Nevada Bar No.: 9515
THARPE & HOWELL
3425 Cliff Shadows Pkwy., Suite 150
Las Vegas, Nevada 89129
(702) 562-3301
Fax: (702) 562-3305
bames@tharpe-howell.com
jblum@tharpe-howell.com

Robert Freedman
California Bar No.:139563
THARPE & HOWELL
15250 Ventura Blvd., 9th Floor
Sherman Oaks, California 91403
(818) 205-9955
Fax: (818) 205-9944
rfreedman@tharpe-howell.com
Pro Hac Vice Application Pending

JEFFREY R. ALBREGTS, ESQ.
Nevada Bar No. 0066
jalbregts@nevadafirm.com
BRIAN G. ANDERSON, ESQ.
Nevada Bar No. 10500
banderson@nevadafirm.com
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912

Attorneys for Plaintiffs,
IRA AND EDYTHE SEAVER FAMILY TRUST,
IRA SEAVER, CIRCLE CONSULTING CORPORATION

Dmc 3/8/10

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION,	)	CASE NO.: A587003
	)	DEPT. NO.: XI
Plaintiffs	)	
v.	)	3/25/10
LEWIS HELFSTEIN, MADALYN	)	9:00 a.m.

HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI and DOES 1 through 20, and ROE entities 21 through 40, inclusive,

Defendants.

ZSE02-21742

PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

Plaintiffs, IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER and CIRCLE CONSULTING CORPORATION, hereby move this Court for a determination that the settlement they entered into with Defendants LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, was made in good faith.

This Motion is made and based upon the attached Points and Authorities, the papers and pleadings on file herein, and such oral argument as the Court may entertain at the hearing of this motion.

DATED this 19 day of February, 2010.

THARPE & HOWELL

By: _____

Byron L. Ames, Esq.
Nevada Bar No.: 7581
Jonathan D. Blum, Esq.
Nevada Bar No.: 9515
3425 Cliff Shadows Pkwy., Suite 150
Las Vegas, Nevada 89129

Attorneys for Plaintiffs,
IRA AND EDYTHE SEAVER FAMILY TRUST,
IRA SEAVER, CIRCLE CONSULTING
CORPORATION

THARPE & HOWELL
3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing MOTION on for hearing before the above entitled Court on the _____ day of _____, 2010, in Department 21 at the hour of _____ ___.m., or as soon thereafter as counsel may be heard.

DATED this _____ day of February, 2010.

THARPE & HOWELL

By: _____

Byron L. Ames, Esq.
Nevada Bar No.: 7581
Jonathan D. Blum, Esq.
Nevada Bar No.: 9515
3425 Cliff Shadows Pkwy., Suite 150
Las Vegas, Nevada 89129

Attorneys for Plaintiffs,
IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION

THARPE & HOWELL
3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

THARPE & HOWELL
3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

POINTS AND AUTHORITIES

I. BACKGROUND/OVERVIEW

A. The Parties

This matter involves three sets of parties and two contracts. Plaintiffs are The Ira and Edy Seaver Family Trust, Ira Seaver and Circle Consulting Corporation (collectively "Plaintiffs"). The first group of Defendants consist of Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc. and Summit Technologies, LLC (collectively the "Summit Defendants"); and the second set of Defendants consists of UI Supplies, Uninet Imaging, Inc. and Nestor Saporiti (collectively the "Uninet Defendants").

B. The Agreements

By way of background, Plaintiff Ira Seaver, through his company National Data Center ("NDC"), developed a certain technology relating to printer toner cartridges. More specifically, Seaver developed computer chips which are an essential component for new printer cartridges, or replacement printer cartridges, to function. Seaver also developed toner formulations. In September of 2004, Plaintiffs entered a series of agreements with the Summit Defendants, which effectively led to Plaintiffs transferring their interests in and to NDC and Lasarstar Distribution Company, Inc. to the Summit Defendants. Pursuant to the agreements, the Plaintiffs were to receive, from the Summit Defendants, scheduled cash distributions, payments for consulting, and payments for the sale of computer chips. Among the agreements, was a document titled "Consulting & Non-Competition Agreement" whereby Summit retained Circle Consulting's services for a fixed fee as a method of paying for the assets it obtained from Plaintiffs. **See Consulting & Non-Competition Agreement, Exhibit "A."**

The second agreement at issue in this case is the Agreement for Purchase and Sale of Assets executed by the Uninet Defendants (specifically UI Supplies) and the Summit Defendants (the "Asset Purchase Agreement"). **See Asset Purchase Agreement, Exhibit "B."** In that agreement, the Summit Defendants sold, transferred and assigned interests the Summit Defendants obtained from Plaintiffs, to UI Supplies. The Asset Purchase Agreement included the transfer of the Circle Consulting Agreement such that UI Supplies stepped into the shoes of Summit when it purchased

Summit's assets.

C. Procedural Posture

The Uninet Defendants filed a Motion to Dismiss which was denied on October 15, 2009. They subsequently filed an Answer and Counterclaim, but did not assert a cross claim against the Summit Defendants. After months of settlement negotiations, Plaintiffs reached a settlement with the Summit Defendants for $60,000.00, as explained in more detail below. **See Declaration of Jeffrey R. Albregts, Exhibit "C."** Based on the settlement, on November 23, 2009 Plaintiffs filed a Notice of Voluntary Dismissal of the Summit Defendants. **See Dismissal, Exhibit "D."**

On January 19, 2010, the Uninet Defendants filed an Amended Answer to Complaint, Counterclaim, and Cross Claim. That Cross Claim, the first filed by the Uninet Defendants, asserts various causes of action against the dismissed Summit Defendants, which claims technically must be alleged against them via a Third Party Complaint. See NRCP 14(a). Irrespective of as much, this Motion seeks formal Court-recognition and approval of the good faith settlement between Plaintiffs and the Summit Defendants in order to preclude the Uninet Defendants' (cross) claims against the Summit Defendants pursuant to NRS 17.245.

D. Facts

Under the Consulting & Non-Competition Agreement, Plaintiffs were to receive compensation from the Summit Defendants for providing consultation to Summit Technologies, LLC and abiding by the non-compete, non-disclosure and confidentiality obligations. That agreement was dated September 1, 2004. **See Exhibit "A."** Such compensation was to include annual consulting fees of $120,000 with $5,000 annual increases. **Id.** Plaintiffs allege that the Summit Defendants failed to make some of the required payments under the Consulting & Non-Competition Agreement, and filed this lawsuit.

On or about March 30, 2007, the Uninet Defendants executed the Asset Purchase Agreement, described above, wherein they acquired rights and duties under the Consulting & Non-Competition Agreement from the Summit Defendants. Thus, the Summit Defendants were liable to pay Plaintiffs during the roughly 30 months between September 1, 2004 and March 30, 2007. Based on the compensation structure outlined in the agreement, the Summit Defendants were obligated to pay

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Plaintiffs approximately $400,000 for that time period. Plaintiffs received only approximately $180,000 throughout these 30 months. Thus, Plaintiffs were still owed roughly $210,000 at the time of the filing of this lawsuit. It is recovery of these damages that Plaintiffs sought in the instant suit against the Summit Defendants.

After protracted negotiations, a settlement in the amount of $60,000.00, to be paid by the Summit Defendants to Plaintiffs, was reached. This amount represents a good faith, fair, negotiated settlement to the contested claims. First, the Summit Defendants had no insurance coverage for these claims, and their ability to finance long and protracted litigation was questionable. Further, there was the possibility that, after costly litigation, even if a much larger judgment was awarded, such a judgment would not be collectible. Thus, after months of settlement negotiations, a fair compromise in the amount of $60,000.00 was reached.

II. ARGUMENT

Plaintiffs reached a good faith negotiated settlement with the Summit Defendants. Months later, the Uninet Defendants brought a cross claim against the already dismissed Summit Defendants. Based on the following statute and interpreting case law, Plaintiffs' settlement with the Summit Defendants should be deemed to be in good faith, and the cross claim, bringing the Summit Defendants back into the case, should be precluded.

A. Legal Standard

NRS 17.245 provides, in pertinent part:

> 1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> > a. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and
> >
> > b. It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.

In The Doctor's Company v. Vincent, 120 Nev. 644, 98 P.3d 681(2004), the Nevada Supreme Court addressed the issue of the determination of good faith settlements, including factors

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that should be used by the District Court in determining the merits of such a motion. The District Court is to consider the factors outlined in In Re MGM Grand Hotel Fire Litigation, 570 F. Supp. 913 (D. Nev. 1983), and use its discretion as provided in Velsicol Chemical Corp. v. Davidson, 107 Nev. 356, 360, 811 P.2d 561 (1991). In Velsicol, the Court found:

> We hold that the determination of good faith should be left to the sound discretion of the trial court based upon all relevant facts available, and that, in the absence of an abuse of that discretion, the trial court's finding should not be disturbed Id. at 360.

In this case, the proposed settlement of sixty thousand dollars ($60,000.00) is substantial and represents a fair account of the Summit Defendants' potential liability, the ability of such amounts to be collected, and the risks and costs of litigation. This settlement was reached after months of extensive negotiations between the parties. **See Exhibit "C."** Plaintiffs and the settling defendants were afforded a full and adequate opportunity to review and evaluate the nature of the allegations and potential defenses. An analysis of the factors outlined in In Re MGM Grand Fire Litigation, leads to the conclusion that the settlement between Plaintiffs and the Summit Defendants was reached in good faith.

1. *Amount Paid In Settlement*: After extensive, arm's length negotiations between the settling parties, they concluded that a settlement of $60,000.00 is a fair account of the settling parties' potential liability.

2. *Allocation of the Settlement Proceeds Amongst Plaintiffs*: Plaintiff Ira Seaver is the beneficiary and principal of all plaintiff entities. Thus, allocation is not an issue.

3. *Insurance Policy Limits of the Settling Parties*: There was no policy of insurance for these claims.

4. *The Financial Condition of the Settling Parties*: The financial condition of the Summit Defendants was an issue considered during the settlement negotiations. Plaintiffs believe that a better result, through protracted litigation, was unlikely given the Summit Defendants' financial condition. This settlement was reached in order that the Summit Defendants extract themselves from the ongoing litigation and was based in part on the high costs of litigation, and the risks of trial.

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Las Vegas, Nevada 89129

5. *The Existence of Collusion, Fraud, or Tortious Conduct Aimed to Injure the Interests of the Non-settling Parties*: The settlement was not based on collusion, fraud, or tortious conduct aimed to injure the interests of the non-settling parties. **See Declaration of Jeffrey R. Albregts, Exhibit "C."** Rather, the settlement was reached after protracted negotiations between the parties, a thorough evaluation of the strength of the claims and defenses, and the costs of litigation. At the time the settlement was reached, there were no cross claims pending between these defendants.

Based on the factors outlined above, Plaintiffs respectfully request that this Court approve this settlement and deem it to be in good faith. Further, the cross claim brought by the Uninet Defendants against the Summit Defendants should be precluded and dismissed.

B. No Express Indemnity Exists in Favor of the Uninet Defendants

It must be noted that the Asset Purchase Agreement does not contain any express indemnity in favor of the Uninet Defendants. Rather, the only indemnification is in favor of the *Seller* (the Summit Defendants). The Asset Purchase Agreement states, "Buyer [Uninet] hereby agrees to indemnify and hold Seller [Summit] harmless and against all liabilities, claims, causes of action, costs and expenses, including reasonable attorney fees...." **See Page 7, ¶ 9(b), Exhibit "B."** The agreement goes on to state, "Buyer [Uninet] shall have no right to seek indemnification based on a breach of a representation and/or warranty made by Seller [Summit] herein or in any other document entered into by Seller in connection herewith....." **See Page 19-20, ¶ 18(a)(xiii), Exhibit "B."** With no express indemnity provision, Summit should be discharged from claims by Uninet if the settlement is deemed to have been in good faith.

C. All of the Uninet Defendants' Cross Claims Against the Summit Defendants Should Be Dismissed

As noted above, the Uninet Defendants have filed a cross-claim against the Summit Defendants based on the claims brought by the Plaintiffs against the Uninet Defendants. Based on the Summit Defendants good faith settlement with Plaintiffs, the Uninet Defendants should be precluded from bringing their cross claim against the Summit Defendants. As such, Plaintiffs seek court recognition that the settlement with the Summit Defendants was in good faith. Therefore, the Uninet Defendants' cross claim against the Summit Defendants must be dismissed.

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3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

III. CONCLUSION

The Plaintiffs and Summit Defendants have reached a fair and equitable settlement in the amount of $60,000.00. Therefore, Plaintiff respectfully requests that this Court grant its Motion for Determination of Good Faith Settlement pursuant to NRS 17.245, and further requests that this Court issue an Order that all claims against the Summit Defendants be dismissed and forever barred.

DATED this 19 day of February, 2010.

THARPE & HOWELL

By: _____

Byron L. Ames, Esq.
Nevada Bar No.: 7581
Jonathan D. Blum, Esq.
Nevada Bar No.: 9515
3425 Cliff Shadows Pkwy., Suite 150
Las Vegas, Nevada 89129

Attorneys for Plaintiffs,
IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION

THARPE & HOWELL
3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of February, 2010, service of the foregoing PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT was made by placing a copy of said document in a sealed envelope with postage fully prepaid, addressed as follows and mailed in accordance with this Firm's practice of collecting, processing and depositing envelopes in a United States Mail receptacle:

Jeffrey R. Albregts, Esq.
SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, Nevada 89101
(702) 791-0308
Fax: (702) 791-1912
Co-Counsel for Plaintiffs

Gary E. Schnitzer, Esq.
KRAVITZ, SCHNITZER, SLOANE, JOHNSON & EBERHARDY
8985 South Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
(702) 362-6666
Fax: (702) 362-2203
Attorney for Defendants,
UI Supplies, Uninet Imaging, Inc.
and Nestor Saporiti

An Employee of Tharpe & Howell

THARPE & HOWELL
3425 Cliff Shadows Parkway
Suite 150
Las Vegas, Nevada 89129

EXHIBIT A

CONSULTING & NON-COMPETITION AGREEMENT

This AGREEMENT, dated as of September 1, 2004, is made between Summit Technologies, LLC ("Company"), a New York limited liability corporation and Circle Consulting Corporation ("Consultant"), a Nevada corporation, having a place of business at 2407 Ping Drive, Henderson, NV 89074.

WITNESSETH:

WHEREAS, the Company has, pursuant to a certain Agreement of Contribution dated September 9, 2004, acquired certain assets of National Data Center, Inc. ("NDC") and,

WHEREAS, the principal of Consultant is thoroughly familiar with the business operations of NDC; and

WHEREAS, as a condition of contribution of the business and assets of NDC to the Company, the Company agreed to retain the services of the Consultant for a fixed fee over a period of time and the Consultant has agreed to render such services to the Company; and

WHEREAS, the Company wishes to retain Consultant to render such services to the Company and its affiliates and the Consultant wishes to render such services, all on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto agree as follows:

1. Engagement.

The Company hereby engages Consultant and Consultant's hereby accept such engagement upon the terms and conditions hereinafter set forth.

2. Term.

The Consultant will be bound by this on the date first above written and payment pursuant to this agreement shall commence Jan 1, 2005 and shall continue until December 31, 2014, unless otherwise terminated pursuant to Section 9.

3. Compensation.

3.1 For all services rendered and covenants given by Consultant under this Agreement, the Company shall pay Consultant an initial annual fee of $125,000, paid monthly. The payment shall be increased by the Federal Employment tax expense as indicated in Schedule A. This fee shall be increased $5,000 each year, beginning on January 1, 2006, and annually on January 1 each year thereafter.

3.2 In addition to the annual fee, the consultant will be reimbursed by the LLC for certain other reasonable expenses, including cell phone usage, auto, insurance and medical coverage.

3.3 In addition to the above, LLC will pay Consultant 05 cents for each chip and 02 cents for resets the company has manufactured and sold up to 40,000 per month, and 02 cents for each one sold thereafter. There shall be an average profit, by the LLC, of at least $1.50 on each chip or $1.00 for reset for the incentive to be paid. The monthly profit shall be based upon the average of profit for the previous calendar month. This payment will be made to Consultant quarterly. The LLC will calculate chip sales first, arriving at maximum units of 40,000 per month, in calculating payments.

3.4 Additional payments. A payment of ten thousand dollars per month shall be made until a total of $_____ is made.

4. **Services to be Rendered.**

Consultant shall be engaged in rendering consulting services to the Company and to the Managers of the Company, in connection with the operations the business acquired by the Company from NDC, including improvement on existing formulations and developing new formulations for new toner printing devices, Also included shall be the supervision , research and development of microchip technology as it relates to toner printing devices.

The Consultant has entered into an agreement with Ira Seaver for his exclusive service for a term to run concurrent with this Agreement and will furnish the services of Ira Seaver to perform the services required by this contract.

5. **Extent of Services.**

Consultant, shall from time to time, make available to the Company, the Consultant's employees, including its President, Ira Seaver on an exclusive basis, to the extent reasonably necessary to enable Consultant to render the services required hereby. Consultant and its employees, if any, shall devote such portion of their business time, attention, and energies to the business of the Company and its affiliates as shall be necessary to render services hereunder, as determined by Consultant in its reasonable discretion.

6. **Disclosure of Information.**

Consultant, recognizes and acknowledges that the trade secrets of the Company and its affiliates and their proprietary information and procedures, as they may exist from time to time, are valuable, special, and unique assets of the

Company's business, access to and knowledge of which are essential to performance of the Consultant's duties hereunder. Except to the extent required in order for the Consultant to carry out and perform the terms of this Agreement, Consultant, will not, at any time during the term of this Agreement disclose, in whole or in part, such secrets, information or processes to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, nor shall they make use of any such property their own purposes of benefit of any firm person or corporation, or other entity (except the Company) under any circumstances during the term of this Agreement; provided, that these restrictions shall not apply to such secrets , information, and processes which are in public domain (provided that Consultant was not responsible, directly or indirectly, for such secrets, information or processes entering the public domain after the date hereof without the Company's written consent). Consultant agrees to hold as the Company's property, all memoranda, books, papers, letters, and other data, and all copies thereof and there from, in any way relating to the Company's business and affairs, whether made by him or otherwise coming into his possession, and on termination of his employment, or on demand of the Company, at any time, to deliver the same to the Company.

7. 7. **Agreement not to Aid Competition.**

7.1 Consultant acknowledges and agrees that during the term of this Agreement, it will not in any way, directly or indirectly, whether for its account or for the account of any other person, firm, or company engage in, represent, furnish consulting services to, be employed by, or have any interest in (whether as owner, principal, director, officer, partner, agent, consultant, stockholder, otherwise) any business which manufacturers, sells or distributes parts and supplies for the

remanufacturing of business machine toner cartridges in competition with the Company or refills business machines toner cartridges. Further, Consultants shall knowingly induce or attempt to induce any person or entity which is a customer of the Company or any of its subsidiaries at any time during the term of this Agreement to cease doing business, in whole or in part, with the Company or such subsidiary, or solicit or endeavor to cause any employee of the Company or its subsidiaries to leave the employ of the Company or such subsidiary.

For the sole purposes of Sections 6 and 7 of this Agreement, the term "Consultant" shall include Consultant, and Ira Seaver individually, and any other person who hereafter renders services to the Company on behalf of Consultant. Consultant agrees that the covenant set forth in this Section 7 is reasonable with respect to its duration, geographic area and scope. If any particular portion of this Section 7 deemed amended to reduce in scope and/or duration the portion thus adjudicated to be invalid or unenforceable to the extend necessary to render it valid or enforceable, such amendment to apply only with respect to the operation of this Section 7 in particular jurisdiction(s) in which adjudication is made.

7.2 The Consultant is exempt with regards to this paragraph for the following activity: Consulting with Tangerine Express, so long as their activity remain on the retail level, Raven Industries, Laserstar Distribution Corporation and the collecting of commissions from Coates Toner manufacturers.

8. **Remedies by Company.**

If there be a breach or threatened breach of any provision(s) of Sections 6 or 7 of this Agreement the Company should be entitled to seek temporary and permanent injunctive relief restraining Consultant from such breach without the necessity of

proving actual damage. Subject to the payment obligations set forth in Section 3 hereof, which are unconditional, nothing herein shall be construed as prohibiting the Company from pursuing a claim for monetary damages resulting from such breach or threatened breach, or other relief. Any claim by the Company alleging any violation or breach by the Consultant under Sections 6 or 7 hereof shall be brought by way of a separate action, and not by way of offset or counterclaim as to the monies due or payments required to be made to the Consultant under this Agreement. Notwithstanding the foregoing, in the event the Company obtains a money judgment against consultant or Seaver for a breach of section 6 or 7 hereof, and such judgment is not bonded, vacated or the enforcement thereof otherwise stayed, then such judgment may be satisfied by way of offset against the monies to be paid to Consultant hereunder, to the extent of such money judgment. The restrictions and covenants contained in Sections 6 and 7 hereof, shall be ipso facto, null and void, in the event of uncured default, beyond any applicable grace periods, on the part of the Company herein.

9. Terminatioin:

9.1. Disability: The Company may terminate Consultant's contract upon the total disability of Ira Seaver. Ira Seaver shall be deemed to be totally disabled if (i) he is unable to perform his duties under this Agreement by reason of mental or physical illness or accident for a period of ninty (90) consecutive days or (ii) he is unable to perform his duties under this Agreement by reason of mental or physical illness or accident for one hundred twenty (120) days in any twelve (12) month period, or (iii) Ira Seaver files an application for to receive permanent disability benefits. Upon termination by reason of the Ira Seaver's disability, the

Corporation's sole and exclusive obligation will be to pay the Consulting fee for a 6 month period from the original date of disability. In the event, within 24 months of disability, Ira Seaver can resume his duties then the termination shall be void and the Consultant will not receive compensation for four month.

9.2. The Company may terminate this contract in the event of Ira Seaver's death during the term of this Agreement. The Company's sole and exclusive obligation will be to pay the Consulting fee for a period of 6 months from the date of his death, plus the amounts set forth in Section 3.4 above.

10. Assignment.

This Agreement may not be assigned by any party hereto.

11. Notices.

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, or by overnight (next weekday) delivery via FedEx, U.P.S. or Airborne Express to the respective party at:

If to Consultant:

Ira Seaver
2407 Ping Drive
Henderson, NV 89074

with a copy to:

Irwin Groner
21021 Ventura Blvd. Suite 200
Woodland Hills, CA 91364

If to the Company:

Summit Technologies
95 Orville Drive
Bohemia, NY 11716

with a copy to:

Lewis Helfstein
10 Meadowgate East
St. James, New York 11780

Notices delivered by Federal Express, U.P.S. or Airborne Express delivery service shall constitute delivery as of the next day of the dispatch. Notices sent by hand shall be deemed effective upon delivery by hand as of the next business day after dispatch. Notices sent by hand shall be deemed effective upon delivery and notices sent by registered or certified mail, return receipt requested shall be deemed effective five days after mailing. Either party may change its address by notice given in accordance with this Section. All such notices shall be deemed made regardless of whether or not the intended recipient refuses or fails to accept delivery thereof.

12. Waiver or Breach.

A waiver by either party of a breach of any provision of this Agreement by the other party shall not be effective unless in writing and shall not operate or be construed as a waiver of any other or subsequent breach by the other party.

13. Entire Agreement.

This instrument contains the entire agreement of the parties. It may be changed only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

14. Governing Law.

The agreement shall be governed by and construed in accordance with the laws of the State of Nevada. If any provision of this agreement shall be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this agreement. In the event of any action, proceeding or

counterclaim brought by either party hereto in connection with or arising under this Agreement, the parties hereby agree to waive trial by jury in any such action or proceeding.

15. **Binding Effect.**

Upon execution and delivery of this Agreement, this Agreement shall be binding upon and inure to the benefit to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

16. **Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

17. **Attorney's Fees.**

In the event that either party to this Agreement commences a litigation to enforce its rights hereunder, the prevailing party in any such party shall be entitled to reimbursement by the other party of the reasonable fees and expenses of the prevailing party's attorneys.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE COMPANY
Summit Technologies, LLC

By: _____
Lewis B. Helfstein, Tax Manager

CONSULTANT

By: _____
Ira Seaver, President

The undersigned acknowledges the applicability of and agrees to be bound individually to the provisions of Sections 6, 7 and 8 above.

_____
Ira Seaver

EXHIBIT B

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

by and between

UI SUPPLIES, INC. and

SUMMIT TECHNOLOGIES, LLC

This agreement is made as of March 30, 2007, at Bohemia, New York, among UI Supplies, Inc. ("Buyer"), a New York Corporation, and Summit Technologies, LLC, a New York Limited Liability Company having its principal office at Bohemia, New York ("Seller").

5.. Sale and Purchase of Assets

a. The Assets: Subject to the terms and conditions in this Agreement, Seller agrees to sell, assign, transfer, convey, and deliver to Buyer, and Buyer agrees to purchase, all of Seller's tangible and intangible property, wherever located, including all unknown and contingent rights, Seller's corporate name, goodwill, insurance and other contract benefits, intellectual property rights, phone numbers, internet domain names and registrations, software programs, such inventory as provided herein, equipment, furniture and machinery, and all other tangible assets used in Seller's business (collectively, the "Acquired Assets"), and a complete and accurate list of all of the Acquired Assets is contained and listed in Exhibit A attached. Expressly excluded from the Acquired Assets purchased by Buyer under this Agreement are all accounts receivable of Seller (the "Accounts Receivable").

b. Collection of Accounts Receivable: Upon the closing of the sale of the Acquired Assets (the "Closing"), Seller shall retain all Accounts Receivable. Both Buyer and Seller acknowledge that after the Closing, Buyer will be selling to customers (each, an "Account Debtor Customer") who, as of the day of Closing (the "Closing Date"), will continue to owe Seller monies against Accounts Receivable. Buyer agrees that all monies collected from an Account Debtor Customer shall go to the Seller first, until such Account Debtor Customer's liability to Seller is satisfied. In the event that any payment received by Buyer from an Account Debtor Customer exceeds the unpaid balance of the Account Receivable owed by the customer to Seller, the entire payment shall be deposited in Buyer's account, and, within three (3) business days of clearance of said funds, Buyer shall deposit the portion due to Seller to Seller's designated account. Upon payment in full of all monies due from an Account Debtor Customer to Seller, all subsequent payments by such customer shall be deposited into Buyer's account. Buyer shall have the obligation to collect and deposit into Seller's account monies received from Seller's Account Debtor Customers for the first 100 days after the Closing Date (the "Collection Period"). During the Collection Period, Buyer shall deliver to Seller weekly written reports to Seller accounting for all monies received by Buyer from each Account Debtor Customer of Seller and the amount deposited in Buyer's designated account. On or before the 110th day after the Closing Date, Buyer shall give written notice to Seller of the outstanding balance due on all Accounts Receivable of Seller, as of the 100th day after the Closing Date (the "100 Day

Report"). Until the later of: (i) the 110th day after the Closing Date, (ii) the date on which Seller receives notice that Buyer does not elect to purchase the Accounts Receivable, and (iii) the closing of Buyer's purchase of the Accounts Receivable, Seller shall have the right, with not less than 24 hours notice to Buyer, to inspect Buyer's books and records regarding the Accounts Receivable and payment history of Seller's Account Debtor Customers. If, after the 100th day after the Closing Date, a balance is still owed to Seller, by any customer of Seller, Buyer shall not make any further sales of product to such customer, until the later of: (i) the Accounts Receivable due to Seller from said customer have been paid in full; and (ii) the closing of the sale of such Accounts Receivable to Buyer, as provided herein. Commencing on the 111th day after the Closing Date, Seller shall have the right to pursue collection of any Account Receivable owed to Seller by any customer of Seller whose accounts are not purchased by Buyer, pursuant to this Agreement. For the three month period following the 110th day after the Closing Date, Buyer, and any of its affiliates, subsidiaries or divisions shall not sell any products to any customer of Seller from whom an Account Receivable balance is owed to Seller, unless such balance is paid in full prior to the expiration of said three month period. If Buyer deems not to extend credit to any customer of Seller, Buyer may not sell any products to such customer for a period of three years from any of Buyer's branches. **The parties may enter into separate agreements on specific accounts which will then not fall under the terms of this section.** Failure to comply with this provision shall be deemed a material default under this Agreement.

c. **Purchase of Accounts Receivable:** Within ten (10) days after the 100 Day Report is due to be delivered to Seller under Article 1.2, Buyer shall notify Seller of its intent to purchase any or all of the remaining Accounts Receivable of Seller, and shall specify the name of each account being purchased, and the outstanding balance of each such account. The purchase price for each account shall be the unpaid balance of the Account Receivable of the Seller at the time of the Purchase, unless agreed otherwise by Seller and Buyer. Payment for all Accounts Receivable being purchased by Buyer from Seller shall be made in full within ten (10) days after Buyer's statement of intent to purchase the Accounts Receivable. Upon payment in full for any Account Receivable of Seller, Seller shall no longer have the right to collect said account, and Buyer shall have the exclusive right to collect said Account Receivable. Buyer shall have no recourse against Seller for the unpaid balance of any Account Receivable sold by Seller to Buyer or for any expenses of collection. Seller makes no representation as to the collectability of any Accounts Receivable of Seller. Buyer shall hold harmless and indemnify Seller from and against all liabilities, claims, causes of action, costs and expenses, including reasonable attorneys fees, arising from the collection of any Account Receivable sold by Seller to Buyer.

d. **Returns**

6.. Purchase Price and Payment for Acquired Assets

a. **Non-Inventory Acquired Assets:** In consideration for the sale and transfer of the Acquired Assets, exclusive of Seller's inventory, including work in process, if any (collectively, the "**Inventory**"), Buyer hereby agrees to pay Seller an aggregate of $250,000 as follows:

i. On the Closing Date, Buyer will pay by wire transfer to Seller, the sum of $50,000;

ii. On the Closing Date, Buyer will deliver to Seller a duly executed promissory note (in the form attached as Exhibit B), dated as of the Closing Date, in the principal amount of $200,000 payable in four payments of $50,000 (the "Note"); first payment to be made 60 days after the Closing Date; second payment to be made 90 days after the Closing Date; third payment to be made 360 days after the Closing Date; and last payment to be made 720 days after the Closing Date.

b. **Allocation of Non-Inventory Purchase Price:** The purchase price for the non-Inventory Acquired Assets shall be allocated as follows:

i. Good will and intangible Acquired Assets – $150,000;

ii. Manufacturing equipment – $80,000; and

iii. Other tangible Acquired Assets – $20,000.

c. **Inventory Purchase:** Buyer shall purchase certain of Seller's Inventory on the Closing Date under the following terms and conditions:

i. Seller has provided the Buyer with a current list of Seller's Inventory. Buyer has indicated those items that he deems are not current Inventory (the "**Excluded Inventory**"), and the Excluded Inventory shall not be part of the Acquired Assets. Buyer agrees to provide Seller with suitable warehouse space for the Excluded Inventory for six (6) months after the Closing Date, at no cost to Seller. Buyer shall allow Seller access to the Excluded Inventory during regular business hours.

ii. The remaining Inventory (the "**Sold Inventory**") shall be valued at Seller's cost as of the Closing Date, and shall be purchased by Buyer. The purchase price of the Sold Inventory shall be 90% of said value. The Buyer shall transfer this amount by wire transfer into Seller's designated account on the Closing Date.

d. **Default on Note Payments:** If any payment due under the Note is not made timely, then, upon ten (10) days written notice from Seller to Buyer of such default, and the balance due under the Note shall immediately be deemed to be due and payable in full, together with interest thereon from the date of default at the rate of nine (9%) percent per annum.

Seller shall be entitled to immediately take any action against Buyer, or Guarantor without further notice.

e. **Event of Default:** A failure by Buyer to timely make any payment due under the Note shall be deemed an event of default under this Agreement ("**Event of Default**"). A failure by Buyer to timely perform any obligation under this Agreement, other than timely payment of the Note, and any other agreements entered into by Buyer in connection with this Agreement, which default remains uncured after ten (10) days notice from Seller to Buyer, shall be deemed an Event of Default. Upon the occurrence of an Event of Default, the balance then due under the Note shall be due and payable in full, together with interest thereon at the rate of nine (9%) percent per annum, from the date of the Event of Default

7.. Liabilities and Sales Tax

a. It is understood that, except as otherwise expressly provided in this Agreement, Buyer is not assuming any of Seller's liabilities or obligations. Provided Buyer performs all of its obligations under this Agreement, Seller agrees to pay any sales or use taxes arising from the sale of Acquired Assets and sold Accounts Receivable under this Agreement.

b. Specifically, Buyer expressly excludes (1) any taxes, including income, sales, and use taxes imposed on Seller because of the sale of its assets and business; (2) any liabilities or expenses Seller incurred in negotiating and carrying out its obligations, or its dissolution and liquidation, under this Agreement (including attorney fees or accountant fees); (3) any obligations of Seller under any employee agreement or any other agreements relating to employee benefits that Seller has with any of its employees; (4) any obligations incurred by Seller prior to the Closing Date; (5) any liabilities or obligations incurred by Seller in violation of, or as a result of Seller's violation of, this Agreement; (6) any obligations or liabilities of Seller under any environmental laws; and (7) any obligations or liabilities of Seller for, or arising out of, any proceeding pending against Seller, or any tortious, unlawful fraudulent conduct on the part of Seller (collectively, the "**Excluded Obligations**").

c. Buyer shall have the right to withhold from the purchase price any amounts necessary to provide for the payment of any sales or use taxes arising from the sale of the Acquired Assets or sold Accounts Receivable that Seller does not pay and for which Buyer has become legally obligated to make such payments. Within five (5) days after delivery to Buyer of proof of payment by Seller, for such obligations, or delivery to Buyer of a duly executed release or satisfaction of such legal obligation of Buyer, Buyer shall deliver to Seller all amounts withheld from the purchase price under this Article 3.3.

d. Seller will pay all sales, use, and similar taxes arising from the transfer of the Acquired Assets (other than taxes on a party's income). Buyer will not be responsible for any business, occupation, withholding, or similar tax, or any taxes of any kind incurred by Seller related to any period before the Closing Date.

e. Seller agrees to indemnify and hold Buyer harmless from and against the Excluded Obligations, all liabilities for any taxes for which Seller is responsible under this Agreement, and all liabilities, claims, causes of action, costs and expenses, including reasonable

attorneys fees, arising from the Excluded Obligations and any taxes for which Seller is responsible under this Agreement.

f. Accounts Payable: Seller shall remain responsible for all accounts payable due to vendors from Seller as of the Closing Date. Effective on the Closing Date, Buyer shall change the format of purchase orders coming from the Summit and Laserstar facilities to clearly indicate that the purchase is being made by an entity other than Seller or Summit Laser Products, Inc. ("Laser")

8.. Lease

a. Buyer and Seller acknowledge that Seller's existing use and occupancy of its premises, located at 95 Orville Dr, Bohemia, NY 11716 (the "Premises"), is under a lease (the "Lease"), dated 12/12/2000, from Reckson FS Limited Partnership ("Landlord"), as landlord, to Laser, as tenant, an accurate and complete copy of which has been supplied to Buyer, and the Lease will be assigned by Laser, and assumed by, Buyer, effective as of, and for all liabilities and obligations arising as of and after, the Closing Date, subject to landlord's consent. Buyer and Seller shall use best efforts to obtain Landlord's written consent for said assignment and assumption, provided however, that Seller and Laser shall not be required to incur any cost in obtaining said consent. Any security deposit available shall inure to the benefit of the Buyer.

b. Buyer hereby agrees to hold harmless and indemnify Seller from and against all liabilities, claims, causes of action, costs and expenses, including reasonable attorneys fees, incurred after the Closing Date in connection with and/or arising from the Lease, any obligations due under the Lease, and/or use, occupancy, and/or possession of the Premises by Buyer and/or any other person or entity prior to the date of Closing Date.

9.. Other Obligations

a. Attached as Exhibit C is a list of Seller's insurance policies, carriers, types of insurance, account numbers, coverage, and premiums. There shall be an adjustment at Closing for all insurance premiums paid by Seller for the period after the Closing Date. Buyer also agrees to assume and discharge, in due course, the following obligations as may arise and become due on and after the date of this Agreement: (1) premiums payable on Seller's insurance policies, listed in Exhibit E, for coverage on and after the date of this Agreement, and (2) the employment of, and salaries and compensation due (consistent with prior rates and practices) to, all employees of Seller. It is understood that Seller and Buyer have prorated all of the expenses attributable to said obligations and have adjusted the purchase price of the Acquired Assets purchased in this Agreement accordingly.

b. Buyer hereby agrees to indemnify and hold Seller harmless from and against all liabilities, claims, causes of action, costs and expenses, including reasonable attorneys fees, arising from any obligation assumed by Buyer under Article 5.1, and/or any failure of Buyer to timely pay any obligation assumed by Buyer under Article 5.1.

10.. Seller's Representations, Warranties, and Covenants: Seller represents, warrants, and covenants to Buyer as follows:

a. **Approval, Authority, and Ownership:** All member approvals required for Seller to enter into this Agreement and sell the Acquired Assets have been duly obtained, and Seller has full power, authority, and ownership to enter into this Agreement and to effectuate all of the transactions contemplated, without any conflict with any other restrictions or limitations, whether imposed by or contained in Seller's management agreement or by or in any law, legal requirement, agreement, or otherwise;

b. **Absence of Changes in Seller's Business:** Except for payroll, Since Jan 1, 2007, there has not been, to Seller's knowledge, any:

i. Transaction by Seller except in the ordinary course of its business as conducted on that date;

ii. Material adverse change in the financial condition, liabilities, assets, business, or results of operations, or prospects of Seller;

iii. Destruction, damage, or loss of any asset of Seller (insured or uninsured) that materially and adversely affects the financial condition, business, results of operations, or prospects of Seller;

iv. Revaluation or write-down by Seller of any of its assets; except for inventory.

v. As of March 1,2007 there has been no increase in the salary or other compensation payable or to become payable by Seller to any of its officers, directors, or employees or declaration, payment, or obligation of any kind for payment, by Seller, of a bonus or other additional salary or compensation to any such person;

vi. Sale or transfer of any asset of Seller, except in the ordinary course of business;

vii. Amendment or termination of, or any release or waiver granted with respect to any contract, agreement, or license to which Seller is a party, except in the ordinary course of business;

viii. Loan or advance by Seller to any person other than ordinary advances to employees for travel expenses made in the ordinary course of business, or any guaranty by Seller of any loan, debt, or other obligations of another person;

ix. Encumbrance of any asset or property of Seller;

x. Waiver or release of any right or claim of Seller, except in the ordinary course of business;

xi. Commencement of, or notice or threat of commencement of, any Proceeding against Seller or the business, assets, or affairs of Seller;

xii. Union organizing efforts, labor strike, other labor trouble, or claim of wrongful discharge, employment discrimination, sexual harassment, retaliatory termination, or other unlawful labor practice or action;

xiii. Agreement by Seller to do any of the things described in the preceding clauses (a) through (l); or

xiv. Other event or condition of any character that has or might reasonably have a material adverse effect on the financial condition, business, results of operation, assets, liabilities, or prospects of Seller.

c. **Condition of Acquired Assets:** All of the fixed assets and equipment transferred under this Agreement are being sold "as is", "where is", subject to normal wear and tear, with no representation or warranty as to their condition or fitness for any particular purchase. All of Seller's intangible rights, to Seller's knowledge as of the date of this Agreement, are solely and exclusively owned by Seller without any infringement on any rights of others.

d. **Existing Relationships:** Seller does not know of any plan or intention of any of Seller's employees, material suppliers, or customers to sever relationships or existing contracts with Seller or to take any other action that would adversely affect the business of Seller.

e. **Distributions and Compensation Payments:** Since March 1, 2007, Seller has not increased, or agreed to any increase in, any salaries or compensations paid or payable to any of its directors, employees, or consultants.

f. **Claims and Litigation:** There are no lawsuits, threats of litigation, claims, or other demands affecting or involving Seller or its business, known to Seller as of the date of this Agreement, arising or accruing before the date of this Agreement, except the action entitled "ACM Technologies v. Summit Technologies LLC".

g. **Seller's Knowledge and Disclosure:** Seller does not know, or have reason to know, of any matters, occurrences, or other information that has not been disclosed to Buyer and that would materially and adversely affect the Acquired Assets purchased by Buyer or its conduct of the business involving such Acquired Assets. Moreover, no representation or warranty by Seller in this Agreement, or any documents furnished to Buyer by Seller, contains or will contain any untrue statement of a material fact, or omit to state a material fact necessary to make the statements contained in these sources accurate.

h. **Rent:** The obligations of Laser under the Lease, shall be paid in full for the period through and including the Closing Date.

i. **Tax Returns and Audits/Books and Records:**

i. **Tax Filings.** As of the Closing Date, within the times and in the manner prescribed by law, Seller shall have filed all federal, state, and local tax returns required by law and have paid in full all taxes, assessments, penalties, and interest due and payable, including all sales, use, and similar taxes, and all payroll and withholding taxes or similar payments then required to be withheld and paid by Seller to any tax authority. There are no present disputes about taxes of any nature between Seller on the one hand, and any tax authority, on the other. Neither the Internal Revenue Service nor any other tax authority has audited, or is in currently auditing, any tax return of Seller. No state or other jurisdiction (including any

local governmental authority) with which Seller has not filed tax returns has asserted that Seller is subject to taxation by such jurisdiction. No tax authority has imposed or asserted any encumbrances on any of the assets or properties of Seller, other than liens on real property for taxes that are not yet due.

ii. **Books and Records of Seller.** Buyer agrees to hold Seller's books and records (the "Records"), at the Premises, at no cost to Seller, until the earlier of: (i) seven (7) years after the Closing Date, and (ii) the date that Buyer vacates the Premises. Buyer will maintain the Records in the same order and manner as presently maintained by Seller and shall allow Seller access to said Records during regular business hours. Buyer shall give Seller 30 days written notice and an opportunity to retrieve the Records, prior to removal of any such Records from the Premises or destruction of such Records.

11.. Seller Cooperation / Non-Compete: Seller agrees and covenants as follows:

a. **Name Change:** Seller warrants that it has granted to Buyer the exclusive right in perpetuity to use its name, "Summit Technologies", as part of Buyer's name for and in connection with all business of whatever kind and character conducted previously by Seller, that it has not granted and will not grant to any other person the right to use, and that it will not itself in the future use the name Summit Technologies as part of any trade name. On Buyer's request, Seller will undertake to change its corporate name to a dissimilar name, and agrees to provide Buyer, if Buyer so requests, the Certificate of Amendment to affect such name change in order to permit Buyer to substitute that name for its own by a simultaneous filing with the New York Secretary of State or by other protective actions.

b. **Cooperation:** Seller agrees to cooperate with Buyer, and on Buyer's reasonable request, to execute all documents and take all actions as are reasonably necessary to perfect and implement Buyer's full ownership of the Acquired Assets purchased under this Agreement, to protect the good will transferred, and to prevent any disruption of Buyer's business relating to any of Seller's employees, suppliers, customers, or other business relationships, provided that Seller shall have no obligation to commence or prosecute or defend any litigation, arbitration or proceeding, and shall not be obligated to incur expenses in excess of $5000 in compliance with this Article 7.2. The parties expressly agree that the Seller shall have no obligation to Buyer for any claims arising out of Intellectual Property, including but not limited to Copyright, Trademark, or Patents actions made against the Buyer or Seller after the date of closing.

c. **Non-competition:** Seller will not, for a five (5) year period from the Closing Date, directly or indirectly, engage in or perform for, or permit its name to be used in connection with, or carry on, or own any part of any business similar to the activities, operations, and business involving the assets sold under this Agreement, as conducted by Seller as of the date hereof.

d. **Title to Acquired Assets:** Seller has good and marketable title in and to all of the Acquired Assets free and clear of all encumbrances, except as set forth in Exhibit F attached.

e. **Customers and Sales:** Exhibit D attached is a correct and current list of all customers of Seller, as of the date of Closing,, together with summaries of the sales made to each

customer during Seller's most recent fiscal year. Except as indicated in Exhibit G, Seller's officers, directors, and shareholders have no information, and are not aware of any facts, indicating that any of these customers intends to cease doing business with Seller or materially alter the amount of the business such customer is presently doing with Seller.

f. **Employment Contracts and Benefits:** Exhibit E attached is a list of all of Seller's employment contracts, collective bargaining agreements, and pension, bonus, profit-sharing, stock option plans, or other agreements providing for employee remuneration or benefits. To the best of Seller's knowledge, as of the date of this Agreement, Seller is not in default under any of these agreements, nor has any event occurred that with notice, lapse of time, or both, would constitute a default by Seller of any of these agreements. Seller's obligations under these agreements shall cease as of the Closing Date, and Seller makes no representation as to the assignability of such agreements.

g. **Insurance Policies:** As of the date of this Agreement, Seller is not in default with respect to payment of premiums on any policy of insurance listed on Exhibit C attached, and there is no claim pending under any such policies, as of the date of this Agreement.

h. **Compliance with Laws:** To Seller's knowledge, Seller has complied in all material respects with all federal, state, and local statutes, laws, and regulations (including any applicable building, zoning, environmental laws, or other law, ordinance, or regulation) affecting the business or properties of Seller or the operation of its business. Seller has not received any notice asserting any violation of any statute, law, or regulation that has not been remedied before the date of this Agreement.

i. **Agreement Will Not Cause Breach or Violation:** The execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following: (a) a default or an event that, with notice, lapse of time, or both, would be a default, breach, or violation of the management agreement of Seller or any lease, license, promissory note, conditional sales contract, commitment, indenture, or other agreement, instrument, or arrangement to which Seller is a party or by which any of them or any assets or properties of any of them is bound; (b) an event that would permit any party to terminate any agreement to which Seller is a party or is bound or to which any of Seller's assets is subject or to accelerate the maturity of any indebtedness or other obligation of Seller; or (c) the creation or imposition of any encumbrance on any of the properties of Seller.

j. **Authority and Consents:** Seller has the right, power, legal capacity, and authority to enter into and perform its obligations under this agreement (including the sale of the Acquired Assets to Buyer), and no approvals or consents of any persons other than Seller is necessary in connection with the sale of the Acquired Assets to Buyer and the performance by Seller of its obligations under this Agreement. The execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions contemplated have been duly authorized by all necessary action on the part of Seller.

k. **Personnel:** Exhibit F attached is a list of the names and addresses of all employees, agents, and manufacturer's representatives of Seller, as of the date of this Agreement, stating the rates of compensation payable to each.

l. **Full Disclosure:** To the best of Seller's knowledge, none of the representations and warranties made by Seller in this Agreement, or in any certificate or memorandum furnished or to be furnished, contains or will contain any untrue statement of a material fact, or omits to state a material fact necessary to prevent the statements from being misleading.

12.. Buyer's Representations, Warranties, and Covenants. Buyer represents and warrants to Seller as follows:

a. **Statements Correct and Complete:** All statements contained in this Article 8 are correct and complete as of the date of this Agreement, and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 8).

b. **Organization of Buyer:** Buyer is a corporation, duly organized, validly existing, and in good standing under the laws of the State of New York.

c. **Authorization of Transaction:** Buyer has full power and authority to execute and deliver this Agreement and the other documents in connection with the transaction contemplated hereunder and to perform its obligations hereunder and thereunder. This Agreement and the other documents constitute valid and legally binding obligations of Buyer, enforceable in accordance with their terms and conditions.

d. **Future Performance:** Buyer will make all payments and perform all such actions as required of it by this Agreement and the other documents.

e. **Non-Contravention:** Neither the execution nor the delivery of this Agreement or any of the other documents or the consummation of the transactions contemplated hereby or thereby will (a) violate any constitution, law, statute, regulation, order or other restriction of any governmental entity to which Buyer is subject or any provision of the certificate of incorporation, bylaws or other organizational documents of Buyer or (b) (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any lien or encumbrance upon Buyer's assets pursuant to, (iv) given any third party the right to modify, terminate or accelerate any obligation under, (v) result in a violation of or under, or (vi) require any notice under any contract to which Buyer is a party or by which it is bound or to which any of its assets is subject (or will result in the imposition of any lien or encumbrance upon any of its assets).

f. **Broker:** No broker, finder or other person acting under Buyer's authority (or the authority of any affiliate of Buyer) is entitled to any broker's commission or other fee in connection with the transactions contemplated by this Agreement for which Seller could be responsible.

g. **Disclosure:** The representations and warranties contained in this Article 8 do not contain any untrue statement of the facts or omit to state any fact necessary in order to make the statements and information contained in this Article 8 not misleading.

h. **Sufficient Funds:** Buyer has available to it sufficient funds to consummate the transactions contemplated hereby, and reasonably expects to have sufficient funds available to it to make all payments due to Seller under this Agreement after the Closing Date.

i. **Due Diligence:** Buyer has fully investigated the existence and condition, as of the date of this Agreement, of the Acquired Assets, and has had full access to the Acquired Assets to perform all due diligence that it deems appropriate in connection with the transactions contemplated by this Agreement, and Buyer acknowledges that it is purchasing the Acquired Assets "as is" and "where is", subject to normal wear and tear, without representation or warranty as to the condition and/or fitness of the Acquired Assets for any particular purpose.

j. **Retirement Benefits:** Buyer and Seller both acknowledge that Madalyn Helfstein owns 100% of Summit Laser Products, Inc, which in turn owns 65% of Seller and has control of the Seller. As an inducement to conclude this transaction, the Buyer agrees to continue the Insurance benefits that Madalyn Helfstein has received from the Seller, including Medical Insurance, until such time as she becomes eligible for Medicare benefits.

13. Closing

a. The Closing will take place at the offices of P&M, 675 Old Country Road, Westbury, New York 11590, at 10:00 a.m. local time, on March 30, 2007, or at such other time and place as Buyer and Seller may agree in writing.

b. At the Closing, Seller must deliver or cause to be delivered to Buyer:

i. Assignments of all personal property leases of Seller, as lessee, properly executed and acknowledged by Seller;

ii. An assignment to Buyer of the Lease, duly executed by Laser;

iii. A bill of sale for the Acquired Assets, duly executed by Seller;

iv. Certified resolutions of Seller, in form satisfactory to counsel for Buyer, authorizing the execution and performance of this Agreement and all actions to be taken by Seller under this Agreement;

v. A certificate executed by the managing member of Seller, certifying that all Seller's representations and warranties under this Agreement are true as of the Closing Date, as though each of those representation and warranties had been made on that date; and

vi. An opinion of Seller's counsel, dated as of the Closing Date, as provided for in this Agreement.

c. Simultaneously with the consummation of the transfer, Seller through its officers, agents, and employees, will put Buyer into full possession and enjoyment of all Acquired Assets to be conveyed and transferred under this Agreement.

d. At the Closing, adjustments shall be made to the purchase price for: (i) all insurance premiums paid by Seller for the period after the Closing Date, and (ii) all rent,

additional rent, and utilities paid by Seller and/or Laser, in connection with the Lease of the Premises, for the period after the Closing Date.

e. At the Closing, Buyer must deliver or cause to be delivered to Seller the following:

i. A wire transfer, to such account as Seller shall designate, in the amount of $50,000;

ii. Buyer's duly executed promissory note, dated as of the Closing Date, in the principal amount of $200,000, in the form of Exhibit B hereto;

iii. A wire transfer, to such account as Seller shall designate, in an amount equal to the purchase price for the Sold Inventory;

iv. An opinion of Buyer's counsel, dated as of the Closing Date, as provided for in this Agreement;

v. Certified resolutions of Buyer's board of directors and shareholders, in form satisfactory to counsel for Seller, authorizing the execution and performance of this Agreement and all actions to be taken by Buyer under this Agreement and any other documents to be delivered in connection with this Agreement (the "**Transaction Documents**");

vi. A certificate duly executed by Buyer's President, certifying that all Buyer's representations and warranties under this Agreement are true as of the Closing Date, as though each of those representations and warranties had been made on that date; and

vii. The Corporate Guranty executed by Uninet Imaging, Inc. in the form of Exhibit G attached,

14.. Conditions Precedent To Buyer's Performance

a. The obligations of Buyer to purchase the Acquired Assets under this Agreement are subject to the satisfaction, at or before the Closing, of all the conditions set out below in this Article 10.

b. All representations and warranties by Seller in this Agreement, or in any written statement that will be delivered to Buyer by Seller under this Agreement are, to the best of Sellers knowledge, true and correct in all material respects on and as of the Closing Date, as though such representations and warranties were made on and as of that date.

c. On or before the Closing Date, Seller will have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions that it is required by this Agreement to perform, comply with, or satisfy, before or at the Closing.

d. During the period from the execution of this Agreement to the Closing Date, there will not have been any material adverse change in the financial condition or the results of operations of Seller, and Seller will not have sustained any material loss or damage to its insured

or uninsured assets that materially affects its ability to conduct its business or the value of the Acquired Assets to be purchased by Buyer under this Agreement at the Closing.

e. Buyer will have received from Seller's counsel, an opinion dated as of the Closing Date, in form and substance satisfactory to Buyer and its counsel, that:

i. Seller is a limited liability company duly formed, validly existing, and in good standing under the laws of New York, and has all requisite power to own its properties as now owned and operate its business and has the power and authority to execute, deliver, and perform its obligations under this Agreement and to consummate the transactions contemplated.

ii. The Agreement has been duly and validly authorized, executed, and delivered by Seller, and is valid and binding against it and is enforceable against Seller in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws and equitable principles affecting the rights of creditors generally.

iii. Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute a default or an event that would—with notice, lapse of time, or both—constitute a default under, or violation or breach of, Seller's membership agreement or bylaws, or, to the best of counsel's knowledge, of any indenture, license, lease, franchise, encumbrance, instrument, or other agreement to which Seller is a party or by which it may be bound.

f. No proceeding before any governmental authority pertaining to the transactions contemplated by this Agreement or to its consummation, or that could reasonably be expected to have a material adverse effect on Seller, any of its businesses, assets, or financial conditions, or the Acquired Assets will have been instituted or threatened before the Closing Date.

g. The execution, delivery, and performance of this Agreement by Seller, and the consummation of the transactions contemplated will have been duly authorized, and Buyer will have received copies of all resolutions of the members of Seller, and minutes pertaining to that authorization, certified by their respective secretaries.

h. All necessary agreements and consents of any parties to the consummation of the transactions contemplated in this Agreement, or otherwise pertaining to the matters covered by it, will have been obtained by Seller and delivered to Buyer.

i. Seller shall have delivered to Buyer all Transaction Documents and taken all actions required to be delivered or taken by Seller under this Agreement, as of the Closing Date. The form and substance of all certificates, instruments, opinions, and other Transaction Documents delivered to Buyer under this Agreement must be satisfactory in all reasonable respects to Buyer and its counsel.

15.. **Conditions Precedent to Seller's Performance**

a. The obligations of Seller to sell and deliver the Acquired Assets under this Agreement are subject to the satisfaction, at or before the Closing, of all the conditions set out below in this Article 11.

b. All representations and warranties by Buyer in this Agreement or in any written statement that will be delivered to Seller by Buyer under this Agreement must be true and correct in all material respects on and as of the Closing Date, as though such representations and warranties were made on and as of that date.

c. On or before the Closing Date, Buyer will have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions that it is required by this Agreement to perform, comply with or satisfy, before or at the Closing.

d. During the period from the execution of this Agreement to the Closing Date, there will not have been any material adverse change in the financial condition or the results of operations of Buyer, and Buyer will not have sustained any material loss or damage to its assets that materially effects its ability to fully perform its obligations under this Agreement at the Closing and thereafter.

e. Seller will have received from Buyer's counsel an opinion, dated as of the Closing Date, in form and substance satisfactory to Seller and its counsel, that:

i. Buyer is a corporation duly formed, validly existing, and in good standing under the laws of the State of New York, and has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement, and to consummate the transactions contemplated.

ii. The Agreement has been duly and validly authorized, executed, and delivered by Buyer, and is valid and binding against it and is enforceable against Buyer in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws and equitable principles affecting the rights of creditors generally.

iii. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement will constitute a default or an event that would–with notice, lapse of time or both–constitute a default under, or violation or breach of, buyer's articles of incorporation or bylaws, or, to the best of counsel's knowledge, of any indenture, license, lease, franchise, encumbrance, instrument or other agreement to which Buyer is a party or by which it may be bound.

f. No proceeding, before any governmental authority pertaining to the transactions contemplated by this Agreement or to its consummation, or that could reasonably be expected to have a material adverse effect on Buyer, any of its businesses, assets or financial conditions, will have been instituted or threatened before the Closing Date.

g. The executions, delivery, and performance of this Agreement by Buyer, and the consummation of the transactions contemplated will have been duly authorized, and Seller will

have received copies of all resolutions of the board of directors of Buyer, and minutes pertaining to that authorization, certified by their respective secretaries.

h. All necessary agreements and consents of any parties to the consummation of the transactions contemplated in this Agreement, or otherwise pertaining to the matters covered by it, will have been obtained by Buyer and delivered to Seller.

i. Buyer shall deliver to Seller all Transaction Documents and have taken all actions required to be delivered or taken by Buyer under this Agreement, as of the Closing Date. The form and substance of all certificates, instruments, opinions, and other Transaction Documents delivered to Seller under this Agreement must be satisfactory in all reasonable respects to Seller and its counsel.

16.. Arbitration

a. Any controversy or claim arising out of or relating to this Agreement, or its breach, shall be settled by binding arbitration in accordance with the commercial rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The venue of any arbitration shall be Nassau County, New York.

17.. Notices

a. All notices, demands or other communications to be given or delivered under this Agreement shall be in writing and shall be personally delivered or, if mailed, sent to the following relevant address or to such other address as the recipient party may have indicated to the sending party in notice given pursuant to this Article 13.1:

i. IF TO SELLER:
Lewis Helfstein
10 Meadowgate East
St. James, NY 11780

with a copy to:

Pryor & Mandelup, L.L.P.
675 Old Country Road
Westbury, New York 11590
Attn: A. Scott Mandelup, Esq.
Fax: (516) 333-7333

ii. IF TO BUYER:
UI Supplies, Inc.
95 Orville Drive
Bohemia, New York 11716
Fax: _____

iii. IF TO UNINET:

Uninet Imaging, Inc.
11124Washington Boulevard
Culver City, Cal. 90232

b. Any such notice shall be deemed given as of the date it is personally delivered or sent by fax or e-mail to the recipient, or one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), or four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested, and postage prepaid. If any time period for giving notice or taking action expires on a day which is a Saturday, Sunday or legal holiday in the State of New York (any other day being a "business day"), such time period shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.

18.. Construction

a. Except as otherwise provided herein:

i. **Entire Agreement.** This Agreement covers the entire understandings of Buyer and Seller regarding its subject matter, and supersedes all prior agreements and understandings, and no modification or amendment of its terms or conditions shall be effective unless in writing and signed by Buyer and Seller;

ii. **Successors and Assigns.** This Agreement shall inure to the benefit of, and is binding on, the respective successors, assigns, distributees, heirs, and personal representatives of Buyer and Seller;

iii. **Headings.** This Agreement shall not be interpreted by reference to any of its titles or headings, which are inserted for purposes of convenience only;

iv. **Waiver and Release.** This Agreement is subject to the waiver and release of any of its requirements, as long as the waiver or release is in writing and signed by the party to be bound, but any such waiver or release shall be construed narrowly and shall not be considered a waiver or release of any further, similar, or related requirement or occurrence, unless expressly specified, and no waiver by any party of any default, misrepresentation or breach of warranty, covenant or agreement made or to be performed hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty, covenant or agreement made or to be performed hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence;

v. **Governing Law and Venue.** This Agreement is made in, and shall be construed under, the substantive laws of the State of New York, exclusive of choice of law principles. Nassau County, New York shall be the sole venue for any action or arbitration brought pursuant to this agreement

vi. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall be deemed to constitute one and the same Agreement;

vii. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or any other jurisdiction if such invalidity or unenforceability does not destroy the basis of the bargain between Buyer and Seller;

viii. **Expenses.** Except as provided herein, each of Buyer and Seller will bear their own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby;

ix. **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement, and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement;

x. **Exceptions.** The word "including" shall mean "including without limitation", and nothing in any schedule or exhibit attached hereto shall be deemed adequate to disclose an exception to a representation or warranty made herein, unless such schedule or exhibit identifies the exception with particularity and describes the relevant facts in detail;

xi. **Incorporation of Exhibits.** The exhibits and any other documents annexed to this Agreement are incorporated herein by reference and made a part hereof;

xii. **WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY EXHIBIT OR OTHER DOCUMENT ANNEXED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER VERBAL OR WRITTEN) RELATING TO THE FOREGOING, AND THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT;**

xiii. **Termination of Covenants, Representations, and Warranties.** The covenants, representations, and warranties made by Seller and/or Buyer in Articles 6 and 7, shall terminate as of the Closing, and Buyer shall have no right to seek indemnification based on a breach of a representation and/or warranty

made by Seller herein or in any other document entered into by Seller in connection herewith; and

xiv. **No Impediment to Liquidation.** Nothing herein shall be deemed or construed so as to limit, restrict or impose any impediment to Seller's right to liquidate, dissolve, and wind up its affairs and to cease all business activities and operations at such time as Seller may determine following the Closing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SELLER:

Dated: Bohemia, New York
March __, 2007

Summit Technologies LLC

By: _____
Lewis B. Helfstein, Managing Member

BUYER:

Dated: _____, New York
March ___, 2007

UI Supplies, Inc.

By: _____
Nestor Saporiti, President

EXHIBIT G

GUARANTEE of UNINET IMAGING, INC.

GUARANTEE, dated as of March 30, 2007, by UniNet Imaging, Inc., a California corporation having an office at 11124Washington Boulevard, Culver City, Cal. 90232 ("Guarantor"), to Summit Technologies LLC, a New York limited liability company, having an address at 10 Meadowgate East, St. James, New York 11780 ("Summit").

WITNESSETH:

WHEREAS, concurrently herewith, Summit is selling certain business assets to UI Supplies, Inc. ("UI"), having an address at 95 Orville Drive, Bohemia, New York 11716, pursuant to an Agreement for Purchase of Assets, dated as of March 30, 2007 between Summit, as seller, and UI, as buyer (the "Agreement"), and

WHEREAS, the sale of assets by Summit to UI under the Agreement is being closed concurrently herewith; and

WHEREAS, a portion of the purchase price under the Agreement is being paid by UI's delivery, concurrently herewith, to Summit's attorney, as escrow agent, of a promissory note (the "Note") payable to Summit, in the amount of $200,000; and

WHEREAS, in consideration of Summit's sale of assets to UI, UI has agreed to perform certain other obligations provided for in the Agreement, and has delivered, concurrently herewith, to Summit's attorney, as escrow agent, an affidavit of confession of judgment (the "Judgment"), in the amount of $100,000, as collateral security for UI's obligations under the Note; and

WHEREAS, in order to induce Summit to enter into and perform the Agreement, Guarantor has agreed to give this Guaranty of payment of the obligations of UI under the Agreement, the Note, and the Judgment;

NOW THEREFORE, in consideration of Ten Dollars, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Guarantor agrees as follows:

1. Guarantor does hereby unconditionally guaranty to Summit the due and punctual payment of: (a) all principal and interest evidenced by the Agreement, all extensions, renewals or refinancings thereof, whenever due and payable, all expenses of collection of the amounts due under the Agreement; and of enforcement of the same and of this Guaranty, including reasonable attorneys' fees (each, an "Obligation", and collectively the "Obligations").

2. This Guaranty is irrevocable, continuing, indivisible and unconditional and, except as otherwise provided herein, may be proceeded upon immediately after failure by UI to pay any of the Obligations, and/or upon the occurrence of an "Event of Default", as defined in the Agreement, without any prior action or proceeding against UI. The Guarantor hereby consents to and waives notice of the following, none of which shall affect, change or discharge the liability of the Guarantor hereunder: (a) any change in the terms of any agreement between UI and Summit; and (b) the acceptance, alteration, release or substitution by Summit of any security for the Obligations, whether provided by the Guarantor or any other person.

3. Guarantor hereby expressly waives the following: (a) acceptance and notice of acceptance of this Guaranty by Summit; (b) notice of extension of time of the payment of, or renewal or alteration of the terms and conditions of, any Obligations; (c) notice of any demand for payment, (d) notice of default or nonpayment as to any Obligations; (e) all other notices to which the Guarantor might otherwise be entitled in connection with this Guaranty or the Obligations of UI hereby guarantied; and (f) trial by jury and the right thereto in any action or proceeding of any kind or nature, arising on, under or by reason of, or relating in any way to, this Guaranty or the Obligations.

4. Guarantor has not and will not set up or claim any defense, counterclaim, set-off or other objection of any kind to any suit, action or proceeding at law, in equity, or otherwise, or to any demand or claim that may be instituted or made under and by virtue of this Guaranty. All remedies of Summit by reason of or under this Guaranty are separate and cumulative remedies, and it is agreed that no one of such remedies shall be deemed in exclusion of any other remedies available to Summit.

5. Guarantor represents and warrants that the Guarantor has full power and authority to execute, deliver and perform this Guaranty, and that neither the execution, delivery nor performance of this Guaranty will violate any law or regulation, or any order or decree of any court or governmental authority, or will conflict with, or result in the breach of, or constitute a default under, any agreement or other instrument to which the Guarantor is a party or by which Guarantor may be bound, or will result in the creation or imposition of any lien, claim or encumbrance upon any property of Guarantor.

6. This Guaranty may not be changed or terminated orally. No modification or waiver of any provision of this Guaranty shall be effective unless such modification or waiver shall be in writing and signed by Summit, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing. No course of dealing between Guarantor and Summit in exercising any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

7. This Guaranty shall be construed in accordance with, and governed by, the substantive laws of the State of New York, exclusive of choice of law principles. No invalidity, irregularity, illegality or unenforceability of any Obligation shall affect, impair or be a defense to the enforceability of this Guaranty. Notwithstanding the invalidity, irregularity, illegality or

unenforceability of any Obligation of UI to Summit, this Guaranty shall remain in full force and effect and shall be binding in accordance with its terms upon Guarantor and the heirs, executors, administrators, successors and assigns of Guarantor.

8. This Guaranty shall be binding upon and inure to the benefit of Summit and its respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Guarantor has given and executed this Guaranty as of the date first above written.

In the presence of:

UniNet Imaging, Inc.

EXHIBIT C

DELARATION OF JEFFREY R. ALBREGTS, ESQ.

Jeffrey R. Albregts, under penalty of perjury, hereby declares as follows:

1. I am an attorney duly authorized to practice law in Nevada and, in that capacity, represent the plaintiffs in the above captioned case, have personal knowledge of the facts set forth herein, except as otherwise indicated, am competent to so testify, and make this declaration in support of Plaintiffs' Motion For Good Faith Settlement.

2. In early 2009, on behalf of the Plaintiffs, settlement negotiations were initiated with Defendants Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc. and Summit Technologies, LLC (collectively the "Summit Defendants").

3. These settlement negotiations continued for approximately 10 months, during which time, the strengths and weaknesses of our case were thoroughly considered.

4. Over the course of those 10 months, before reaching a settlement of $60,000.00, multiple rounds of offers and counter-offers were made between these parties.

5. During settlement negotiations, there was no discussion of how any settlement would affect the UI Supplies, Uninet Imaging, Inc. or Nestor Saporiti (collectively the "Uninet Defendants") Uninet Defendants. In other words, there was no collusion, fraud, or tortious conduct aimed to injure the interests of the Uninet Defendants.

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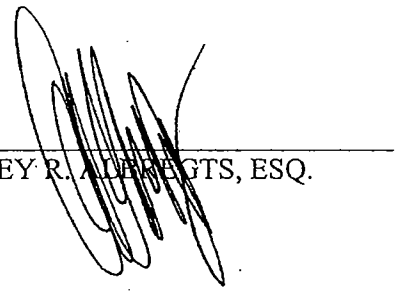
6. Pursuant to NRS §53.045, under penalty of perjury I state that the foregoing is true and correct.

Dated this 10 day of February, 2010.



JEFFREY R. ALBREGTS, ESQ.

EXHIBIT D

ORIGINAL

VDSM
JEFFREY R. ALBREGTS, ESQ. (NBN 0066)
BRIAN G. ANDERSON, ESQ. (NBN 10500)
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308/ Fax: (702) 791-1912
Attorneys for Plaintiffs

FILED
NOV 23 2009
CLERK OF COURT

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541016

DISTRICT COURT

CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST; IRA SEAVER; and CIRCLE CONSULTING CORPORATION,

Plaintiffs,

v.

LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI and DOES 1 through 20, and ROE entities 21 through 40, inclusive,

Defendants.

AND RELATED MATTERS.

Case No.: A587003
Dept. No.: XI

NOTICE OF VOLUNTARY DISMISSAL OF DEFENDANTS LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC. AND SUMMIT TECHNOLOGIES, LLC ONLY

YOU, AND EACH OF YOU, will please notice that pursuant to NRCP 41(a)(1)(ii), no answer or motion for summary judgment having been filed herein by Defendants Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc. and Summit Technologies, LLC (the "Summit Defendants"); Plaintiffs, Ira and Edythe Seaver Family Trust, Ira Seaver and Circle Consulting, hereby voluntarily dismiss this action as against the Summit Defendants only.

Dated this 23 day of November, 2009.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

JEFFREY R. ALBREGTS, ESQ. (NBN 0066)
BRIAN G. ANDERSON, ESQ. (NBN 10500)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

07650-03/529868.doc

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON
SDW

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of November, 2009, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF VOLUNTARY DISMISSAL OF DEFENDANTS LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC. AND SUMMIT TECHNOLOGIES, LLC ONLY**, postage prepaid and addressed to:

Lewis Helfstein
Madalyn Helfstein
10 Meadowgate East
St. James, NY 11780
Defendants

Gary E. Schnitzer, Esq.
Michael B. Lee, Esq.
KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.
8985 South Eastern Avenue, Suite No. 200
Las Vegas, Nevada 89123
(702) 362-2203

Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

Robert M. Freedman, Esq.
THARPE & HOWELL
15250 Ventura Boulevard
Ninth Floor
Sherman Oaks, CA 91403
Co-Counsel for Plaintiffs

An employee of Santoro, Driggs, Walch, Kearney, Holley & Thompson

SDW SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON