IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 56383

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

Appellants,

vs.

UI SUPPLIES; UNINET IMAGING, INC.; AND NESTOR SAPORITI

Respondents.

Interlocutory Appeal from an Order Denying Appellant's Motion for Stay or Dismissal, and to Compel Arbitration
Eighth Judicial District Court, Clark County, Nevada
The Honorable Elizabeth Gonzalez, District Judge

Appellant's Appendix Volume II

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SUPREME COURT NO. 56383

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing APPELLANT'S BRIEF, APPELLANT'S APPENDIX, VOLUME I, AND APPELLANT'S APPENDIX, VOLUME II was served to those persons designated below on the 8TH day of November, 2010:

____x____ By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

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An Employee of Foley & Oakes, PC

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Filed through Wiznet on July 7, 2010

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Counterclaimants,

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION, and ROE CORPORATIONS 101-200,

Counterdefendants.

CASE NO. A587003
DEPT NO. XI

LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION TO STAY CROSSCLAIM PENDING APPEAL

DATE:
TIME:

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING and NESTOR SAPORITI,

Cross-Claimants,

vs.

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

Cross-Defendants.

COMES NOW Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC, (hereinafter referred to collectively as the "Helfstein Cross-Defendants"), by and through their attorneys, J. Michael Oakes, Esq. of Foley & Oakes, PC, and hereby submit their Motion to Stay Crossclaim Pending Appeal. This Motion is based upon the pleadings and papers on file herein, the Memorandum of Points Authorities which follows, and such argument as will be heard at the time of the hearing of this Motion.

DATED this 7th day of July, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
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Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

NOTICE OF MOTION

TO: Michael B. Lee, Esq., attorney for Defendant/Cross-claimants, UI Supplies, Uninet Imaging, Inc. and Nestor Saporiti, and

TO: Jeffrey R. Albregts, Esq., attorney for Plaintiffs, Ira and Edythe Seaver Family Trust, Ira Seaver, Circle Consulting Corporation, and

TO: Byron L. Ames, Esq., attorney for Plaintiffs, Ira and Edythe Seaver Family Trust, Ira Seaver, Circle Consulting Corporation, and

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the following MOTION TO STAY CROSSCLAIM PENDING APPEAL on for hearing before the above-entitled Court in Department No. XI, on the ____ day of _____, 2010, at the hour of _____ ___.m. of said date, or as soon thereafter as counsel can be heard.

DATED this 21 day of July, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
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Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Helfstein Cross-Defendants have filed their Notice of Appeal contemporaneously with the filing of this motion.

The Helfstein Cross-Defendants are hereby requesting that the Court stay this action as to the crossclaim that has been asserted against them, pending disposition of their appeal from the June 15, 2010 Order Denying Motion To Stay Or Dismiss.

II. Legal Argument

Nevada Statutes provide for an interlocutory appeal from an order denying a motion to compel arbitration. Such an appeal is specifically provided for in NRS 38.247(1)(a), which simply states that "An appeal may be taken from: (a) An order denying a motion to compel arbitration."

In considering the appeal, the order will be subject to a de novo review. Specifically, as stated in State v. Second Judicial District Court of the State of Nevada, 199 P.3d 828, 125 Nev. 5 (Nev. 01/29/2009):

> 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.

Therefore, although this Court has previously ruled against the Helfstein Defendants, there remains a reasonable likelihood that the Nevada Supreme Court, in reviewing the matter de novo, will determine that the arbitration clause shall govern.

In the absence of a stay pending appeal, a successful appeal would be rendered moot. The Helfstein Defendants would be required to appear and defend the case in Court, thereby

depriving them of the cost saving benefits of their bargain, whereby all disputes were to be arbitrated in Nassau County, New York.

Based thereon, in order to preserve their rights pending appeal, the Helfstein Defendants are requesting that this Court stay the adjudication of the Cross Claim.

DATED this 7th day of July, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
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Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

CERTIFICATE OF SERVICE BY MAIL AND BY FACSIMILE

I hereby certify that a true and correct copy of the foregoing DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES, LLC'S MOTION TO STAY CROSSCLAIM PENDING APPEAL was served to those persons designated below on the 2nd day of July, 2010:

X By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

___ By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI

Counter-Claimants

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200.

Counter-Defendants

Case No. A587003

Dept. No. XI

DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION TO STAY CROSSCLAIM PENDING APPEAL; COUNTER-MOTION TO DISMISS IF STAY IS GRANTED

Date of Hearing: August 20, 2010

Time of Hearing: chambers

KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.
LAWYERS

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI Cross-Claimants vs. LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, Cross-Defendants	**DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION TO STAY CROSSCLAIM PENDING APPEAL**

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 "UniNet Defendants"), by and through their attorneys of record, the law firm of Kravitz, Schnitzer, Sloane, & Johnson, Chtd., and hereby respectfully file this Opposition ("Opposition") to Cross Defendants, 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 "Helfstein Defendants") Motion to Stay Crossclaim 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

The Helfstein Defendants are indispensable parties to this litigation. If a stay is permissible, then the entire action should be stayed - not just the cross-claims. However, if the stay is limited to the cross-claims only, then, alternatively, Plaintiffs' action should be dismissed under Nevada Rule of Civil Procedure 19(a). The Helfstein Defendants should be required to post a supercedeas bond

for $2 Million if the cross-claims are stayed. 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, the Helfstein Defendants entered into an agreement with Mr. Seaver to form Summit. *See* Complaint at ¶ 5. The Helfstein Defendants 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, the Helfstein Defendants 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 Exhibit "2" 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* Exhibit "E" attached as Exhibit "3". 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 "4" at ¶ 7. Thus, the Asset Purchase Agreement clearly establishes that the UniNet Defendants did not assume the Consulting Agreement. Nevertheless, Plaintiffs have brought a frivolous lawsuit against the UniNet Defendants under the terms of the Consulting Agreement.

a. *Warranties From Seller to UniNet Defendants*

The Asset Purchase Agreement provided the UniNet Defendants with a series of warranties, which are directly applicable to the UniNet Defendants' right to seek indemnification from the

Helfstein Defendants 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* Ex. 2. 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 asst or properties of any of them is bound . . . ."

Id. 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, the Helfstein Defendants provided several warranties to the UniNet Defendants 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. *UniNet Defendants Relied on Helfstein Defendants' Representation that the Consulting Agreement Was not Being Assigned*

The Helfstein Defendants induced the UniNet Defendants into executing the Asset Purchase Agreement based on their representation that the Consulting Agreement was not being assigned through the Asset Purchase Agreement. The UniNet Defendants 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 the UniNet Defendants' claims for indemnification from the Helfstein Defendants as to the Plaintiffs' claims. Moreover, it shows that the Helfstein Defendants status as indispensable parties.

C. **Statement of Procedure**

On April 3, 2009, Plaintiffs filed a Complaint against both the Helfstein Defendants and UniNet Defendants. 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 the

Helfstein Defendants. Notably, all of Plaintiffs' claims arise under the Consulting Agreement.

In turn, on January 19, 2010, the UniNet Defendants filed a Cross-Claim against the Helfstein Defendants. The Cross-Claim asserts twelve claims against the Helfstein Defendants: (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 the UniNet Defendants. *See* Compl. at ¶¶ 24-27, 48-53. However, the UniNet Defendants were not a party to that contract. Only the Helfstein Defendants were parties to both the Consulting Agreement and the Asset Purchase Agreement. *See* Exs. 1, 2. In that light, they are "indispensable" to the adjudication of the dispute over the Consulting Agreement, and to the UniNet Defendants' defense from Plaintiffs' frivolous litigation. Similarly, the Helfstein Defendants are liable to the UniNet Defendants 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, the Helfstein Defendants filed a Motion to Stay or Dismissal and to Compel Arbitration ("Compel Motion"). On May 25, 2010, this Honorable Court heard oral arguments in support of the legal briefs from the Parties regarding the Compel Motion. After entertaining all Parties, this Court denied the Compel Motion. It 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 Order Denying Motion to Stay or Dismiss dated June 10, 2010 attached as Exhibit "5". On July 15, 2010, this Order was filed. On July 16, 2010, the Order was entered. Thereafter, on July 7,

[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.

2010, the Helfstein Defendants filed a Notice of Appeal, Case Appeal Statement, and this instant Motion.

II. DISCUSSION

The Helfstein Defendants seek to stay the cross-claim asserted against them pending their appeal. *See* Mot. at 4:6-8. However, the Helfstein Defendants are indispensable parties to Plaintiffs' case. If a complete stay is improper, then Plaintiffs' case should be dismissed under Nevada Rule of Civil Procedure 19(a). Alternatively, if a stay is appropriate, the Helfstein Defendants should be required to post a bond for $2 Million. Furthermore, any stay should apply to the entire case, not simply the cross-claim. 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 the Nevada Supreme Court considers in requiring a supercedeas bond. Part C asserts that a partial stay is improper, and a stay of the entire case pending appeal would be more appropriate. Finally, in the alternative, Part D requests a dismissal of Plaintiffs' case if the Helfstein Defendants cannot be made a party to this action.

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(c); *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*

The Helfstein Defendants failed to proffer any arguments demonstrating that the object of the appeal would be defeated if this Honorable Court did not grant a stay. This, in and of itself, is sufficient to demonstrate that the Helfstein Defendants do not have a legitimate basis for seeking a stay of the cross-claims. *In arguendo*, the mandatory provisions of the Asset Purchase Agreement are inapplicable to the claims that arise out of the Consulting Agreement. As such, the Helfstein Defendants' appeal is immaterial to the cross-claims, and the purpose of the appeal will be unaffected. This justifies a denial of the Motion.

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

Once again, the Helfstein Defendants did not provide any argument regarding any potential irreparable or serious injury if a stay was denied. As before, this demonstrates that the Helfstein Defendants do not have a good faith basis for seeking the stay. However, *in arguendo*, it is fairly clear that Plaintiffs' damages, if any, are against the Helfstein Defendants only. Thus, the Helfstein Defendants will not likely suffer any irreparable or serious injury if this Honorable Court denied their motion for a stay.

///

///

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

The Helfstein Defendants are indispensable parties to Plaintiffs' claims under the Consulting Agreement. As a practical matter, the Helfstein Defendants' absence from this litigation impairs and impedes the UniNet Defendants' ability to protect their interests. Similarly, there is a substantial risk of inconsistent outcomes if the UniNet Defendants are obligated to defend this action without the presence of the Helfstein Defendants. Thus, the UniNet Defendants respectfully request that this Honorable Court consider the extent that a judgment rendered without the Helfstein Defendants will prejudice the UniNet Defendants. Additionally, they also request that the Court consider the extent that a judgment under the Consulting Agreement can actually be rendered without the Helfstein Defendants when the UniNet Defendants 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 the UniNet Defendants 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 the Helfstein Defendants as defendants. This demonstrates that the Helfstein Defendants are indispensable parties to the Consulting Agreement, which allows the UniNet Defendants to join them to this litigation under Nevada Rule of Civil Procedure 13(h).

Furthermore, this Honorable Court should take notice that the Helfstein Defendants' active fault actually and proximately caused 100% of Plaintiffs' alleged damages. The Helfstein Defendants 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.

UniNet Defendants are entitled to indemnification from the Helfstein Defendants. The undisputed facts demonstrate that the only defendants culpable for Plaintiffs' alleged damages are the Helfstein Defendants. Overwhelming evidence demonstrates that the UniNet Defendants did not

want to assume the Consulting Agreement. *See* Ex. 2. The UniNet Defendants do not have any legal obligation to Plaintiffs. As such, any liability borne by the UniNet Defendants arising out of the Consulting Agreement should be completely shifted to the Helfstein Defendants. *See* Nev. R. Civ. Pro. 14(a). In total, the Nevada Rules of Civil Procedure demand that the Helfstein Defendants remain parties to this action in Nevada. The cross-claims and third-party claims do not arise against the Helfstein Defendants 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 partial stay pending appeal is improper.

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 Order Denying Motion to Stay or Dismiss dated June 10, 2010 attached as Exhibit "5". 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. The UniNet Defendants 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, the Helfstein Defendants are unlikely to prevail on the merits of their appeal. This justifies the denial of the request to stay the cross-claims instead of the entire case.

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*

The Helfstein Defendants 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 the Helfstein Defendants would be relatively difficult. As such, a bond would protect the UniNet Defendants in the event that the trier-of-fact determines that the Helfstein Defendants are liable under the cross-claims.

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 the Helfstein Defendants were insolvent. *See* Plaintiffs' Motion for Determination of Good Faith Settlement attached as Exhibit "6". Upon information and belief, Plaintiffs obtained this information from Mr. Helfstein. Thus, this Honorable Court should have zero confidence in the Helfstein Defendants' ability to fund any Judgment rendered against them. Therefore, a supercedeas bond is appropriate.

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 the Helfstein Defendants will not have the ability to pay a Judgment rendered against them. *See* Ex. 6. Therefore, the Helfstein Defendants will not be able to prove that their ability to pay a Judgment would make the cost of a bond economically wasteful.

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 the Defendants at risk for an insecure position.

C. **The Entire Case Should Be Stayed Pending Appeal**

The Helfstein Defendants are indispensable parties to this action. As asserted at length in Section II(A)(3), the absence of the Helfstein Defendants from the main litigation will impede the UniNet Defendants to protect their interest. As such, a partial stay of the cross-claims only is improper. In weighing the competing interests of the UniNet Defendants, the Helfstein Defendants, 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 the UniNet Defendants if it were required to defend against Plaintiffs' claims without the presence of the Helfstein Defendants in this litigation. As such, the UniNet Defendants respectfully request that this Honorable Court deny the Helfstein Defendants' request to stay the cross-claims only.

D. **Alternatively, if Arbitration is Proper, Then Plaintiffs' Case Should Be Dismissed Pursuant to Nevada Rule of Civil Procedure 19**

1. *Standard for Motion to Dismiss under Nevada Rule of Civil Procedure 19*

A defendant may move to dismiss plaintiff's complaint when plaintiff fails to join a party under Nevada Rule of Civil Procedure 19. NRCP 12(b)(6). "In reviewing a motion to dismiss, the plaintiff's evidence and all reasonable inferences that can be drawn from the evidence must be admitted[,]" and interpreted in the light most favorable to the plaintiff." *Fava v. Hammond Co.*, 102 Nev. 323, 325-26, 720 P.2d 702, 704 (1986).

Under Nevada Rule of Civil Procedure 19,

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the persons absence may (I) as a practical matter impair or impede the persons ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff."
>
> (b) If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the persons absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the persons absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(Emphasis added).

Here, the Helfstein Defendants are indispensable parties. Section I(A)(3) already described the facts and circumstances supporting this determination. In both equity and good conscience, Plaintiffs' action against the UniNet Defendants should be dismissed based on the absence of the

Helfstein Defendants. It is grossly unjust and unfair to allow Plaintiffs to prosecute a case against the UniNet Defendants for an agreement they were never a party to. Furthermore, it is highly questionable to allow Plaintiffs to prosecute their case through the Asset Purchase Agreement, although they were never a party to it. The only party with privity to both the Consulting Agreement and the Asset Purchase Agreement are the Helfstein Defendants. As such, they qualify as both "indispensable parties."

The absence of the Helfstein Defendants will substantially deprive the UniNet Defendants of a complete defense in this matter. As a practical matter, it impairs their ability to protect their interest and leave them susceptible to sustaining a substantial risk of receiving inconsistent findings that they are liable for an agreement they never assumed. The plain language of the Asset Purchase Agreement demonstrates that the UniNet Defendants are incurring massive prejudice as a result of Plaintiffs' frivolous action against them. Plaintiffs had adequate remedy originally when they sued the Helfstein Defendants. It is a gross miscarriage of justice to allow Plaintiffs to continue prosecuting this case without joining the Helfstein Defendants as cross-claimants.

The UniNet Defendants are entitled to join the Helfstein Defendants in this matter. Under Nevada Rule of Civil Procedure 13(h), the Helfstein Defendants qualify as "indispensable parties" arising under the same facts and circumstances as claims presented in Plaintiffs' Complaint. Furthermore, the Helfstein Defendants are liable to the UniNet Defendants under theories of indemnification and contribution. The Asset Purchase Agreement contains a series of warranties that the UniNet Defendants were not assuming the Consulting Agreement. Gross injustice occurs if Plaintiffs can prosecute claims under the Consulting Agreement against the UniNet Defendants without joining the Helfstein Defendants as a party. Therefore, the UniNet Defendants respectfully request that this Honorable Court dismiss Plaintiffs' case if the Helfstein Defendants are not joined as indispensable parties.

III. CONCLUSION

Staying the cross-claims pending the Helfstein Defendants' appeal instead of the entire action would result in manifest injustice to the UniNet Defendants. The Helfstein Defendants are indispensable parties to Plaintiffs' litigation arising under the Consulting Agreement. Substantial

evidence demonstrates that the Helfstein Defendants are critical to help the trier-of-fact assess Plaintiffs' claims and the potential liabilities of both the Helfstein Defendants and the UniNet Defendants. As such, a partial stay is improper and the entire litigation should be stayed pending appeal.

Alternatively, if this Honorable Court determines that a stay is proper, this action should be dismissed under Nevada Rule of Civil Procedure 19(a). Or on the other hand, the Helfstein Defendants should be required to post a supercedeas bond in the amount of $2 Million. The Helfstein Defendants' residence in a foreign jurisdiction illustrates that both Plaintiffs and the UniNet Defendants 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 26 day of July, 2010.

KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.

KRAVITZ, SCHNITZER, SLOANE, & JOHNSON, CHTD.

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MICHAEL B. LEE, ESQ. (NSB 10122)
8985 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
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Attorneys for Defendants UI Supplies, UniNet Imaging and Nestor Saporiti

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26 day of July, 2010, I placed a copy of the foregoing **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION TO STAY CROSSCLAIM PENDING APPEAL** in the United States mail, postage pre-paid, and addressed as follows:

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KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.

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 9th, 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:

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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. <u>Remedies by Company.</u>

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

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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. **Termination:**

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:

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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

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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

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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

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").

1. Sale and Purchase of Assets

1.1 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").

1.2 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.

1.3 **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.

1.4 **Returns**

2. **Purchase Price and Payment for Acquired Assets**

2.1 **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:

(a) On the Closing Date, Buyer will pay by wire transfer to Seller, the sum of $150,000;

(b) 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 $100,000 payable in two 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.

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

(a) Good will and intangible Acquired Assets – $150,000;

(b) Manufacturing equipment – $80,000; and

(c) Other tangible Acquired Assets – $20,000.

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

(a) 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 be part of the Acquired Asset at a price of 1% of Seller's cost.

(b) 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 85% of said value except for chip components valued at 90%. The Buyer shall transfer this amount by wire transfer into Seller's designated account on the Closing Date, pursuant to Schedule H, attached.

2.4 **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.

2.5 **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

3. **Liabilities and Sales Tax**

3.1 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.

3.2 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").

3.3 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.

3.4 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.

3.5 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.

3.6 **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")

4. Lease

4.1 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.

4.2 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.

5. Other Obligations

5.1 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 C, 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.

5.2 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.

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

6.1 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;

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

(a) Transaction by Seller except in the ordinary course of its business as conducted on that date;

(b) Material adverse change in the financial condition, liabilities, assets, business, or results of operations, or prospects of Seller;

(c) 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;

(d) Revaluation or write-down by Seller of any of its assets, except for inventory.

(e) 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;

(f) Sale or transfer of any asset of Seller, except in the ordinary course of business;

(g) 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;

(h) 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;

(i) Encumbrance of any asset or property of Seller;

(j) Waiver or release of any right or claim of Seller, except in the ordinary course of business;

(k) Commencement of, or notice or threat of commencement of, any Proceeding against Seller or the business, assets, or affairs of Seller;

(l) 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;

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

(n) 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.

6.3 **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.

6.4 **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.

6.5 **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.

6.6 **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".

6.7 **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.

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

6.9 **Tax Returns and Audits/Books and Records:**

(a) **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.

(b) **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.

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

7.1 **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.

7.2 **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.

7.3 **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.

7.4 **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.

7.5 **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.

7.6 **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.

7.7 **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.

7.8 **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.

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

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

8.1 **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).

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

8.3 **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.

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

8.5 **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) give 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).

8.6 **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.

8.8 **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.

8.9 **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.

8.10 **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.

9. Closing

9.1 The Closing will take place at at 9:00 a.m. local time, on April 2, 2007, or at such other time and place as Buyer and Seller may agree in writing.

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

(a) Assignments of all personal property leases of Seller, as lessee, properly executed and acknowledged by Seller;

(b) An assignment to Buyer of the Lease, duly executed by Laser;

(c) A bill of sale for the Acquired Assets, duly executed by Seller;

(d) 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;

(e) 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

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

9.3 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.

9.4 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.

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

(a) A wire transfer, to such account as Seller shall designate, in the amount of $150,000;

(b) Buyer's duly executed promissory note, dated as of the Closing Date, in the principal amount of $100,000, in the form of Exhibit B hereto;

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

(d) An opinion of Buyer's counsel, dated as of the Closing Date, as provided for in this Agreement;

(e) 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");

(f) 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

(g) The Corporate Guaranty executed by Uninet Imaging, Inc. in the form of Exhibit G attached.

10. Conditions Precedent To Buyer's Performance

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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:

(a) 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.

(b) 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.

(c) 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

11. Conditions Precedent to Seller's Performance

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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:

(a) 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.

(b) 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.

(c) 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.

11.6 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.

11.7 The execution, 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.

11.8 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.

11.9 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.

12. Arbitration

12.1 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.

13. Notices

13.1 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:

(a) 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

(b) IF TO BUYER:

UI Supplies, Inc.
95 Orville Drive
Bohemia, New York 11716
Fax: _____

(c) IF TO UNINET:

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

13.2 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.

14. Construction

14.1 Except as otherwise provided herein:

(a) 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;

(b) 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;

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

(d) 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;

(e) 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

(f) 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;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

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

(l) 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;

(m) **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

(n) **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.

Dated: Bohemia, New York
March 13, 2007

SELLER:

Summit Technologies LLC

By: _____
Lewis B. Helfstein, Managing Member

Ira and Edythe Family Trust

By: _____
Ira Seaver, Tustee

Dated: _____, New York
March ___, 2007

BUYER:

U! Supplies, Inc.

By: _____
Nestor Sapgriti, President

EXHIBIT 3

EXHIBIT E
EMPLOYMENT AGREEMENTS

NONE

CONSULTING AGREEMENTS WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED

EXHIBIT 4

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

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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 HELPSTEIN
SUMMIT TECHNOLOGIES LLC.

11/19/09
DATE

Robert / Helfstein dec.

EXHIBIT 5

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CLERK OF THE COURT

RPLY
J. Michael Oakes, Esq.
Nevada Bar No. 1999
FOLEY & OAKES, PC
850 East Bonneville Avenue
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
mike@foleyoakes.com
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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.

CASE NO. A587003
DEPT NO. XI

CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF TO UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO MOTION FOR STAY OF CROSSCLAIM PENDING APPEAL

DATE: August 20, 2010
TIME: In Chambers

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Counterclaimants,

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION, and ROE CORPORATIONS 101-200,

Counterdefendants.

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING and NESTOR SAPORITI,

Cross-Claimants,

vs.

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

Cross-Defendants.

CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF TO UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO MOTION FOR STAY OF CROSSCLAIM PENDING APPEAL

COMES NOW Cross - Defendants, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., and SUMMIT TECHNOLOGIES, LLC, (collectively referred to herein as "Helfstein"), by and through their attorneys, J. Michael Oakes, of the law firm of Foley & Oakes, PC, and hereby submit their Reply Brief on Motion for Stay of Crossclaim Pending Appeal.

DATED this 12th day of August, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 384-2070
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

MEMORANDUM OF POINTS AND AUTHORITIES

In relying upon Fritz Hansen A/S v. District Court, 116 Nev. 650, 6 P.3d 982 (Nev. 2000), Saporiti's opposition has misstated the standard for the granting of this motion. In considering whether to grant a stay pending appeal from an order denying a motion to compel arbitration, the burden of showing irreparable harm is upon the party opposing the stay, rather than the movant. The rule has been stated that "absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay is granted, a stay should issue to avoid defeating the object of the appeal."

This is in recognition of the unique circumstances presented by such a motion, as explained by the Nevada Supreme Court in Mikohn Gaming Corp. v. McCrea, 89 P.3d 36, 120 Nev. 248 (Nev. 2004), where the Court stated:

> Generally, in determining whether to issue a stay pending disposition of an appeal, this court considers 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. We have not indicated that any one factor carries more weight than the others, although Fritz Hansen A/S v. District Court recognizes that if one or two factors are especially strong, they may counterbalance other weak factors.
>
> Our stay analysis in an appeal from an order refusing to compel arbitration necessarily reflects the unique policies and purposes of arbitration and the interlocutory nature of the appeal. As a result, the first stay factor takes on added significance and generally warrants a stay of trial court proceedings pending resolution of the appeal. The other stay factors remain relevant, but **absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay is granted, a stay should issue to avoid defeating the object of the appeal.** (Emphasis added). See 120 Nev. at 251-252.

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This liberal standard for the granting of a stay pending appeal is reflective of Nevada's strong public policy in favor of arbitration.[1] Applying these principles to this case will demonstrate that the granting of a stay in this instance is appropriate.

First, Saporiti will not suffer any form of irreparable harm if a stay is granted. Indeed, the irreparable harm analysis does not generally play a significant role in the decision whether to issue a stay. This was explained in the Mikohn decision as follows:

> Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay. Normally, the only cognizant harm threatened to the parties is increased litigation costs and delay. We have previously explained that litigation costs, even if potentially substantial, are not irreparable harm. Similarly, a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm. See 120 Nev. at 253.

Given this standard, Saporiti is unable to demonstrate any sort of irreparable harm that would be sufficient to overcome the general rule that a stay should issue to avoid defeating the object of the appeal.

Second, Saporiti is unable to make "a strong showing that the appeal lacks merit." The only claims that involve Helfstein are those described in Saporiti's Cross Claim (which is really a third party claim) for indemnity. The Cross Claim itself alleges that "Cross-Defendants breached the terms of the Sales Agreement by exposing Cross-Claimants to alleged damages by Plaintiffs related to the Consulting Agreement." (See paragraph 10 of the Cross-Claim). This means that the indemnity claims asserted by Saporiti are "arising out of or relating to" the Sales Agreement, and all doubts concerning their arbitrability must be resolved in favor of arbitration.

---

[1] In furtherance of that public policy, the Mikohn decision did not require the posting of a bond by the appellant.

The question to be presented on appeal will be whether the indemnity claim is governed by the broad form arbitration agreement contained in the Asset Purchase Agreement, which states "Any controversy on claims arising out of or relating to this Agreement, or its breach, shall be settled by binding arbitration . . ." As explained in Kindred v. Second Judicial Dist. Ct., 116 Nev. 405, 996 P.2d 903 (2000):

> . . . in judging the scope of the arbitration agreements, we "resolve all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration." See 116 Nev. At 411.

Given the broad language of the agreement to arbitrate and the public policy requiring that arbitration agreements be broadly construed in favor of arbitration, there is a reasonable likelihood that Helfstein will prevail on its appeal. Clearly, the appeal has been brought in good faith, and, therefore, the "strong showing that it lacks merit" is missing here.

Finally, Saporiti continues to argue that Helfstein is an indispensable party. This argument will undoubtedly be raised again in opposing the appeal. However, there is no authority to support this novel proposition, which would require a finding that all of a defendant's potential indemnitors would have to be joined as parties to prevent dismissal of a Plaintiff's case. This result would be absurd. Indemnity claims are not compulsory claims, and they are frequently litigated as separate cases, following disposition of the underlying claim.

By way of contrast, there are several examples of cases where the Nevada Supreme Court has found certain parties to be indispensable, but none of them are analogous to an indemnity (or contribution) claim. For instance, an owner of legal title to real property is an indispensable party in a quiet title action, See Schwob v. Hemsath, 98 Nev. 293, 646 P.2d 1212 (1982); an assignee of an interest in a judgment is a proper plaintiff in enforcement action, See Mandlebaum v. Gregovich, 24 Nev. 154, 50 P. 849 (1897); in an action to set aside a conveyance of property into trust, the trust beneficiaries must be joined, See Robinson v.

Kind, 23 Nev. 330, 47 P. 977 (1897); when a plaintiff seeks to set aside a conveyance of property, the person who received the property in the conveyance must be joined as a party, See Johnson v. Johnson, 93 Nev. 655, 572 P.2d 925 (1977); where unsuccessful bidder filed suit to challenge public contract award, successful bidder was an indispensable party, See Blaine Equipment Co., Inc. v. State, 138 P.3d 820, 122 Nev. 860 (Nev. 2006).

In short, the Helfstein parties are not indispensable parties to this case. The Plaintiffs can pursue their case and the Saporiti parties can pursue their counterclaim. Mr. Helfstein's deposition will be taken just like any witness (it is currently set for August 23), and his testimony may be considered at the trial of the case. However, it is a complete misuse of the term to conclude that a person becomes an "indispensable party" merely because they have knowledge of facts bearing upon the dispute.

Helfstein recognizes that the court ruled against him in considering the Motion for Stay of Dismissal, and to Compel Arbitration in the first place. However, given the language of the agreement itself, and the language of the Cross-Claim which shows that the asserted claims arise directly out of the agreement containing the arbitration provision, it can hardly be said that there has been "a strong showing that the appeal lacks merit." By way of comparison, the Mikohn decision granted the requested stay pending appeal merely because "it is not clear" if arbitration would be required. Specifically, the Mikohn decision stated as follows:

> In this case, the merits are unclear at this stage. Without a full appellate review of the record, we cannot determine if Mikohn's appeal is likely to succeed. As a result, **because it is not clear if arbitration of McCrea's claims is required by the employment agreement's arbitration clause and Mikohn will be forced to spend money and time preparing for trial, thus potentially losing the benefits of arbitration, we grant Mikohn's motion and extend the stay for the duration of this appeal.** (Emphasis added). See 120 Nev. at 254.

Based upon the foregoing, the Helfstein parties assert that Saporiti has not shown any reason why the general rule in favor of granting a stay should not be applied. Therefore, it is respectively requested that this Motion be granted, and that a stay be issued, without bond, pending the outcome of the interlocutory appeal.

Respectively submitted this 20th day of August, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 384-2070
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing **CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF TO UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO MOTION FOR STAY CROSSCLAIM PENDING APPEAL** was served to those persons designated below on the 16th day of August, 2010:

X By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

_____ By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

Gary E. Schnitzer, Esq,
Michael B. Lee, Esq.
Kravitz, Schnitzer, Sloane & Johnson Chtd.
8985 S. Eastern Avenue, Suite 200
Las Vegas, NV 89123
Facsimile No. 702-362-2203
Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

Jeffrey R. Albregts, Esq.
Santoro, Driggs, Walch, Kearney,
Holley & Thompson
400 South Fourth Street
Third Floor
Las Vegas, NV 89101
Facsimile No. 702- 791-1912
Attorneys for Plaintiffs

Byron L. Ames, Esq.
Jonathan D. Blum, Esq.
Tharpe & Howell
3425 Cliff Shadows Parkway, Suite 150
Las Vegas, NV 89129
Facsimile No. 702-562-3305
Attorneys for Plaintiffs

Robert Freedman, Esq.
Tharpe & Howell LLP
15250 Ventura Blvd., 9th Floor
Sherman Oaks, CA 91403
Facsimile No. 818-205-9944
Attorneys for Plaintiffs

An Employee Of Foley & Oakes, PC

FOLEY & OAKES

09A587003

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	August 20, 2010

09A587003 Ira And Edythe Seaver Family Trust, Plaintiff(s)
vs.
UI Supplies, Defendant(s)

August 20, 2010 3:00 AM Motion

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Nicole McDevitt, Relief Clerk

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- The Court having reviewed the Motion to Stay and the related briefing and good cause appearing DENIES the motion. There is no basis for a stay of the entire case or the interrelated cross claim at this time. Moving counsel to prepare and submit the order within 10 days.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folders of [redacted] and Gary E. Schnitzer, Esq. (Kravitz, Schnitzer, Sloane & Johnson Chtd.); Byron L. Ames, Esq. (Tharpe & Howell); and Jeffrey R. Albregts, Esq. (Santoro, Driggs, Waich, Kearney, Holley & Thompson).

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:

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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

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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. Hellstein, Tax Manager

IS 0000111

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

IS 0000112

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

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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.

c. **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,

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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.

c. 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 Guaranty 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.. <u>Conditions Precedent to Seller's Performance</u>

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.
11124 Washington 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

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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 guaranteed; 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 "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 HELFSTEIN
SUMMIT TECHNOLOGIES LLC.

11/10/09
DATE

Robert / Helfstein dec.

RPLY
J. Michael Oakes, Esq.
Nevada Bar No. 1999
FOLEY & OAKES, PC
850 East Bonneville Avenue
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
mike@foleyoakes.com
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Defendants/Cross-Defendants

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION, Plaintiffs, vs. 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.	CASE NO. A587003 DEPT NO. XI **CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF ON MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION** DATE: May 25, 2010 TIME: 9:00 a.m.
UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI, Counterclaimants, vs. IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION, and ROE CORPORATIONS 101-200, Counterdefendants.	

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING and NESTOR SAPORITI,

Cross-Claimants,

vs.

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

Cross-Defendants.

CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF ON MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION

COMES NOW Cross - Defendants, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., and SUMMIT TECHNOLOGIES, LLC, (collectively referred to herein as "the Summit Parties"), by and through their attorneys, J. Michael Oakes, of the law firm of Foley & Oakes, PC, and hereby submit their Reply Brief on Motion for Stay or Dismissal, and to Compel Arbitration.

DATED this 17th day of May, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 384-2070
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Opposition in this case has failed to establish any reason why the Court should not grant the Motion. The existence of a valid arbitration agreement has been admitted, and in accordance with NRS 38.221, the Court should grant this Motion.

The opposing parties have attempted to argue that the moving parties are somehow "indispensible" parties, that the action cannot proceed in their absence, and, therefore, the Court should ignore the arbitration agreement. This argument is flawed in two critical respects. First, a Crossclaim or Third Party Claim for indemnity or contribution is a "permissive" claim, not a "compulsory" one, and there is no Nevada case standing for the proposition that a party who may be liable to a defendant for indemnity or contribution is an "indispensible" party. Second, even if the movants were "indispensible", there is no law to support the novel proposition that being "indispensible" negates a party's valid agreement to arbitrate disputes.

The Crossclaim against the moving parties is severable from the claims asserted against the Defendants by the Plaintiffs. The granting of this Motion will not interfere with the adjudication of Plaintiffs' case.

Finally, the opposing parties have argued that the venue provision, which requires that any dispute between the moving parties and the Crossclaimants be adjudicated in Nassau County, New York, is unconscionable. This argument is, itself, unconscionable. The Agreement for Purchase and Sale of Assets was an agreement between two sophisticated parties, both of whom were domiciled in New York. The Crossclaimant was the "buyer" in that transaction, and, as such, if anyone had a superior bargaining position, it was the buyer. Thus, the Court should honor the choice of venue clause that was contained in the Agreement.

The venue issue goes primarily to the question of whether to dismiss or stay the Crossclaim. In light of the choice of venue provision, this Court would not be the appropriate court to determine whether to confirm an arbitration award. Instead, venue for confirmation of any arbitration award would be Nassau County, New York. Thus, the appropriate remedy in this case is dismissal of the Crossclaim, rather than a stay thereof.

II.

LEGAL ARGUMENT

A. NRS 38.221 requires the Court to enforce the Arbitration Agreement.

NRS 38.221(1)(b) states, upon receiving an opposition to a motion to compel arbitration, "the court **shall** proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate."

In this case, the existence of the Agreement to arbitrate is admitted, and it governs the dispute raised in the Crossclaim. The Agreement containing the broad form mandatory arbitration clause is the very same agreement that is the subject of the Crossclaim, which alleges in Paragraph 10 that "Cross-defendants breached the term of the Sales Agreement by exposing Cross-claimants to alleged damages by Plaintiffs related to the Consulting Agreement."

Since the opposition has not shown that there is "no enforceable agreement to arbitrate," the statute requires that the arbitration provision be enforced and that this motion be granted.

The Opposition goes to great lengths to argue that the claim of the Plaintiffs against the Cross-claimants is frivolous, as would be any defense of the Crossclaim by these moving parties. Obviously, these contentions are disputed, but the more important point for this motion is that the merits of the various claims have nothing to do with whether to enforce the

agreement to arbitrate.[1] NRS 38.221(4) states that "The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established." Determining whether the claims or defenses are meritorious will be the job of the arbitrator.

Finally, the Opposition has argued that, because the moving parties are "indispensible", it is necessary that the Court either dismiss the Plaintiffs' case or refuse to honor the arbitration agreement. However, as would be explained more fully below, there is nothing "indispensible" about a party against whom a claim for contribution or indemnity is being asserted. To the contrary, claims for contribution and indemnity are not compulsory claims, and any such claims can be severed from the underlying claim asserted by a Plaintiff against the Defendants of their choosing. On this point, NRS 38.221(7) states that "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim."[2]

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[1] The Opposition mischaracterizes the nature of the claims of the Plaintiffs, arguing that, since the Defendants/Cross-claimants did not assume the Consulting Agreement with the Plaintiffs, they have no liability to them. However, there is a great deal more to the Plaintiffs' claims against the Cross-claimants, as they will explain to the Court.

[2] Of course, in this case, due to the venue provision contained in the Agreement, the moving parties are asking for a dismissal, rather than a stay pending arbitration.

B. **Claims for contribution and indemnity are not compulsory claims, and may be severed from the underlying case.**

In opposing this Motion, the Cross-claimants have described their claims as follows:

> ". . . 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." (see page 7 of Opposition)

Under NRCP 13(h), "persons other than those made parties to the original action may be made parties to a counterclaim or crossclaim in accordance with the provision of Rules 19 and 20." Thus, unlike compulsory counterclaims, which are made under NRCP 13(a), and which must be asserted, the claims asserted under NRCP 13(h) are permissive in nature.

Similarly, under NRCP 14(a), "at any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Again, the use of the word "may" indicates that the claim is permissive, and, furthermore, NRCP 14(a) contemplates that "any party may move to strike the third-party claim, or for its severance or separate trial."

Thus, contrary to the unsupported conclusion urged by the opposing parties, the case between the plaintiff and the defendants can proceed forward without the moving parties.

C. **The forum selection clause was part of a freely negotiated agreement.**

The Agreement for Purchase and Sale of Assets was an agreement between a New York limited liability company and a New York corporation. In addition to the provisions calling for mandatory arbitration of any disputes, the agreement contained the following provisions, showing the strong connection of the parties to New York:

1) The first page of the Agreement recites that it is made at "Bohemia, New York" between a New York limited liability company and a New York corporation.

2) Section 8.2 states "Buyer is a corporation, duly organized, validly existing, and in good standing under the laws of the State of New York."

3) Section 12.1 states "Any controversy or claim arising out of or relating to this Agreement, or its breach, shall be settled by binding arbitration . . . The venue of any arbitration shall be Nassau County, New York."

4) Section 13.1 provides for the manner of giving notices, and states that notices to buyer shall be sent to "UI Supplies, Inc., 95 Orville Drive, Bohemia, New York, 11716."

5) Section 14.1 (e) states "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."

6) Section 14.1 (i) states "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."

Thus, in summary, the Agreement for Purchase and Sale of Assets had strong connections to the State of New York. This was a one time agreement, rather than being a form contract that was used repetitively on a "take it or leave it" basis. The Agreement itself recites that "the parties have participated jointly in the negotiation and drafting of this Agreement. . ."

These facts are in direct contrast to the facts described in Tandy Computer Leasing v. Terina's Pizza, 105 Nev. 841, 784 P.2d 7 (1989), the primary case relied upon in the Opposition. In Tandy, a Las Vegas pizza company leased computer equipment for use in their Las Vegas pizza parlors. The lease came about by visiting the Radio Shack computer center in Las Vegas, Nevada. The lease agreement was a standard form contract that contained a forum selection clause which stated jurisdiction would be in Texas and venue in Fort Worth, Texas.

Upon entry of default judgment in Texas against the lessee, the lessor sought to domesticate its judgment in Nevada.

The Nevada Supreme Court affirmed the setting aside of the foreign judgment, and determined that the Texas courts had no personal jurisdiction over the Nevada lessees, and that the Texas judgment was in violation of their due process rights.

The facts in this case are not anything like the facts described in the Tandy decision, and there is nothing about the transaction before the Court that would render the forum selection clause unconscionable. Therefore, the Court should recognize the fully negotiated agreement between the parties, and dismiss this action.

DATED this 11th day of May, 2010.

FOLEY & OAKES, PC

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Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 384-2070
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

CERTIFICATE OF SERVICE BY MAIL AND BY FACSIMILE

I hereby certify that a true and correct copy of the foregoing CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S REPLY BRIEF ON MOTION FOR STAY OR DISMISSAL AND TO COMPEL ARBITRATION was served to those persons designated below on the 11th day of May, 2010:

X By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

X By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

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Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

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Attorneys for Plaintiffs

An Employee Of Foley & Oakes, PC

FOLEY & OAKES

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IRA AND EDYTHE SEAVER FAMILY TRUST, et al. Plaintiffs vs. UI SUPPLIES, et al. Defendants And related cases and parties	CASE NO. A-587003 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

TUESDAY, MAY 25, 2010

APPEARANCES:

FOR THE PLAINTIFF:	JEFFREY R. ALBREGTS, ESQ. BRIAN ANDERSON, ESQ.
FOR THE DEFENDANT:	MICHAEL B. LEE, ESQ. JOHN M. OAKES, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, TUESDAY, MAY 25, 2010, 9:50 A.M.

(Court was called to order)

THE COURT: Seaver Family Trust versus UI Supplies.

MR. ANDERSON: Your Honor, Mr. Albregts I know wanted to be here. Could you trail us for --

THE COURT: Even though his cell phone went off during my hearing already this morning?

MR. ANDERSON: If you want to go forward with it, we can.

THE COURT: Well, let's wait for him.

(Court recessed at 9:50 a.m., until 10:19 a.m.)

THE COURT: Is anybody here on Seaver versus UNI Holdings?

MR. ANDERSON: There's Mr. Albregts. Yes.

THE COURT: Is everyone here?

MR. OAKES: Good morning, Your Honor. Michael Oakes representing Lewis Helfstein, Madalyn Helfstein, Summit Technologies, and Summit Laser Products.

MR. LEE: Michael Lee representing Uninet defendants.

MR. ALBREGTS: Jeff Albregts on behalf of the plaintiffs. My apology for being late and my earlier cell phone faux pas, Your Honor.

THE COURT: All right. Mr. Oakes.

MR. OAKES: Your Honor, I have a motion to compel

arbitration or for stay or dismissal. The basis is a written agreement provides for mandatory arbitration of disputes between our respective clients. It also provides that venue for any litigation or arbitration shall be Nassau County, New York. It is a contract between two New York entities. The Court should enforce it. As a remedy here I think it would be a waste to merely stay the case, because if this goes to arbitration and then needs to be confirmed, the place to do that is Nassau County. And therefore we're asking for dismissal without prejudice at this time.

THE COURT: Okay.

MR. LEE: Good morning, Your Honor. Michael Lee. I'll try to be brief today. As we appeared before you last Thursday I indicated that this was a case that was completely a fraud case brought by the plaintiff. In particular, the exhibit attached to Mr. Helfstein's motion here contains the exhibit that says that the consulting agreement with our receiver isn't being assumed. The only reason I bring that to your attention is that we did not bring a lawsuit in this case. We did not choose Nevada as the jurisdiction. We did not choose Nevada as the venue.

What happened in this case is that Mr. Seaver and his -- the other plaintiffs filed a complaint in Nevada against our -- against my clients and against Mr. Helfstein. In that complaint he asserts that there are allegations

arising out of the consulting agreement. Within the consulting agreement, the plain language, it contains a choice of venue clause that states that Nevada is the jurisdiction.

Under the Rules of Civil Procedure 13(h), 14(a), we have the right to bring a cross-claim against Mr. Helfstein which does not arise under the asset purchase agreement.

As I put in my brief, the claims under 13(h) claim that Mr. Helfstein is an indispensable party to the claims that Mr. Seaver is bringing against our clients. In that light we wanted to brief -- briefly over the facts of the case, there was a consulting agreement entered between these two parties in 2004. In that it set certain obligations between the parties. Our client was not a party to that agreement.

In 2007 our client entered into the asset purchase agreement with Mr. Helfstein and his entities. Within that agreement, as I stated to you earlier, which his exhibits clearly demonstrate, we did not assume the consulting agreement with that party.

THE COURT: And that's the fully initialed Exhibit E?

MR. LEE: Fully initialed Exhibit E, yes.

What's also notable about that Exhibit E is that the plaintiff had notice of this document back in December of 2007. It's part of their initial production of documents.

Just also indicating the frivolous nature of the lawsuit.

Now, in terms of the motion before us today, the choice of venue, the arbitration clause, that would be all great if we brought this claim. We didn't. This case arises under the consulting agreement, and under the consulting agreement it sets Nevada as the jurisdiction. Mr. Seaver in some type of procedural maneuvering decided to dismiss Mr. Helfstein from this case. I believe it's collusion between the two of them to direct their damages towards our clients because he has the deeper pockets. Ultimately, as I stated before, under the Nevada Rules of Civil Procedure we have a right to seek the cross-claims against him because he's an indispensable party, which is an issue to my countermotion.

Also, under Rule 14(a) we have the right to seek to indemnification claims against him if we're liable for any damages to the plaintiffs. As we stated and their documents clearly show, we never assumed those -- that agreement, so we shouldn't have any damages owed to them under those agreements.

Now, if you agree that the choice of forum is correct and the asset purchase agreement is correct, then my countermotions come into play. The first countermotion is to stay the proceedings that the plaintiff had filed against my client. Under the --

THE COURT: Let's talk about the arbitration

provision for a minute. Is it your position that because this is essentially an indemnity claim that it is not a controversy or claim arising out of or relating to the asset purchase agreement?

MR. LEE: Well, the dispute in this matter arises out of the consulting agreement, not the asset purchase agreement.

THE COURT: So that would be, yes, Judge, that's my position?

MR. LEE: My position is that the way that you're construing it is -- if you construe it globally, yes. There is the asset purchase agreement that says that any dispute, any claim has to be arbitrated. But we're not the plaintiff in this case. We're bringing a compulsory claim against the Helfstein defendants. This is arising out of the plaintiffs' action, which arises out of the consulting agreement. We are not a party to the consulting agreement. And that's why when I go to my countermotions here the Helfstein defendants are an indispensable party under Rule 19.

Under Rule 19, it also relates back to Rule 13(h), that if someone is an indispensable party, then they can be added to a party -- added as an additional defendant in this action. Which has occurred.

Now, when you're asking about the arbitration clauses, the plaintiffs in this case don't have any standing

to assert a cause of action under the asset purchase agreement. What they're bringing is the cause of action under the consulting agreement. I don't want to go in circles here, but under that agreement this jurisdiction is proper. Under the Nevada Rules of Civil Procedure, under the rules of efficiency, under the rules of simple fairness, the Helfstein defendants are a proper defendant in that case, and arbitration enforcing and compelling the arbitration is proper.

Now, on the other hand, if you find that the asset purchase agreement controls, that arbitration clause controls, then the action that Mr. Seaver and the plaintiffs are bringing against my client should be stayed. They should be stayed because the ultimate issue that they're bringing causes of action against us relates to the asset purchase agreement whether or not we assume the consulting agreement. Which the plain language clearly states it doesn't, and there's no dispute on this side of the table that says that we assumed it.

On the other hand, if you agree that it controls and they're also the indispensable parties, then plaintiffs' action against us should be dismissed because it's improper -- or it's impossible for them to go ahead and bring the Helfstein defendants into this case.

I will then turn it over to Mr. Albregts.

THE COURT: No, not Mr. Albregts. Mr. Oakes.

MR. LEE: Mr. Oakes. Excuse me.

THE COURT: Mr. Albregts doesn't care.

MR. OAKES: Your Honor, I don't know how far I need to go. An indemnity claim is not a compulsory claim, it's a permissive claim, as Your Honor well knows.

THE COURT: I know that. And I know that there's nothing that requires us to resolve them all at the same time. It just makes a lot more sense to resolve them all at the same time.

MR. OAKES: Doesn't make sense when you have a contract that says you'll resolve your dispute in another jurisdiction. And that's what we're asking you to enforce, Your Honor.

THE COURT: Okay. Here the provision in the asset purchase agreement is not the basis for the claims that had been made in this case. For that reason the Court is declining to grant the motion to compel arbitration.

MR. LEE: You want me to prepare the order?

THE COURT: Sure.

All right. Did you get my message about the stipulated protective orders that you gave me, that I need a two-stage disclosure and if you have questions talk to the guys over in that corner or the guys over in that corner on the back row about confidential and highly confidential

documents.

UNIDENTIFIED SPEAKER: Which one of the guys, Your Honor?

THE COURT: Well, any of the guys of that case. They have made it an art form.

MR. ALBREGTS: I've learned that recently, and I'm led to believe, Your Honor, that we got our two versions over there like you wanted, and I thought -- I won't speak for --

THE COURT: The note I have is I received a revised protective order from the plaintiff but not the defendant. And since Mr. Oakes is now part of the case at least for the moment, he probably should be involved in the process.

MR. LEE: I believe the email to your office went to Mr. Anderson.

MR. ALBREGTS: I'm the plaintiff, so I got mine and yours. I was in trial Thursday and Friday, Your Honor. I apologize.

THE COURT: You did what you were supposed to.

MR. LEE: So you just want us to meet and confer and see if we can reach another --

THE COURT: Yeah. I need two stages, because not all of the documents will be information that Mr. Seaver cannot see. Some of the documents may be documents Mr. Seaver cannot see.

MR. LEE: Thank you, Your Honor.

MR. OAKES: Thank you very much, Your Honor.

THE COURT: Have a nice day.

MR. ALBREGTS: So am I -- I'm sorry. Am I to provide another -- I apologize -- protective order to you?

THE COURT: You did well.

MR. ALBREGTS: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 10:28 A.M.

* * * * *

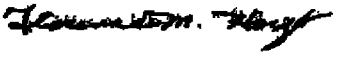
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



9/22/10

FLORENCE HOYT, TRANSCRIBER — DATE

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION Plaintiff, vs. 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.	Case No. A587003 Dept. No. XI Date of Hearing: May 25, 2010 Time of Hearing: 9:00 a.m.
UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI Counter-Claimants vs. IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200. Counter-Defendants	**NOTICE OF ENTRY OF ORDER**

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI

Cross-Claimants

vs.

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

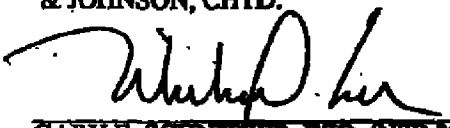
Cross-Defendants

NOTICE OF ENTRY OF ORDER

YOU, AND EACH OF YOU, will please take notice that an Order Denying Motion to Stay or Dismiss was entered in this matter on June 15, 2010. A copy of said Order Denying Motion to Stay or Dismiss is attached hereto and incorporated herewith by reference.

DATED this 16 day of June, 2010.

KRAVITZ, SCHNITZER SLOANE, & JOHNSON, CHTD.



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KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16 day of June, 2010, I placed a copy of the foregoing **NOTICE OF ENTRY OF ORDER** in the United States mail, postage pre-paid, and addressed as follows:

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI

Counter-Claimants

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200.

Counter-Defendants

Case No. A587003

Dept. No. XI

ORDER DENYING MOTION TO STAY OR DISMISS

Date of Hearing: May 25, 2010

Time of Hearing: 9:00 a.m.

ORDER DENYING MOTION TO STAY OR DISMISS

THIS MATTER was set for hearing on the 25th day of May, 2010, on Cross-Defendants Lewis Helfstein, Madalyn Helfstein, and Summit Laser ("Cross-Defendants") Motion for Stay or Dismissal, and to Compel Arbitration ("Motion"), by and through their attorneys of record, the law firm of Foley & Oakes, P.C., and Cross-Claimants UI Supplies, UniNet Imaging, and Nestor Saporiti (collectively referred to as the "Cross-Claimants"), by and through their attorneys of record, the law firm of Kravitz, Schnitzer, Sloane & Johnson, Chtd., and this Honorable Court having considered the papers and pleadings on file herein, and entertaining oral arguments, the Court hereby issues the following decree:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Cross-Defendants Motion is **DENIED** as 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Cross-Claimants' Counter-Motions are also **DENIED** as moot.

Dated this 10 day of June, 2010.

DISTRICT JUDGE

Respectfully Submitted By:

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Filed through Wiznet on July 7, 2010

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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.

CASE NO. A587003
DEPT NO. XI

NOTICE OF APPEAL

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Counterclaimants,

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION, and ROE CORPORATIONS 101-200,

Counterdefendants.

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING and NESTOR SAPORITI,

Cross-Claimants,

vs.

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

Cross-Defendants.

NOTICE IS HEREBY GIVEN that Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC, hereby appeal to the Supreme Court of the State of Nevada from the Order Denying Motion To Stay Or Dismiss, entered herein on June 15, 2010.

DATED this 12 day of July, 2010.

FOLEY & OAKES, PC

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Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., And Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL was served to those persons designated below on the 7th day of July, 2010:

X By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

_____ By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

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Attorneys for Plaintiffs

An Employee Of Foley & Oakes, PC

FOLEY & OAKES

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")

4. Lease

4.1 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.

4.2 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.

5. Other Obligations

5.1 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 C, 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.

5.2 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.

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

6.1 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;

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

(a) Transaction by Seller except in the ordinary course of its business as conducted on that date;

(b) Material adverse change in the financial condition, liabilities, assets, business, or results of operations, or prospects of Seller;

(c) 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;

(d) Revaluation or write-down by Seller of any of its assets, except for inventory.

(e) 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;

(f) Sale or transfer of any asset of Seller, except in the ordinary course of business;

(g) 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;

(h) 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;

(i) Encumbrance of any asset or property of Seller;

(j) Waiver or release of any right or claim of Seller, except in the ordinary course of business;

(k) Commencement of, or notice or threat of commencement of, any Proceeding against Seller or the business, assets, or affairs of Seller;

(l) 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;

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

(n) 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.

6.3 **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.

6.4 **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.

6.5 **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.

6.6 **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".

6.7 **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.

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

6.9 **Tax Returns and Audits/Books and Records:**

(a) **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.

(b) **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.

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

7.1 **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.

7.2 **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.

7.3 **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.

7.4 **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.

7.5 **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.

7.6 **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.

7.7 **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.

7.8 **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.

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

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

8.1 **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).

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

8.3 **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.

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

8.5 **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).

8.6 **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.

8.7 **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.

8.8 **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.

8.9 **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.

8.10 **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.

9. **Closing**

9.1 The Closing will take place at at 9:00 a.m. local time, on April 2, 2007, or at such other time and place as Buyer and Seller may agree in writing.

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

(a) Assignments of all personal property leases of Seller, as lessee, properly executed and acknowledged by Seller;

(b) An assignment to Buyer of the Lease, duly executed by Laser;

(c) A bill of sale for the Acquired Assets, duly executed by Seller;

(d) 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;

(e) 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

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

9.3 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.

9.4 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.

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

(a) A wire transfer, to such account as Seller shall designate, in the amount of $150,000;

(b) Buyer's duly executed promissory note, dated as of the Closing Date, in the principal amount of $100,000, in the form of Exhibit B hereto;

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

(d) An opinion of Buyer's counsel, dated as of the Closing Date, as provided for in this Agreement;

(e) 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**");

(f) 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

(g) The Corporate Guaranty executed by Uninet Imaging, Inc. in the form of Exhibit G attached,

10. **Conditions Precedent To Buyer's Performance**

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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:

(a) 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.

(b) 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.

(c) 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

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

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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:

(a) 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.

(b) 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.

(c) 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

12. **Arbitration**

12.1 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.

13. **Notices**

13.1 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:

(a) 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

(b) IF TO BUYER:

UI Supplies, Inc.
95 Orville Drive
Bohemia, New York 11716
Fax: _____

(c) IF TO UNINET:

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

13.2 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.

14. **Construction**

14.1 Except as otherwise provided herein:

(a) **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;

(b) **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;

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

(d) **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;

(e) **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

(f) **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;

(g) **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;

(h) **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;

(i) **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;

(j) **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;

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

(l) **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;

(m) **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

(n) **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.

Dated: Bohemia, New York
March 4, 2007

SELLER:

Summit Technologies LLC

By: _____
Lewis B. Helfstein, Managing Member

Ira and Edythe Family Trust

By: _____
Ira Seaver, Tustee

Dated: Bohemia, New York
March 30, 2007

BUYER:

UI Supplies, Inc.

By: _____
Nestor Saporiti, President

EXHIBIT E
EMPLOYMENT AGREEMENTS

NONE

CONSULTING AGREEMENTS WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED

EXHIBIT B

FOLEY & OAKES, PC

ATTORNEYS AT LAW

DANIEL T. FOLEY
DIANA J. FOLEY
J. MICHAEL OAKES

830 EAST BONNEVILLE AVENUE
LAS VEGAS, NEVADA 89101
TELEPHONE: (702) 384-2070
FACSIMILE: (702) 384-2128

JOSEPH M. FOLEY
(1924 - 2002)

April 19, 2010

Via Regular Mail and
Email Transmission
mlee@kssattorneys.com

Michael B. Lee, Esq.
Kravit, Schnitzer,
Sloane & Johnson, Chtd.
8985 S. Eastern Avenue
Suite 200
Las Vegas, Nevada 89123

Re: Case No. A 587003
Demand for Arbitration and for Change of Venue

Dear Mr. Lee:

Our firm represents Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC. This is with reference to the "Crossclaim" that has been filed against our clients, for which you have demanded a responsive pleading by April 20, 2010.

As described in Paragraph 3 of your Crossclaim, the claims you have asserted specifically arise out of the Agreement for Purchase and Sale of Assets by and between UI Supplies, Inc. and Summit Technologies, LLC.

That is an agreement between a New York corporation and a New York limited liability company, which specifically calls for mandatory arbitration of all disputes, and for venue to be located in Nassau County, New York. Specifically, the agreement states as follows:

1. "12. Arbitration
12.1 Any controversy or claim arising out of or relating to this Agreement, or its beach, 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."

2. "14.1(e) 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."

Based upon the foregoing, this is to demand that you dismiss your Crossclaim against my clients, and, if you desire to proceed against them, that you comply with the express terms of the written contract between the parties, by initiating an arbitration of this matter in the proper county.

Please let me know if you are willing to comply with this demand. If we do not hear from you, we will file an appropriate motion with the District Court. For ease of communication, please feel free to respond directly to my email, which is mike@foleyoakes.com.

Sincerely,

FOLEY & OAKES, PC

J. MICHAEL OAKES

JMO:lms

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CLERK OF THE COURT

AFFT
J. Michael Oakes, Esq.
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mike@foleyoakes.com
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, /Cross-Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATIOIN, Plaintiffs, vs. LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES LLC, UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI and DOES 1 through 20, and ROE entities 21 through 40, inclusive, Defendants.	CASE NO. A587003 DEPT. NO. XI AFFIDAVIT OF LEWIS HELFSTEIN DATE: May 25, 2010 TIME: 9:00 a.m.
UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI, Counter-Claimants, vs. IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORAITON, and ROE CORPORATIONS 101-200, Counter-Defendants.	

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI,	)
Cross-Claimants,	)
vs.	)
LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES, LLC,	)
Cross-Defendants.	)

Attached hereto as Exhibit "A" is the original Affidavit of Lewis Helfstein. A copy of this Affidavit was originally filed as an exhibit to Cross-Defendants, Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC's of Motion For Stay or Dismissal and to Compel Arbitration.

DATED this 23rd day of April, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
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Las Vegas, Nevada 89101
(702) 384-2070
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

FOLEY & OAKES

CERTIFICATE OF SERVICE BY MAIL AND BY FACSIMILE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF LEWIS HELPSTEIN was served to those persons designated below on the 23rd day of April, 2010:

____ By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

_X_ By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

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An Employee Of Foley & Oakes, PC

FOLEY & OAKES

Exhibit A

STATE OF NEW YORK)
: SS
COUNTY OF SUFFOLK)

AFFIDAVIT OF LEWIS HELFSTEIN

Lewis Helfstein, after being first duly sworn, deposes and states the following:

1. I have personal knowledge of the facts and statements set forth herein.

2. On or about March 30, 2007, UI Supplies, Inc. and Summit Technologies, LLC entered into an Agreement for Purchase and Sale of Assets (the "Agreement"), a copy of which is attached hereto as Exhibit 1.

3. As described in the Agreement, UI Supplies, Inc. is a New York corporation and Summit Technologies, LLC is a New York limited liability company, having its principal office at Bohemia, New York. As shown on page 18 of the Agreement, the Agreement was executed in Bohemia, New York, by Lewis Helfstein for Summit Technologies, LLC and by Nestor Saporiti for UI Supplies, Inc.

4. The Crossclaim that has been filed against me and the other Cross-Defendants, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC arises out of the Agreement.

5. The Agreement contained the following provisions:

> "12. Arbitration
> 12.1 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."
>
> "14.1(e) 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."

6. The Crossclaim identifies UI Supplies, Inc., Uninet Imaging, Inc., and Nestor

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Saporiti as the Cross-Claimants. UI Supplies is the New York corporation that was a party to the Agreement. Uninet Imaging is the parent company of UI Supplies, Inc., and Nestor Saporiti is the President and principal owner of UI Supplies, Inc.

7. Madalyn Helfstein is my wife. She and I both reside in the State of New York. Summit Laser Products, Inc. is a New York corporation and Summit Technologies, LLC is a New York limited liability company. Summit Laser Products, Inc. is a shareholder of Summit Technologies, LLC.

DATED this 19th day of April, 2010.

Lewis Helfstein

Subscribed and Sworn to
before me this 19 day of
APRIL, 2010.

Notary Public

[redacted]

FOLEY & OAKES

APR 2 6 2010

NOTC
JEFFREY R. ALBREGTS, ESQ. /NBN 0066
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI and DOES 1 through 20, and ROE entities 21 through 40, inclusive,

Defendants.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Counterclaimants,

v.

IRA AND EDYTHE SEAVER FAMILY TRUST; IRA SEAVER; and CIRCLE CONSULTING CORPORATION, and ROE CORPORATIONS 101-200,

Counterdefendants.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Cross-Claimants,

v.

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

Cross-Defendants.

Case No.: A587003
Dept. No.: XI

Hearing Date: 5/25/10
Hearing Time: 9:00 a.m.

NOTICE OF NONOPPOSITION TO CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

NOTICE OF NONOPPOSITION TO CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION

TO THE COURT AND TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that Plaintiffs IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, and CIRCLE CONSULTING CORPORATION declare that they have no opposition to Cross-Defendants, Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC's Motion for Stay or Dismissal, and to Compel Arbitration.

Dated this 22 day of April, 2010.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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Las Vegas, Nevada 89101

Attorneys for Plaintiffs/Counterdefendants

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22nd day of April, 2010, 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 NONOPPOSITION TO CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION,** postage prepaid and addressed to:

J. Michael Oakes, Esq.
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI

Counter-Claimants

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200.

Counter-Defendants

Case No. A587003

Dept. No. XI

DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION, AND ALTERNATIVELY, COUNTER-MOTION TO STAY PROCEEDINGS PENDING ARBITRATION; MOTION TO DISMISS PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 19

Date of Hearing: May 25, 2010

Time of Hearing: 9:00 a.m.

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI Cross-Claimants vs. LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, Cross-Defendants	**DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION, AND ALTERNATIVELY, COUNTER-MOTION TO STAY PROCEEDINGS PENDING ARBITRATION; MOTION TO DISMISS PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 19**

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 "UniNet Defendants"), by and through their attorneys of record, the law firm of Kravitz, Schnitzer, Sloane, & Johnson, Chtd., and hereby respectfully file this Opposition ("Opposition") to Cross Defendants, 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 "Helfstein Defendants") Motion for Stay or Dismissal, and to Compel Arbitration ("Motion").

Additionally, the UniNet Defendants also file a Counter Motion, in the Alternative if arbitration and change of venue is warranted, to Stay Proceedings Pending Arbitration; Motion to Dismiss Pursuant to Nevada Rule of Civil Procedure 19. 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Summary of Argument

The Helfstein Defendants are indispensable parties to claims arising out of the Consulting Agreement (defined below). The Consulting Agreement contains a mandatory clause making Nevada the proper forum for those disputes. Under Nevada Rule of Civil Procedure 13(h), the

UniNet Defendants are entitled to bring a cross-claim against the Helfstein Defendants based on the nature of Plaintiffs' action. Furthermore, they are also allowed to join the Helfstein Defendants to this action under Nevada Rule of Civil Procedure 14(a) based on their right to seek indemnification. As such, the Motion should be denied in its entirety.

Alternatively, if the Asset Purchase Agreement (defined below) controls the venue and choice of law for disputes arising out of the Consulting Agreement, then a stay of Plaintiffs' claims against the UniNet Defendants is proper. The plain language of the Asset Purchase Agreement, and Mr. Helfstein's Declaration, clearly state that the UniNet Defendants never assumed the Consulting Agreement. Nevertheless, Plaintiffs want to prosecute their claims against the UniNet Defendants for damages arising out of the Consulting Agreement. Furthermore, the Helfstein Defendants desire to stay any action against them until Plaintiffs action against the UniNet Defendants, for a contract they were never a party to nor never assumed, is resolved. That is a classic example of putting the cart before the horse. This justifies staying this action until there is a resolution of the cross-claims, or for the complete dismissal of Plaintiffs' case under Nevada Rule of Civil Procedure 19(b).

B. Statement of the Facts

The following facts are taken from Plaintiffs' Complaint. On or about August 12, 2004, the Helfstein Defendants entered into an Agreement with Mr. Seaver to form Summit. *See* Complaint at ¶ 5. The Helfstein Defendants 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.*; Mot. at 5:20-21. On or about September 1, 2004, the Helfstein Defendants 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* Mot., 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, profitsharing, 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. 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 the UniNet Defendants did not assume the Consulting Agreement. Nevertheless, Plaintiffs have brought a frivolous lawsuit against the UniNet Defendants under the terms of the Consulting Agreement.

a. *Warranties From Seller to UniNet Defendants*

The Asset Purchase Agreement provided the UniNet Defendants with a series of warranties, which are directly applicable to the UniNet Defendants' right to seek indemnification from the Helfstein Defendants. Summit represented that it had the approval and authority of all members to enter into the Asset Purchase Agreement. Mot, Ex. A at ¶ 6.1. 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.*

Similarly, 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. 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.

Mot, Ex. A at ¶ 6.7 (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 asst or properties of any of them is bound . . . ."

Mot, Ex. A 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. Mot, Ex. A 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."

Mot, Ex. A at ¶ 7.12.

In total, the Helfstein Defendants provided several warranties to the UniNet Defendants 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. *UniNet Defendants Relied on Helfstein Defendants' Representation that the Consulting Agreement Was not Being Assigned*

The Helfstein Defendants induced the UniNet Defendants into executing the Asset Purchase Agreement based on their representation that the Consulting Agreement was not being assigned through the Asset Purchase Agreement. The UniNet Defendants 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 the UniNet Defendants' claims for indemnification and evidence the Helfstein Defendants status as indispensable parties.

C. **Statement of Procedure**

On April 3, 2009, Plaintiffs filed a Complaint against both the Helfstein Defendants and UniNet Defendants. 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 the Helfstein Defendants.

In turn, on January 19, 2010, the UniNet Defendants filed a Cross Claim against the Helfstein Defendants. The Cross Claim asserts twelve claims against the Helfstein Defendants: (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 the UniNet Defendants. *See* Compl. at ¶¶ 24-27, 48-53. However, the UniNet Defendants were not a party to that contract. Only the Helfstein Defendants were parties to both the Consulting Agreement and the Asset Purchase Agreement. *See* Ex. 1, Mot., Ex. A. In that light, they are "indispensable" to the adjudication of the dispute over the Consulting Agreement, and to the UniNet Defendants' defense from Plaintiffs' frivolous litigation. Similarly, the Helfstein Defendants are liable to the UniNet Defendants under a theory of indemnification for any damages they may incur as a result of

[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. This is addressed in more detail in section I(A).

the claims arising under the Consulting Agreement.

II. DISCUSSION

The Helfstein Defendants are seeking to compel arbitration under the Asset Purchase Agreement based on the mandatory arbitration clause and choice of venue clause. Mot. at 2:14-17. Furthermore, they are seeking dismissal of the UniNet Defendants cross-claims, or alternatively, a stay of those claims until Plaintiffs' lawsuit against the UniNet Defendants' is resolved. *Id.* at 4:10-14. However, the Helfstein Defendants fail to appreciate that they are "indispensable parties" to Plaintiffs' claims for breach of the Consulting Agreement. The Consulting Agreement explicitly demands that Nevada law govern any dispute arising out of that contract. *See* Ex. 1 at ¶ 14 at IS 0000110-11. Plaintiffs' claims solely arise out of the Consulting Agreement, not the Asset Purchase Agreement. As such, the Consulting Agreement supercedes the Asset Purchase Agreement, including the choice of law and forum provisions.

The Discussion is organized into five Parts. Part A explains the civil procedure standards for bringing a cross claim and a third-party claim, and the Helfstein Defendants' status as "indispensable parties" that permit joining them as a party to Plaintiffs' claims arising under the Consulting Agreement. Part B examines the arbitration clause of the Asset Purchase Agreement, and how it does not apply to this dispute. Similarly, Part C illustrates how the forum selection clause is also inapplicable. Alternatively, if this Honorable Court grants the Helfstein Defendants' Motion, Part D requests a stay of Plaintiffs' case until the issue regarding the non-assignment of the Consulting Agreement is resolved. Finally, Part E moves for dismissal of Plaintiffs' case entirely under Nevada Rule of Civil Procedure 19(b).

A. Cross-claims Against Helfstein Defendants are Proper

1. *Joinder of Additional Parties Under Rule 13(h)*

A cross claim is the proper procedural device for the joinder of additional parties when the joinder is necessary for just adjudication based on its status as an "indispensable party," or the relief arises out of the same transactions, occurrences, or series of transactions and occurrences with common questions of fact and/or law. Nev. R. Civ. Pro. 13(h). "An indispensable party is a party who is 'necessary' to an action, but for some reason, cannot be made a party to that action." *Potts v.*

Vokits, 101 Nev. 90, 92, 692 P.2d 1304, 1306 (1985). If the court finds that a party is indispensable, it must decide whether in equity and good conscious the action should proceed. *Id.* "If in equity and in good conscious the action cannot proceed without the necessary party, that party is 'indispensable' . . . ." *Id.*

Nevada Rule of Civil Procedure 19 states that:

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence **complete relief cannot be accorded** among those already parties, or (2) the person claims an **interest relating to the subject of the action** and is so situated that the disposition of the action in the persons absence may (I) as a practical matter **impair or impede the persons ability to protect that interest** or (ii) leave any of the persons already parties subject to a **substantial risk** of incurring double, multiple, or otherwise **inconsistent obligations** by reason of the claimed interest. If the person has not been so joined, the **court shall order that the person be made a party**. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(Emphasis added).

2. *Third-Party Practice Under Rule 14*

Third-party practice "is based upon a theory of indemnity." *Reid v. Royal Ins. Co.*, 80 Nev. 137, 140, 390 P.2d 45, 46 (1964). When a third-party may be liable to a defendant, the defendant may, as a third-party plaintiff, make a claim against the third-party defendant for all or part of the plaintiff's claim against the third-party plaintiff. Nev. Rule. Civ. Pro. 14(a). "The application of indemnity (when proper) shifts the burden of the entire loss from the defendant tort-feasor to another who should bear it instead." *Reid*, 80 Nev. at 141, 390 P.2d at 47 (citing Prosser, Torts § 46 (2nd Ed.)).

3. *The Helfstein Defendants are Proper Cross-Claimants Under Rule 19, and Proper Third-Party Defendants Under Rule 14(a)*

The Helfstein Defendants are indispensable parties to Plaintiffs' claims under the Consulting Agreement. As a practical matter, the Helfstein Defendants' absence from this litigation impairs and impedes the UniNet Defendants' ability to protect their interests. Similarly, there is a substantial risk of inconsistent outcomes if the UniNet Defendants are obligated to defend this action without the

presence of the Helfstein Defendants. Thus, the UniNet Defendants respectfully request that this Honorable Court consider the extent that a judgment rendered without the Helfstein Defendants will prejudice the UniNet Defendants. Additionally, they also request that the Court consider the extent that a judgment under the Consulting Agreement can actually be rendered without the Helfstein Defendants when the UniNet Defendants 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 the UniNet Defendants 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 the Helfstein Defendants as defendants. This demonstrates that the Helfstein Defendants are indispensable parties to the Consulting Agreement, which allows the UniNet Defendants to join them to this litigation under Nevada Rule of Civil Procedure 13(h).

Furthermore, this Honorable Court should take notice that the Helfstein Defendants' active fault actually and proximately caused 100% of Plaintiffs' alleged damages. The Helfstein Defendants 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 provided several warranties that he secured Mr. Seaver's consent to terminate the Consulting Agreement upon the sale of Summit's assets.

The UniNet Defendants' warranties in the Asset Purchase Agreement demonstrate that the UniNet Defendants are entitled to indemnification from the Helfstein Defendants. These warranties included representations 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. *See* Mot., Ex. A at ¶¶ 6.1, 6.6, 6.7, 7.9, 7.10, 7.12.

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The undisputed facts demonstrate that the only defendants culpable for Plaintiffs' alleged damages are the Helfstein Defendants. Overwhelming evidence demonstrates that the UniNet Defendants did not want to assume the Consulting Agreement. *See Id.* The UniNet Defendants do not have any legal obligation to Plaintiffs. As such, any liability borne by the UniNet Defendants should be completely shifted to the Helfstein Defendants. *See* Nev. R. Civ. Pro. 14(a). In total, the Nevada Rules of Civil Procedure demand that the Helfstein Defendants remain parties to this action in Nevada. The cross-claims and third-party claims do not arise against the Helfstein Defendants 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.

B. Enforceability of Arbitration Clauses

Whether a dispute arising under a contract is arbitrable is a matter of contract interpretation, which is a question of law. *State ex rel. Masto v. Second Judicial Dist. Court ex rel. County*, 125 Nev. 5, ___, 199 P.3d 828, 832 (Nev. 2009). District Courts have the discretion to determine the enforceability of an arbitration clause. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). "Nevada courts resolve all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration." *Int'l Assoc. Firefighters v. City of Las Vegas*, 104 Nev. 615, 618, 764 P.2d 478, 480 (1988). However, "[i]f the court finds that there is no enforceable agreement, it may not . . . order the parties to arbitrate." Nev. Rev. Stat. § 38.221(3).

Generally, arbitration is a matter of contract and " 'a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.' " *Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 59, ___, 189 P.3d 656, 660 (2008) (quoting *Thomson-CSF. S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir.1995) (quoting *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)). Thus, while Nevada recognizes a strong policy in favor of arbitration, "such agreements must not be so broadly construed as to encompass claims and parties that were not intended by the original contract." *see Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 39 (2004). Nevertheless, the obligation to arbitrate, which was executed by another party, may attach to a nonsignatory. *Truck Ins. Exchange*, 189 P.3d at 660 (citing *Inter. Paper v. Schwabedissen Maschinen & Anlagen*, 206 F.3d 411, 416-17

(4th Cir.2000)).

Here, there is no enforceable agreement that requires arbitration in this matter. As stated earlier, Plaintiffs' claims arise under the Consulting Agreement. *See* Compl. Without admitting the sufficiency of those claims, Plaintiffs allege that the UniNet Defendants are liable to them for breach of that agreement. *Id.* Notably, the UniNet Defendants were never a party to the Consulting Agreement, nor assumed it. *See* Mot., Ex. A *et seq.* The only parties to that Agreement were Plaintiffs and the Helfstein Defendants. *See* Ex. 1.

The Consulting Agreement does not require arbitration. Plaintiffs should not be allowed to prosecute their claims against the UniNet Defendants without joining the Helfstein Defendants in this matter. Otherwise, gross injustice and unfairness would befall the UniNet Defendants since they never assumed the Consulting Agreement. *See* Mot., Ex. A *et seq.* While the Helfstein Defendants are attempting to characterize the cross-claims as arising under the Asset Purchase Agreement, they completely failed to acknowledge their status as indispensable parties to the Consulting Agreement. In that light, the cross-claims against the Helfstein Defendants are appropriate arise under the Consulting Agreement.

The UniNet Defendants respectfully request that this Honorable Court deny the Motion. Plaintiffs' action is solely based on the Consulting Agreement. That agreement does not contain an arbitration clause demanding that disputes arising under it must be arbitrated. Furthermore, the Asset Purchase Agreement cannot be so broadly construed as to encompass claims arising under the Consulting Agreement. This is especially true since the plain language of the Asset Purchase Agreement specifically states that the UniNet Defendants were not assuming the Consulting Agreement. As such, the Helfstein Defendants' have the status as indispensable parties to the Consulting Agreement. Additionally, they are also third-parties with an obligation to indemnify the UniNet Defendants. In either case, the arbitration clause of the Asset Purchase Agreement is inapplicable as it pertains to the Consulting Agreement.

Unconscionability as a Defense to Arbitration Clause

Mandatory arbitration clauses may be unconscionable when the term is procedurally and substantively unconscionable. *See D.R. Horton v. Green*, 120 Nev. 549, 551, 96 P.3d 1159, 1160

(2004). Both procedural and substantive unconscionability must be present for a court to exercise discretion to invalidate an arbitration clause. *Id.* at 553. Procedural unconscionability focuses on the one-sidedness of a contract, particularly the inability of the weaker party to meaningfully negotiate because of unequal bargaining power, and an inability to understand the contractual language. *Id.* at 554. Substantive unconscionability is present when the terms are so one-sided and harsh that it shocks the judicial conscience. *Villa Milano Homeowners Assn. v. Il Davorge*, 84 Cal.App.4th 819, 829, 102 Cal.Rptr.2d 1 (Cal. App. 4th Dist. 2000). Substantive unconscionability as to arbitration clauses exists when arbitration agreements contain provisions that vary the substantive remedies and the consequences on the parties unequally. *Id.* at 558 citing *Ting v. AT & T*, 319 F.3d 1126 (9th Cir. 2003).

Here, the arbitration provisions of the Asset Purchase Agreement are unconscionable. In terms of procedural unconscionability, the Asset Purchase Agreement is one-sided that it requires arbitration in New York. This is a foreign jurisdiction to the purpose of the Asset Purchase Agreement. The Asset Purchase Agreement contemplated the sale of both tangible and intangible assets located in Las Vegas, Nevada. New York is an alien jurisdiction that has no purpose other than the convenience of the Helfstein Defendants. This demonstrates that the term is one-sided and procedurally unconscionable. Similarly, the arbitration clause is also substantively unconscionable because of the one-sided nature of the provision, and harshness that requires the UniNet Defendants to waive their right to a jury trial and to litigate in a foreign jurisdiction. In total, the arbitration clause is unconscionable and unenforceable.

C. **Forum Selection Clauses**

"While some forum selection clauses are sufficient to subject parties to the personal jurisdiction of out-of-state courts, not all forum selection clauses are enforceable." *Tandy Computer Leasing, a Div. of Tandy Electronics, Inc. v. Terina*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989). "'Where such forum selection provisions have been obtained through 'freely negotiated' agreements and are not 'unreasonable and unjust,' their enforcement does not offend Due Process.'" *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n. 14, 105 S.Ct. 2174, 2182 n. 14, 85 L.Ed.2d 528 (1985)).

Nevertheless, the Nevada Supreme Court identified several factors that could render a forum selection clause unconscionable, including: (1) the absence of negotiations regarding the forum selection clause; (2) the unimportance of the clause to the contract's purpose; (3) the placement and font size of the clause in the contract;(4) the potential lack of knowledge regarding the clause's potential consequence; (5) public policy considerations demanding decisions on the merits and exclusion of unfair advantages. *Id.* at 843-44, 784 P.2d at 8 (citations omitted); *see also D.R. Horton v. Green*, 120 Nev. 549, 557, 96 P.3d 1159, 1165 (2004).

Here, the forum selection clause is inapplicable. As stated earlier, the Consulting Agreement clearly sets Nevada as the proper jurisdiction for claims arising out of it. Plaintiffs are prosecuting a case solely based on the Consulting Agreement. As such, the forum selection clause of the Asset Purchase Agreement is inapplicable. In *arguendo*, even if it was applicable, the forum selection clause is unconscionable. There is no evidence that there was meaningful negotiation regarding the forum selection clause. Similarly, the forum selection clause of New York is unrelated to the purchase of assets in Las Vegas, Nevada. Furthermore, the Helfstein Defendants have not presented evidence demonstrating the UniNet Defendants' awareness of the forum selection clause. The only purpose of the forum selection clause is to provide the Helfstein Defendants with an unfair advantage.

Like the Arbitration clause, the forum selection clause is unconscionable. It goes against Nevada's public policy of requiring cases to be decided on their merits. The Helfstein Defendants' request would place a substantial burden on the UniNet Defendants to litigate a case in an inconvenient forum that does not house any of the likely witnesses, documents, or admissible evidence that would be used to prosecute/defend claims. Nevertheless, Plaintiff's claims arise under the Consulting Agreement, not the Asset Purchase Agreement. Thus, enforcing those clauses to allow the Helfstein Defendants to escape this jurisdiction is improper.

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COUNTER-MOTIONS

D. Alternatively, if Arbitration is Proper, Then This Matter Should Be Stayed Pending Resolution of the UniNet Defendants' Dispute with the Helfstein Defendants

"'[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 consider 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(c); *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.

Here, Plaintiffs' action against the UniNet Defendants should be stayed pending resolution of the dispute pertaining to the Asset Purchase Agreement. The plain language of the Asset Purchase

Agreement clearly states that the UniNet Defendants were not assuming the Consulting Agreement. *See* Mot., Ex. A at sec. Furthermore, Mr. Helfstein provided a Declaration stating that a replacement Consulting Agreement was necessary. *See* Ex. 2 at ¶ 7. As such, the UniNet Defendants' ability to obtain declaratory relief or a finding of fact that the Asset Purchase Agreement did not assign the Consulting Agreement to them is vital to the resolution of Plaintiffs' case.

Trial courts should follow guidelines to achieve consistent, predictable, and fair results. *See Local Joint Exec. Bd. of Las Vegas, Culinary Workers Union, Local No. 226 v. Martin Stern*, 98 Nev. 409, 411, 651 P.2d 637, 638 (1982). Courts should avoid rulings that result in illogical and unjust results, which offend traditional notions of fairness and justice. *State of Nev. v. Second Judicial Dist. Court ex rel. County of Washoe*, 188 P.3d 1079, 1083 (Nev. 2008). It is completely illogical to allow Plaintiffs to prosecute a frivolous lawsuit against the UniNet Defendants, but stay the UniNet Defendants' right to seek cross-claims against the only responsible parties - the Helfstein Defendants.

Furthermore, the UniNet Defendants will sustain irreparable injury and extreme prejudice if they are required to defend this action without the Helfstein Defendants being a party to it. Clearly, Plaintiffs are presenting a frivolous lawsuit against the UniNet Defendants. The plain language of the Asset Purchase Agreement states in clear and unambiguous language that the UniNet Defendants were not assuming the Consulting Agreement. Nevertheless, Plaintiffs are attempting to enforce the Consulting Agreement against the UniNet Defendants. Inexplicably, Plaintiffs have voluntarily dismissed their claims against the Helfstein Defendants. This demonstrates that there is an element of collusion between the Helfstein Defendants and Plaintiffs to present frivolous litigation against the UniNet Defendants for vexation and harassment purposes. This justifies staying Plaintiffs' case until there is a resolution regarding the UniNet Defendants' cross-claims against the Helfstein Defendants.

E. Alternatively, if Arbitration is Proper, Then Plaintiffs' Case Should Be Dismissed Pursuant to Nevada Rule of Civil Procedure 19

1. *Standard for Motion to Dismiss under Nevada Rule of Civil Procedure 19*

A defendant may move to dismiss plaintiff's complaint when plaintiff fails to join a party

under Nevada Rule of Civil Procedure 19. NRCP 12(b)(6). "In reviewing a motion to dismiss, the plaintiff's evidence and all reasonable inferences that can be drawn from the evidence must be admitted[,]" and interpreted in the light most favorable to the plaintiff." *Fava v. Hammond Co.*, 102 Nev. 323, 325-26, 720 P.2d 702, 704 (1986).

Under Nevada Rule of Civil Procedure 19,

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) **in the person's absence complete relief cannot be accorded among those already parties**, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the persons absence may (I) as a practical matter **impair or impede the persons ability to protect that interest** or (ii) leave any of the persons already parties subject to a **substantial risk of incurring double, multiple, or otherwise inconsistent obligations** by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff."
>
> (b) If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the persons absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the persons absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(Emphasis added).

Here, the Helfstein Defendants are indispensable parties. Section I(A)(3) already described the facts and circumstances supporting this determination. In both equity and good conscience, Plaintiffs' action against the UniNet Defendants should be dismissed based on the absence of the Helfstein Defendants. It is grossly unjust and unfair to allow Plaintiffs to prosecute a case against the UniNet Defendants for an agreement they were never a party to. Furthermore, it is highly questionable to allow Plaintiffs to prosecute their case through the Asset Purchase Agreement, although they were never a party to it. The only party with privity to both the Consulting Agreement

and the Asset Purchase Agreement are the Helfstein Defendants. As such, they qualify as both "indispensable parties."

The absence of the Helfstein Defendants will substantially deprive the UniNet Defendants of a complete defense in this matter. As a practical matter, it impairs their ability to protect their interest and leave them susceptible to sustaining a substantial risk of receiving inconsistent findings that they are liable for an agreement they never assumed. The plain language of the Asset Purchase Agreement demonstrates that the UniNet Defendants are incurring massive prejudice as a result of Plaintiffs' frivolous action against them. Plaintiff had adequate remedy originally when they sued the Helfstein Defendants. It is a gross miscarriage of justice to allow Plaintiffs to continue prosecuting this case without joining the Helfstein Defendants as cross-claimants.

The UniNet Defendants are entitled to join the Helfstein Defendants in this matter. Under Nevada Rule of Civil Procedure 13(h), the Helfstein Defendants qualify as "indispensable parties" arising under the same facts and circumstances as claims presented in Plaintiffs' Complaint. Furthermore, the Helfstein Defendants are liable to the UniNet Defendants under theories of indemnification and contribution. The Asset Purchase Agreement contains a series of warranties that the UniNet Defendants were not assuming the Consulting Agreement. Gross injustice occurs if Plaintiffs can prosecute claims under the Consulting Agreement against the UniNet Defendants without joining the Helfstein Defendants as a party. Therefore, the UniNet Defendants respectfully request that this Honorable Court dismiss Plaintiffs' case if the Helfstein Defendants are not joined as indispensable parties.

III. CONCLUSION

The Motion should be denied in its entirety. The Helfstein Defendants are clearly indispensable parties to both the Consulting Agreement and the Asset Purchase Agreement. Their status as the only party with privity of contract to both agreements demonstrates how they are indispensable to Plaintiffs' case. Furthermore, the plain language of the Consulting Agreement does not contain an arbitration agreement and explicitly states that Nevada is the proper venue for disputes arising under the Consulting Agreement. As the Consulting Agreement is the controlling document upon which the Plaintiffs are prosecuting this litigation, those terms should control.

Furthermore, the Nevada Rules of Civil Procedure permit the UniNet Defendants to join the Helfstein Defendants in this action. Under Rule 13(h), the Helfstein Defendants qualify as indispensable parties who are participants in the same transactions arising under Plaintiffs' Complaint. Additionally, the Helfstein Defendants are obligated to indemnify the UniNet Defendants for any damages Plaintiffs have incurred under the Consulting Agreement. Those damages would be directly related to the active fault of the Helfstein Defendants. This allows for a complete shift of liability from the UniNet Defendants to the Helfstein Defendants.

Alternatively, if this Honorable Court finds that the Helfstein Defendants are entitled to arbitration and change the venue to New York, Plaintiffs' action against the UniNet Defendants should be stayed. In large part, the resolution of the Asset Purchase Agreement dispute is necessary to determine who is the liable party to Plaintiffs. Moreover, the Helfstein Defendants are indispensable parties to Plaintiffs' litigation against the UniNet Defendants. In that light, their absence justifies dismissal of Plaintiffs' case if they cannot be joined.

DATED this 5 day of May, 2010.

KRAVITZ, SCHNITZER SLOANE, & JOHNSON, CHTD.

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

CERTIFICATE OF FACSIMILE AND MAILING

I HEREBY CERTIFY that on this 6 day of May, 2010, I faxed and placed a copy of the foregoing **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S OPPOSITION TO CROSS DEFENDANTS', LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER TECHNOLOGIES, LLC.'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION, AND ALTERNATIVELY, COUNTER-MOTION TO STAY PROCEEDINGS PENDING ARBITRATION; MOTION TO DISMISS PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 19** in the United States mail, postage pre-paid, and addressed as follows:

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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 1, 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:

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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.

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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

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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

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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. **Termination:**

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 56383

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

Appellants,

vs.

UI SUPPLIES; UNINET IMAGING, INC.; AND NESTOR SAPORITI

Respondents.

Interlocutory Appeal from an Order Denying Appellant's Motion for Stay or Dismissal, and to Compel Arbitration
Eighth Judicial District Court, Clark County, Nevada
The Honorable Elizabeth Gonzalez, District Judge

Appellant's Appendix Volume I

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SUPREME COURT NO. 56383

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing APPELLANT'S BRIEF, APPELLANT'S APPENDIX, VOLUME I, AND APPELLANT'S APPENDIX, VOLUME II was served to those persons designated below on the 8TH day of November, 2010:

____x____ By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon fully paid, addressed as follows below.

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Byron L. Ames, Esq. Jonathan D. Blum, Esq. Tharpe & Howell 3425 Cliff Shadows Parkway, Suite 150 Las Vegas, NV 89129 Facsimile No. 702-562-3305 *Attorneys for Plaintiffs*	Robert Freedman, Esq. Tharpe & Howell LLP 15250 Ventura Blvd., 9th Floor Sherman Oaks, CA 91403 Facsimile No. 818-205-9944 *Attorneys for Plaintiffs*

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FILED

APR 3 4 5 PM '09

DISTRICT COURT

CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, 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.	Case No.: A587003 Department: V II ARBITRATION EXEMPTION CLAIMED: ACTION FOR DECLARATORY RELIEF, AND PROBABLE JURY VALUE IN EXCESS OF $50,000.00.

COMPLAINT

COME NOW Plaintiffs, IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION ("Plaintiffs") by and through the law firm of THARPE & HOWELL, and hereby sue the Defendants for damages arising out of a series of commercial transactions arising out of the transfer of property and other rights to Summit Technologies LLC. and their subsequent transfer of property and other rights to UI Supplies and Uninet Imaging, Inc.

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Parties:

Plaintiffs:

1. Ira and Edythe Seaver Family Trust ("Seaver Trust"), is organized pursuant to the laws of Nevada ("Seaver Trust"). Ira Seaver ("Ira Seaver") is a resident of the State of Nevada. Circle Consulting Corporation ("Circle Consulting") is a Nevada Corporation whose principal place of business is Clark County, Nevada.

Defendants:

2. Defendant Lewis Helfstein ("Lewis Helfstein") is a resident of New York. Defendant Madalyn Helfstein ("Madalyn Helfstein") is a resident of New York . Defendant Summit Laser Products Inc. ("Summit Laser") is a New York Corporation. Defendant Summit Technologies, LLC. ("Summit") is a New York Limited Liability Company. Defendant UI Supplies ("UI") is a New York Corporation. Defendant UniNet Imaging Inc.("Uninet") is a California Corporation with its principal place of business in Los Angeles County. Defendant Nestor Saporiti ("Saporiti") is a resident of the State of California.

3. That the true names, identities or capacities, whether individual, corporate, associate, or otherwise of the defendants, DOES 1 through 20, and ROE entities 21 through 40, are unknown to the Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs are informed and do believe, and thereupon alleges, that each of the Defendants designated herein as DOE is responsible in some manner for the events and happenings herein referred to. That Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendants DOES 1 through 20, and ROE entities 21 through 40, when same have been ascertained by Plaintiffs, together with appropriate charging allegations, to join in this action.

General Definitions:

4. Plaintiffs Ira Seaver and Circle Consulting are collectively referred to as the "Circle Consultants." Defendants Lewis Helfstein, Madalyn Helfstein and Summit Laser are collectively referred to as the "Helfstein Defendants." Defendants UI, Uninet, and Saporiti are collectively referred to as the "Uninet Defendants." Seaver Trust, Ira Seaver and Circle Consulting are

collectively referred to as the "Plaintiffs."

Agreements:

5. On or about August 12, 2004, the Helfstein Defendants entered into an agreement with Ira Seaver to form Summit with the Helfstein defendants maintaining management and control of Summit but obtaining the approval from Ira Seaver for decisions concerning the capital structure of Summit. In addition, Ira Seaver and/or the Seaver Trust was to receive $6,700 per month in distributions from Summit subject to a $55,000 pre-tax profit; that Summit would enter into a Consulting Agreement with Ira Seaver for an annual fee of $120,000 paid bi-monthly, with annual $5,000 increases. Summit Formation Agreement - Exhibit "1."

6. On or about September 1, 2004 the Helfstein Defendants entered into an Operating Agreement with, among others, the Seaver Trust for the operation of Summit as a New York Limited Liability Company. Summit Operating Agreement – Exhibit "2." The Operating Agreement provides for Summit's maintaining records and providing an accounting, including providing quarterly reports to its members. The Operating Agreement provides for obtaining 75% of its members' consent for changes in its capital structure. The Operating Agreement provides for distribution of profits and net cash flow – 65% to Summit Laser and 35% to The Seaver Trust. The Operating Agreement provides for consulting services and fees paid to Circle Consulting and Ira Seaver of $120,000 per year with $5,000 annual increases and health insurance. The Operating Agreement provides for the Helfstein defendants' management and control of Summit.

7. On or about September 1, 2004, a Consulting, Non-Competition and Confidentiality Agreement was entered into by Lewis Helfstein on behalf of Summit, and Ira Seaver, individually and as President of Circle Consulting. The consulting agreement included, among other things, payment of $125,000 per year paid monthly, with annual $5,000 increases; reimbursement of

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expenses, and; payments based on sale of laser printer chips. In exchange, Ira Seaver was to exclusively perform services at the request of Summit, and Ira Seaver was to comply with enumerated non-compete, non disclosure, and confidentiality obligations. Circle Consulting Agreement – Exhibit "3."

8. On or about March 27, 2007, an Agreement was entered into by the Helfstein Defendants on behalf of Summit, and Saporiti on behalf of UI and Uninet. Under the Agreement, the Uninet Defendants acquired certain assets and contract benefits, including rights and obligations to the Circle Consulting Agreement. Summit Asset Sale Agreement (unsigned copy) – Exhibit "4."

General Allegations:

9. The allegations in this complaint are based on the information and belief of the Plaintiffs. Plaintiffs reserve their rights to amend the complaint as additional information is obtained through investigation and discovery.

10. The Helfstein Defendants, Summit Laser, and Summit were acting on behalf of, and as agents of each other; they acted in the course and scope of authority granted to the others and, that such actions were ratified by each of them such that each should be bound by the actions of the others.

11. The Helfstein Defendants operated, managed and controlled Summit as their alter ego, by among other things, co-mingling of funds, facilities, equipment and other assets of Summit, creating and operating Summit as a mere shell, a disregard for corporate record-keeping, accounting and other formalities, such that there is a unity of interest and ownership between Summit and the Helfstein Defendants that the separate personalities do not really exist and an inequitable result will occur if the acts in question are treated as those of Summit alone.

12. The Uninet Defendants were acting on behalf of, and as agents of each other; they acted

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in the course and scope of authority granted to the others and, that such actions were ratified by each of them such that each should be bound by the actions of the others.

13. Saporiti operated, managed and controlled Uninet and UI as his alter ego, and that Uninet operated, managed and controlled UI as its alter ego, by among other things, co-mingling of funds, facilities, equipment and other assets of UI and Uninet, that UI and Uninet were mere shells, that there was a disregard for corporate record-keeping, accounting and other formalities such that there is a unity of interest and ownership between UI, Uninet and Saporiti such that the separate personalities do not really exist and an inequitable result will occur if the acts in question are treated as those of UI and/or Uninet alone.

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Specific Allegations:

14. In or about 2004 the Helfstein Defendants induced the Plaintiffs to enter into a series of contracts, including those set forth in this complaint, that effectively led to the Plaintiffs transferring all of their interests in and to National Data Center Inc., and Lasarstar Distribution Company Inc. to the Helfstein Defendants for the purpose of starting a new company, Summit Technologies, LLC. Summit was to be managed by the Helfstein Defendants. In exchange for entering into the aforementioned agreements, the Plaintiffs were to receive from Summit scheduled cash distributions, payments for consulting, and payments for the sale of computer chips. In addition, it was agreed that the Helfstein Defendants would not relinquish control of the company without the approval of the Plaintiffs' or the re-purchase of the Plaintiffs interest.

15. The Helfstein Defendants, while in control of Summit, operated it in a careless and negligent manner, and in a manner intended to benefit the Helfstein Defendants personally. This included their manipulating the activities of the company, as well its books and records. The Helfstein Defendants and defendant Summit failed and refused to pay, or cause Summit to pay, the

Plaintiffs any of the scheduled cash distributions or payment for sales of computer chips. In addition, The Helfstein Defendants and defendant Summit failed and refused to pay, or cause Summit to pay Circle Consulting pursuant to the terms of the Circle Consulting Agreement.

16. The Helfstein Defendants, without obtaining approval from the Plaintiffs, entered into the Summit Asset Sale Agreement wherein The Helfstein Defendants would sell, transfer and assign certain assets of Summit to the Uninet Defendants, including Uninet's assumption of certain contractual rights and obligations of Summit. In exchange, Uninet provided a cash payment and other consideration to Summit, and, entered into an agreement with Lew Helfstein whereby the Uninet Defendants would pay Lewis Helfstein as a consultant.

17. As part of the Summit Asset Sale Agreement, the Uninet Defendants, as successor in interest to Summit, assumed certain contractual rights and obligations of Summit, including the consulting agreement between Circle Consulting and Summit. The Uninet Defendants took actions and made representations to Ira Seaver and the trade that they obtained the rights to the Circle Consulting Agreement, and that Circle Consulting and Ira Seaver were bound by it. In reliance on the actions, representations and requests of the Uninet Defendants, Circle Consulting and Ira Seaver complied with their obligations under the Circle Consulting Agreement. Circle sent invoices and statements for work performed to the Uninet Defendants, who did not object, but simply failed to respond.

18. The Plaintiffs have fully performed and satisfied all of their obligations under the agreements entered into with the Defendants, including the Summit Formation Agreement, the Summit Operating Agreement and the Circle Consulting Agreement. However, the Defendants, and each of them, have breached the aforementioned agreements.

19. The Plaintiffs have suffered damages that include, among other things, their failure to

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receive distribution payments pursuant to the Summit Formation Agreement and Summit Operating Agreement, and failure to receive payments for consulting services or payment for sales of computer chips from either Summit or the Uninet Defendants.

20. The Helfstein Defendants breached the Summit Formation Agreement by failing, among other things, to pay, or to have Summit pay, Ira Seaver $10,000 per month for any assets that exceeded liabilities; failing to pay or have Summit pay Ira Seaver $6,700 per month in distributions from Summit subject to a $55,000 pre-tax profit; and, failing to pay or have Summit pay Circle Consulting the annual fee of $120,000 with annual $5,000 increases.

21. The Helfstein Defendants and Summit breached the Summit Operating Agreement by among other things, self dealing with respect to the assets and operations of Summit; failing to properly maintain books and records or to provide an accounting of its financial activities; failing to provide quarterly reports to its members; failing to obtain the consent of 75% of its members for the asset sale to the Uninet Defendants; failing to distribute money as provided for under the agreement; failing to pay the Circle Consultants $120,000 per year with $5,000 annual increases, failing to pay for computer chips that were sold, and failing to provide health insurance.

22. The Uninet Defendants, breached the Circle Consulting Agreement by, among other things, failing to pay the Circle Consultants $125,000 per year paid monthly, with annual $5,000 increases; reimbursement of expenses; and payments based on sale of laser printer chips.

23. Plaintiffs are informed and believe, and herein allege that all relevant times the Defendants, and each of them, acted with malice against Plaintiff's that justifies the imposition of punitive damages. This includes, but is not limited to, their acting with the intent to harm the Plaintiffs by, among other things, secretly and purposely depriving Plaintiffs of contract benefits in complete disregard for their contractual and other legal obligations to the Plaintiffs, as well as

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intentionally exploiting the Plaintiffs property, assets, relationship and name for their own benefit.

FIRST CAUSE OF ACTION

BREACH OF CIRCLE CONSULTING CONTRACT

(By Plaintiffs Circle Consulting and Ira Seaver against All Defendants)

24. Plaintiffs reincorporate paragraphs 1 through 23 as herein alleged.

25. Plaintiffs Circle Consulting and Ira Seaver entered into the Circle Consulting Agreement with the Helfstein Defendants and Summit. The Uninet Defendants, as successors in interest to Summit, assumed the rights and obligations to the Circle Consulting agreement.

26. Plaintiffs have performed all conditions, covenants and promises required on their part to be performed in accordance with the terms and conditions of the Circle Consulting Agreement and/or any non-performance is excused. This includes, but is not limited to, satisfying all terms and conditions of the Circle Consulting Agreement with respect to all of the Defendants.

27. The Helfstein Defendants and Summit, as well as their successors in interest the Uninet Defendants, breached the agreement by failing to make payments as provided for under the agreement. As a result of Defendants' breach, Plaintiffs have been damaged in an amount in excess of $10,000.00.

SECOND CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES FORMATION AGREEMENT

(By Plaintiff Ira Seaver and the Seaver Trust and against Defendants Lewis Helfstein and Madalyn Helfstein)

28. Plaintiffs reincorporate paragraphs 1 through 27 as herein alleged.

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29. Ira Seaver, on behalf of himself and the Seaver Trust entered into the Summit Formation Agreement with the Helfstein Defendants. Ira Seaver and the Seaver Trust performed all conditions, covenants and promises required on their part to be performed in accordance with the terms and conditions of the Summit Formation Agreement and/or any non-performance is excused.

30. The Helfstein Defendants breached the agreement by amongst other things, failing to seek authorization from Summit's members for the Summit asset sale to Uninet, failing to make payments and/or causing Summit to make payments as provided for under the Summit Formation Agreement. As a result of Defendants' breach, Plaintiffs have been damaged in an amount in excess of $10,000.00.

THIRD CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES OPERATING AGREEMENT

(By all Plaintiffs and against the Helfstein Defendants and Summit.)

31. Plaintiffs reincorporate paragraphs 1 through 30 as herein alleged.

32. The Plaintiffs entered into the Summit Operating Agreement with the Helfstein Defendants and Summit. The Plaintiffs have performed all conditions, covenants and promises required on their part to be performed in accordance with the terms and conditions of the Summit Operating Agreement and/or any non-performance is excused.

33. The Helfstein Defendants and Summit breached the agreement by failing to perform under the agreement, including, but not limited to the making of payments to the Plaintiffs as provided for under the agreement. In addition, neither Summit nor the Helfstein Defendants obtained authorization from Ira Seaver for changes to the capital structure of Summit. As a result of Defendants' breach, Plaintiffs have been damaged in an amount in excess of $10,000.00.

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FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(By Plaintiffs Ira Seaver and the Seaver Trust against the Helfstein Defendants)

34. Plaintiffs reincorporate paragraphs 1 through 33 as herein alleged.

35. As a member and manager of Summit, Defendant Lew Helfstein and the Helfstein Defendants had a fiduciary duty toward other members of Summit, including Ira Seaver and the Seaver Trust. This duty includes, amongst other things, a duty to manage and operate Summit in the best interests of all of its members; to operate the company in a professional and non-negligent manner; to provide full and complete and regular accountings; and to pay the company's obligations to its other members pursuant to the Summit Operating Agreement.

36. Plaintiff is informed and believes and herein alleges that amongst other things, Lew Helfstein breached his fiduciary duties to Summit's members, including Ira Seaver, by failing to manage and operate Summit in the best interest of all of its members, including Ira Seaver; by failing to operate the company in a professional and non-negligent manner; by failing to provide full and complete and regular accountings; and by failing to pay the company's obligations to its other members pursuant to the Summit Operating Agreement. As a result of Lew Helfstein and the Helfstein Defendants breach of their fiduciary obligation, Ira Seaver has been damaged in an amount in excess of $10,000.00.

FIFTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

(By Plaintiffs Circle Consulting and Ira Seaver against the Uninet Defendants)

37. Plaintiffs reincorporate paragraphs 1 through 36 as herein alleged.

38. The Uninet Defendants made express and implied representations to induce Circle

Consulting and Ira Seaver to believe that the Uninet Defendants has acquired rights to the consulting agreement between Circle Consulting and Summit. This included, but was not limited to, that Ira Seaver was to make himself available to consult with the Uninet Defendants, to refrain from competing or taking actions adverse to the Uninet Defendants' interest, and that Circle Consulting was to comply with the non-compete and confidentiality provisions of the Circle Consulting Agreement.

39. Circle Consulting and Ira Seaver, in reliance on the express and implied representations of the Uninet Defendants, fully complied with their obligations under the Circle Consulting Agreement. However, the Uninet Defendants failed and refused to compensate Circle Consulting and Ira Seaver as required under the Circle Consulting Agreement. As a result of the above actions by the Uninet Defendants, Plaintiffs Circle Consulting and Ira Seaver have been damaged in an amount in excess of $10,000.00.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

(By all Plaintiffs against the Uninet Defendants)

40. Plaintiffs reincorporate paragraphs 1 through 39 as herein alleged.

41. The Uninet Defendants obtained a variety of goods, services, rights and other property directly and indirectly from the Plaintiffs for which the Plaintiffs were not compensated for, but which the Defendants used, sold and/or otherwise exploited for their own interests. This includes, but is not limited to the Uninet Defendants using intellectual property of the Plaintiffs, as well as capitalizing on their relationship with the Plaintiffs and their use of Plaintiffs' property.

42. No attempt has been made by the Uninet Defendants to compensate the Plaintiffs.

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As a result, the Uninet Defendants have been unjustly enriched. As a result of the above actions by the Uninet Defendants, Plaintiffs have been damaged in an amount in excess of $10,000.00.

SEVENTH CAUSE OF ACTION

ACCOUNTING

(By the Seaver Trust and Ira Seaver against Summit and the Helfstein Defendants)

43. Plaintiffs reincorporate paragraphs 1 through 42 as herein alleged.

44. A fiduciary relationship existed between the Seaver Trust and Ira Seaver, and Summit and the Helfstein Defendants. This relationship arouse out of, among other things, Defendants' membership in, and management responsibilities of Summit which required them to fully account for Summit's activities, assets, and its financial condition.

45. Summit and the Helfstein Defendants breached their fiduciary obligations by not operating and managing Summit properly, and by failing to properly account for and report on its financial conditions. As a result, a full and complete accounting of its activities is required in order to ascertain its true financial condition.

EIGHTH CAUSE OF ACTION

DECLRATORY RELIEF

(By Plaintiffs against All Defendants)

46. Plaintiffs reincorporate paragraphs 1 through 45 herein alleged.

47. An actual controversy exists amongst and between all of the Plaintiffs and all of the Defendants (the "Parties") with respect to the rights, duties and obligations of the Parties under the Summit Operating Agreement, the Circle Consulting Agreement, and the Summit Asset Sale Agreement. A declaration of rights and obligations is necessary to eliminate controversies and lack of certainty.

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NINTH CAUSE OF ACTION

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By Plaintiffs against All Defendants)

48. Plaintiffs reincorporate paragraphs 1 through 47 herein alleged.

49. That the Implied Covenant of Good Faith and Fair Dealing exists in every Nevada contract.

50. That the Implied Covenant of Good Faith and Fair Dealing forbids arbitrary, unfair acts by one party that disadvantage the other.

51. That the acts of the Defendants have been arbitrary and unfair.

52. That the acts of the Defendants have disadvantaged the Plaintiffs.

53. That the Plaintiffs are entitled to damages in excess of $10,000.00.

TENTH CAUSE OF ACTION

ALTER EGO

(By Plaintiffs against All Defendants)

54. Plaintiffs reincorporate paragraphs 1 through 53 herein alleged.

55. That the Helfstein Defendants and the Summit Defendant are influenced and governed by each other and are so intertwined with one another as to be factually and legally indistinguishable.

56. That the Helfstein Defendants and the Summit Defendant have such a unity of interest and ownership in one another, that they are inseperable from each other.

57. That under the circumstances, the adherence to a fiction of separate entities would sanction fraud and/or promote injustice.

58. That the Saporiti Defendant and the Uninet and UI Defendants are influenced and

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governed by each other and are so intertwined with one another as to be factually and legally indistinguishable.

59. That the Saporiti Defendant and the Uninet and UI Defendants have such a unity of interest and ownership in one another, that they are inseparable from each other.

60. That under the circumstances, the adherence to a fiction of separate entities would sanction fraud and/or promote injustice.

61. That the Plaintiffs are entitled to damages in excess of $10,000.00.

RELIEF REQUESTED

FIRST CAUSE OF ACTION – BREACH OF CIRCLE CONSULTING AGREEMENT

1. Payment of fees due under the agreement.

2. Payment of pre-judgment interest.

3. Payment of contractual attorney fees and costs.

SECOND CAUSE OF ACTION – BREACH OF SUMMIT FORMATION AGREEMENT

1. Payment of compensation due under the Summit Operating Agreement.

2. Payment for the sale of computer chips.

3. Payment under the Circle Consulting Agreement.

4. General damages.

THIRD CAUSE OF ACTION - BREACH OF THE SUMMIT TECHNOLOGIES OPERATING AGREEMENT

1. Payment of compensation due under the Summit Operating Agreement.

2. Payment for the sale of computer chips.

3. Payment under the Circle Consulting Agreement.

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4. General damages.

5. Attorney fees and costs

FOURTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

1. Payment of compensation due under the Summit Operating Agreement.

2. Payment for the sale of computer chips.

3. Payment under the Circle Consulting Agreement.

4. General damages.

5. Punitive damages.

FIFTH CAUSE OF ACTION - PROMISSORY ESTOPPEL

1. Payment of fees due under the Circle Consulting Agreement

SIXTH CAUSE OF ACTION - UNJUST ENRICHMENT

1. An Accounting.

2. Appraisal.

3. Payment of value received.

SEVENTH CAUSE OF ACTION - ACCOUNTING

1. An Accounting of the financial books and records of Summit.

EIGHTH CAUSE OF ACTION - DECLARATORY RELIEF

1. A declaration of the rights and duties of Circle Consulting and Ira Seaver as well as all of the Defendants with respect to the Circle Consulting Agreement.

2. A declaration of the rights, duties and obligations of the Helfstein Defendants and Summit under the Summit Operating Agreement.

NINTH CAUSE OF ACTION - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1. General Damages.

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2. Special Damages.

3. Payment of Attorney Fees and Costs.

TENTH CAUSE OF ACTION - ALTER EGO

1. A declaration that the entity Defendants are the Alter Ego of the individuals that control them.

FOR ALL CAUSES OF ACTION

1. Attorney fees and costs as provided for by contract and statutes;

2. Pre-judgment interest;

3. Any other relief the Court deems appropriate.

DATED this 2nd day of April, 2009

THARPE AND HOWELL

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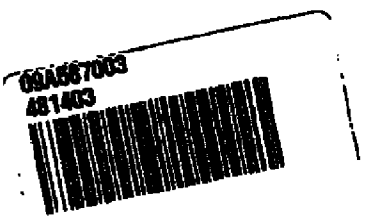
FILED
OCT 23 2009
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION Plaintiff, vs. 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.	Case No. A587003 Dept. No. XI **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S ANSWER AND COUNTERCLAIM TO COMPLAINT** Date of Hearing: Time of Hearing:
UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI Counter-Claimants vs. IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200. Counter-Defendants	



RECEIVED
OCT 28 2009
CLERK OF THE COURT

COMES NOW, DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI, ("Defendants"), by and through their attorneys, the law firm of Kravitz, Schnitzer, Sloane & Johnson, Chtd., and hereby submit their Answer to Complaint ("Answer") as follows:

1. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 1.

2. Defendants admit that Defendant UI Supplies is a New York Corporation; that Defendant UniNet Imaging Inc. is a California Corporation with its principal place of business in Los Angeles County; and that Defendant Nestor Saporiti is a resident of the State of California, but deny the remaining allegations contained in Paragraph 2.

3. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 3.

General Definitions:

4. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 4.

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Agreements:

5. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 5.

6. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 5.

7. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 7.

8. Defendants admit that an Agreement was entered into by the Helfstein Defendants on behalf of Summit, and Saporiti on behalf of UI and Uninet, but deny the remaining allegations contained in Paragraph 8.

General Allegations:

9. Defendants deny each and every allegation contained in Paragraph 9.

10. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 10.

11. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 11.

12. Defendants deny each and every allegation contained in Paragraph 12.

13. Defendants deny each and every allegation contained in Paragraph 13.

Specific Allegations:

14. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 14.

15. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 15.

16. Defendants deny each and every allegation contained in Paragraph 16.

17. Defendants deny each and every allegation contained in Paragraph 17.

18. Defendants deny each and every allegation contained in Paragraph 18.

19. Defendants deny each and every allegation contained in Paragraph 19.

20. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 20.

21. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 21.

22. Defendants deny each and every allegation contained in Paragraph 22.

23. Defendants deny each and every allegation contained in Paragraph 23.

FIRST CAUSE OF ACTION

BREACH OF CIRCLE CONSULTING CONTRACT

24. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 23 as though fully set forth herein.

25. Defendants deny each and every allegation contained in Paragraph 25.

26. Defendants deny each and every allegation contained in Paragraph 26.

27. Defendants deny each and every allegation contained in Paragraph 27.

SECOND CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES FORMATION AGREEMENT

28. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 27 as though fully set forth herein.

29. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 29.

30. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 30.

THIRD CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES OPERATING AGREEMENT

31. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 30 as though fully set forth herein.

32. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 32.

33. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 33.

FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

34. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 33 as though fully set forth herein.

35. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 35.

36. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 36.

FIFTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

37. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 36 as though fully set forth herein.

38. Defendants deny each and every allegation contained in Paragraph 38.

39. Defendants deny each and every allegation contained in Paragraph 39.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

(By all Plaintiffs against the Uninet Defendants)

40. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 39 as though fully set forth herein.

41. Defendants deny each and every allegation contained in Paragraph 41.

42. Defendants deny each and every allegation contained in Paragraph 42.

SEVENTH CAUSE OF ACTION

ACCOUNTING

43. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 42 as though fully set forth herein.

44. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 44.

45. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 45.

EIGHTH CAUSE OF ACTION

DECLARATORY RELIEF

(By Plaintiffs against All Defendants)

46. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 45 as though fully set forth herein.

47. Defendants deny each and every allegation contained in Paragraph 47.

NINTH CAUSE OF ACTION

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By Plaintiffs against All Defendants)

48. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 47 as though fully set forth herein.

49. Defendants admit each and every allegation contained in Paragraph 49.

50. Defendants admit each and every allegation contained in Paragraph 50.

51. Defendants deny each and every allegation contained in Paragraph 51.

52. Defendants deny each and every allegation contained in Paragraph 52.

53. Defendants deny each and every allegation contained in Paragraph 53.

TENTH CAUSE OF ACTION

ALTER EGO

(By Plaintiffs against All Defendants)

54. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 53 as though fully set forth herein.

55. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 55.

56. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 56.

57. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 57.

58. Defendants deny each and every allegation contained in Paragraph 58.

59. Defendants deny each and every allegation contained in Paragraph 59.

60. Defendants deny each and every allegation contained in Paragraph 60.

61. Defendants deny each and every allegation contained in Paragraph 61.

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AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' Compliant fails to state a claim for which relief may be granted.

Second Affirmative Defense

Plaintiffs, through its acts and omissions, has waived its right to prosecute its claims against Defendants.

Third Affirmative Defense

Plaintiffs, by and through their acts and omissions, are estopped from prosecuting their claims against Defendants.

Fourth Affirmative Defense

Plaintiffs' claims are barred by the Doctrine of Novation.

Fifth Affirmative Defense

Plaintiffs' claims are barred by the Doctrine of Accord and Satisfaction.

Sixth Affirmative Defense

Defendants allege that the Complaint and each and every cause of action stated therein fails to state facts sufficient to constitute a cause of action, or any cause of action, as against Defendants.

Seventh Affirmative Defense

Defendants are informed and believe and thereon allege that Plaintiffs' alleged damages, if any, were and are, wholly or partially, contributed or proximately caused by Plaintiffs' recklessness and negligence, thus barring or diminishing Plaintiffs' recovery herein according to principles of comparative negligence.

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Eighth Affirmative Defense

Defendants are informed and believe and thereon allege that the Complaint and each and every cause of action contained therein is barred by the applicable Statutes of Repose, such that the Complaint and each and every cause of action contained therein is time-barred.

Ninth Affirmative Defense

Defendants are informed and believe and thereon allege that as to each alleged cause of action, Plaintiffs have failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

Tenth Affirmative Defense

Defendants are informed and believe and thereon allege that the Complaint and each and every cause of action contained therein is barred by the applicable Statutes of Limitation.

Eleventh Affirmative Defense

Defendants are informed and believe and on that basis allege that Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

Twelfth Affirmative Defense

Defendants are informed and believe and thereon allege that the injuries and damages of which Plaintiffs complain were proximately caused by, or contributed to, by the acts of other Third-Party Defendants, Defendants, persons and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiffs complain, thus barring Plaintiffs from any recovery against

Defendants.

Thirteenth Affirmative Defense

It has been necessary for Defendants to retain the services of an attorney to defend this action and it is entitled to a reasonable sum as and for attorneys' fees.

Fourteenth Affirmative Defense

Defendants are informed and believe and thereon allege that the claims of Plaintiffs are reduced, modified and/or barred by the Doctrine of Unclean Hands.

Fifteenth Affirmative Defense

Defendants are informed and believe that the Plaintiffs lack standing to assert one or more of the claims made in its Complaint, such that it may not recover damages for said claims, thereby barring or diminishing Plaintiffs' recovery herein.

Sixteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' claims are barred by the doctrine of laches.

Seventeenth Affirmative Defense

In further answering, Defendants state that Plaintiffs fail to state a claim upon which relief may be granted.

Eighteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of lack of jurisdiction over the subject matter of the action.

Nineteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of lack of jurisdiction over the person.

Twentieth Affirmative Defense

In further answering, Defendants state that venue is improper.

Twenty-First Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of insufficiency of process.

Twenty-Second Affirmative Defense

In further answering, Defendants state that Plaintiffs' complaint is wholly insubstantial, frivolous, and not advanced in good faith.

Twenty-Third Affirmative Defense

In further answering, Defendants state that the alleged agreement is contrary to the statue of frauds, and therefore unenforceable.

Twenty-Fourth Affirmative Defense

In further answering, Defendants state that Plaintiffs waived any right to payment they may have had under the alleged agreement.

Twenty-Fifth Affirmative Defense

In further answering, Defendants state that if there was an agreement between Plaintiffs and Defendants, Plaintiffs breached the agreement, therefore, Plaintiffs are not entitled to prevail in this action.

Twenty-Sixth Affirmative Defense

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for responding party after reasonable inquiry upon the filing of the answering Defendants' Answer to Plaintiffs' Complaint, and therefore Defendants reserve the right to amend their Answer

to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, These Answering Defendants request for relief and pray for judgment against Plaintiffs, and each of them, as follows:

a. That Plaintiffs take nothing by way of the Complaint on file herein;

b. For reasonable attorney's fees and costs of suit incurred herein; and

c. Such other and further relief the Court may deem just and proper.

COUNTER CLAIM

COMES NOW, COUNTER-CLAIMANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI, ("Counter-Claimants"), by and through their attorneys, the law firm of Kravitz, Schnitzer, Sloane & Johnson, Chtd., and hereby files this Counter-Claim as follows against COUNTER-DEFENDANTS IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION:

1. At all times relevant herein, Counter-Defendants were and are residents of Clark County, Nevada.

2. At all times relevant herein, NESTOR SAPORITI was and is a resident of California, UI SUPPLIES is and was a New York Corporation, and UNINET IMAGING is and was a California Corporation.

3. Upon information and belief, CIRCLE CONSULTING CORPORATION entered into a consulting agreement on or about September 1, 2004, for the exclusive performance of services at the request for Summit.

4. Upon information and belief, the consulting agreement contained a provision stating that Ira Seaver was to exclusively perform services at the request of Summit and required to honor restrictive covenants related to non-competition, non-

disclosure of non-public information and trade secrets, and confidentiality.

5. However, this consulting agreement contained an express provision that it was unassignable. A waiver of this provision required a written writing by Circle Consulting, through Ira Seaver, and Summit.

6. No written modification of the anti-assignment provision of the consulting agreement was executed.

7. Thus, the consulting agreement is and was unassignable based on its plain language.

8. IRA SEAVER and CIRCLE CONSULTING violated the consulting agreement through the actions of IRA SEAVER through IRA SEAVER's engagement of activities that violated the restrictive covenants of the consulting agreement.

9. Counter-Defendants do not have a right to assert claims against Counter-Plaintiffs as a matter of law since the consulting agreement is unassignable. However, in the alternative, assuming that the consulting agreement is assignable, Counter-Defendants breached that agreement and engaged in deceptive trade practices.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

10. The consulting agreement provided various obligations and terms of dealings between the Helfstein Defendants (defined by Counter-Defendants' Complaint) and Counter-Defendants.

11. Counter-Defendants breached the terms of the consulting agreement by IRA SEAVER's action and conduct.

12. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at

trial.

13. In order to prosecute this action, Counter-Claimants had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the consulting agreement.

SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

14. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 13, inclusive, as if fully set forth at this point and incorporates them herein by reference.

15. Each contract in Nevada carries with it the duty of good faith and fair dealing.

16. As a result of Counter-Defendants' actions, they breached their obligations of good faith and fair dealing toward Counter-Claimants with respect to the consulting agreement.

17. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

18. As a result of Counter-Defendants' breach of good faith and fair dealing, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the consulting agreement.

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THIRD CLAIM FOR RELIEF
(Deceptive Trade Practices - Nev. Rev. Stat. § 598.0915)

19. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 18, inclusive, as if fully set forth at this point and incorporates them herein by reference.

20. Upon information and belief, in the course of their business, Counter-Defendants knowingly made false representations as to an affiliation, connection, and/or association with Counter-Claimants or Summit.

21. Counter-Defendants' affirmative representation to the public at large was to take advantage of Counter-Claimants' or Summit's good will established throughout the years constituted deceptive trade practices.

22. Unless Counter-Defendants are enjoined and prohibitive from engaging in such deceptive trade practices, Counter-Defendants will continue his unlawful activities.

23. As a direct and proximate result of Counter-Defendants' engagement and deceptive trade practices, Counter-Claimants have suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and good will.

24. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

25. In order to prosecute this action, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending against Counter-Defendants' deceptive trade practices.

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FOURTH CLAIM FOR RELIEF
(Misappropriation of Trade Secrets - Nev. Rev. Stat. § 600A.303)

26. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 25, inclusively, as if fully set forth at this point and incorporates them herein by reference.

27. IRA SEAVER, as a consulting for the Helfstein Defendants, obtained proprietary information ("Information") related to the operation of that business.

28. This Information is not known outside of the Helfstein Defendants' business and is difficult to acquire by a third party.

29. The Information is confidential and secret.

30. The Helfstein Defendants guarded the secrecy of this Information.

31. IRA SEAVER had access to the Helfstein Defendants Trade Secrets through his knowledge as the corporate consultant, which entails, among other things, the Helfstein Defendants' customers' buying habits, internal operations, operations unknown to their competitors, and other information related to the operation of the Helfstein Defendants' business.

32. Counter-Defendants attempt to use the Helfstein Defendants' Trade Secrets for an economic advantage.

33. Unless Counter-Defendants' are enjoined and prohibited from engaging in such misappropriation of Trade Secrets, they will continue this activity.

34. As a direct and proximate result of IRA SEAVER'S engagement and misappropriation of Trade Secrets, Counter-Claimants have suffered, and will continue to suffer, monetary losses and irreparable injury to their business, reputation, and good will.

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35. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

36. In order to prosecute this action, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending against Mr. Finkel's misappropriation of Trade Secrets pursuant to Nev. Rev. Stat. § 600A.060.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

37. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 36, inclusive, as if fully set forth at this point and incorporates them herein by reference.

38. Counter-Defendants have a contractual duty to, among other things, deal honestly, fairly, confidently, and professionally with Counter-Claimants. Counter-Defendants also have a duty to comply with the consulting agreement and their dealings with Counter-Claimants.

39. Counter-Defendants refused to comply with the consulting agreement and perform as specified.

40. Counter-Defendants breached and/or failed and refused to comply with their aforementioned duties and obligations under the consulting agreement. As such, Counter-Defendants have been unjustly enriched.

41. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

42. In order to prosecute this action, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Agreement.

WHEREFORE, Counter-Claimants pray for judgment against Counter-Defendants as follows:

1. For this Court to declare the consulting agreement terminated based on IRA SEAVER'S default of his obligations.

2. For this Court to declare that Counter-Defendants are in material breach for their failure of the consulting agreement based IRA SEAVER'S violations of the restrictive covenants.

3. For breach of contract damages as requested above;

4. For damages associated with breach of the covenant of good faith and fair dealings as stated above;

5. For damages associated with deceptive trade practices as defined by Nevada Revised Statute § 598.0915 as stated above;

6. For damages associated with misappropriation of trade secrets as defined by Nevada Revised Statute § 600A as stated above;

7. For damages associated with unjust enrichment as stated above;

8. For attorney's fees and costs incurred herein;

9. For exemplary damages; and

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10. For such other and further relief as the Court may deem just and proper.

DATED this 21 day of October, 2009.

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 FACSIMILE AND MAILING

I HEREBY CERTIFY that on this 23rd day of October, 2009, I faxed and placed a copy of the foregoing **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S ANSWER AND COUNTERCLAIM TO COMPLAINT** in the United States mail, postage pre-paid, and addressed as follows:

Jeffrey R. Albregts, Esq. (NBN 0066)
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
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jalbregts@nevadafirm.com
Attorneys for Plaintiffs

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Attorneys for Plaintiffs

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

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VDSM
JEFFREY R. ALBREGTS, ESQ. (NBN 0066)
BRIAN G. ANDERSON, ESQ. (NBN 10500)
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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

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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.
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Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

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Co-Counsel for Plaintiffs

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

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

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AANCC&AC
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Telephone: (702) 222-4142
Facsimile: (702) 362-2203
Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION Plaintiff, vs. 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. UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI Counter-Claimants vs. IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION; and ROE CORPORATIONS 101-200. Counter-Defendants	Case No. A587003 Dept. No. XI **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S FIRST AMENDED ANSWER TO COMPLAINT, COUNTERCLAIM, AND CROSS CLAIM**

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI Cross-Claimants vs. LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC, Cross-Defendants	**DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S FIRST AMENDED ANSWER TO COMPLAINT, COUNTERCLAIM, AND CROSS CLAIM**

COMES NOW, DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI, ("Defendants"), by and through their attorneys, the law firm of Kravitz, Schnitzer, Sloane & Johnson, Chtd., and hereby submit their Answer to Complaint ("Answer") as follows:

1. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 1.

2. Defendants admit that Defendant UI Supplies is a New York Corporation; that Defendant UniNet Imaging Inc. is a California Corporation with its principal place of business in Los Angeles County; and that Defendant Nestor Saporiti is a resident of the State of California, but deny the remaining allegations contained in Paragraph 2.

3. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 3.

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General Definitions:

4. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 4.

Agreements:

5. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 5.

6. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 5.

7. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 7.

8. Defendants admit that an Agreement was entered into by the Helfstein Defendants on behalf of Summit, and Saporiti on behalf of UI and Uninet, but deny the remaining allegations contained in Paragraph 8.

General Allegations:

9. Defendants deny each and every allegation contained in Paragraph 9.

10. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 10.

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11. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 11.

12. Defendants deny each and every allegation contained in Paragraph 12.

13. Defendants deny each and every allegation contained in Paragraph 13.

Specific Allegations:

14. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 14.

15. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 15.

16. Defendants deny each and every allegation contained in Paragraph 16.

17. Defendants deny each and every allegation contained in Paragraph 17.

18. Defendants deny each and every allegation contained in Paragraph 18.

19. Defendants deny each and every allegation contained in Paragraph 19.

20. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 20.

21. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 21.

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22. Defendants deny each and every allegation contained in Paragraph 22.

23. Defendants deny each and every allegation contained in Paragraph 23.

FIRST CAUSE OF ACTION

BREACH OF CIRCLE CONSULTING CONTRACT

24. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 23 as though fully set forth herein.

25. Defendants deny each and every allegation contained in Paragraph 25.

26. Defendants deny each and every allegation contained in Paragraph 26.

27. Defendants deny each and every allegation contained in Paragraph 27.

SECOND CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES FORMATION AGREEMENT

28. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 27 as though fully set forth herein.

29. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 29.

30. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 30.

THIRD CAUSE OF ACTION

BREACH OF SUMMIT TECHNOLOGIES OPERATING AGREEMENT

31. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 30 as though fully set forth herein.

32. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 32.

33. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 33.

FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

34. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 33 as though fully set forth herein.

35. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 35.

36. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 36.

FIFTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

37. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 36 as though fully set forth herein.

38. Defendants deny each and every allegation contained in Paragraph 38.

39. Defendants deny each and every allegation contained in Paragraph 39.

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SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

(By all Plaintiffs against the Uninet Defendants)

40. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 39 as though fully set forth herein.

41. Defendants deny each and every allegation contained in Paragraph 41.

42. Defendants deny each and every allegation contained in Paragraph 42.

SEVENTH CAUSE OF ACTION

ACCOUNTING

43. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 42 as though fully set forth herein.

44. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 44.

45. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 45.

EIGHTH CAUSE OF ACTION

DECLARATORY RELIEF

(By Plaintiffs against All Defendants)

46. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 45 as though fully set forth herein.

47. Defendants deny each and every allegation contained in Paragraph 47.

NINTH CAUSE OF ACTION

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By Plaintiffs against All Defendants)

48. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 47 as though fully set forth herein.

49. Defendants admit each and every allegation contained in Paragraph 49.

50. Defendants admit each and every allegation contained in Paragraph 50.

51. Defendants deny each and every allegation contained in Paragraph 51.

52. Defendants deny each and every allegation contained in Paragraph 52.

53. Defendants deny each and every allegation contained in Paragraph 53.

TENTH CAUSE OF ACTION

ALTER EGO

(By Plaintiffs against All Defendants)

54. Defendants reassert and reallege all of their answers contained in Paragraphs 1 through 53 as though fully set forth herein.

55. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 55.

56. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon said ground deny each and every allegation contained in Paragraph 56.

57. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained herein and upon

said ground deny each and every allegation contained in Paragraph 57.

58. Defendants deny each and every allegation contained in Paragraph 58.

59. Defendants deny each and every allegation contained in Paragraph 59.

60. Defendants deny each and every allegation contained in Paragraph 60.

61. Defendants deny each and every allegation contained in Paragraph 61.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' Compliant fails to state a claim for which relief may be granted.

Second Affirmative Defense

Plaintiffs, through its acts and omissions, have waived its right to prosecute its claims against Defendants.

Third Affirmative Defense

Plaintiffs, by and through their acts and omissions, are estopped from prosecuting their claims against Defendants.

Fourth Affirmative Defense

Plaintiffs' claims are barred by the Doctrine of Novation.

Fifth Affirmative Defense

Plaintiffs' claims are barred by the Doctrine of Accord and Satisfaction.

Sixth Affirmative Defense

Defendants allege that the Complaint and each and every cause of action stated therein fails to state facts sufficient to constitute a cause of action, or any cause of action, as against Defendants.

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Seventh Affirmative Defense

Defendants are informed and believe and thereon allege that Plaintiffs' alleged damages, if any, were and are, wholly or partially, contributed or proximately caused by Plaintiffs' recklessness and negligence, thus barring or diminishing Plaintiffs' recovery herein according to principles of comparative negligence.

Eighth Affirmative Defense

Defendants are informed and believe and thereon allege that the Complaint and each and every cause of action contained therein is barred by the applicable Statutes of Repose, such that the Complaint and each and every cause of action contained therein is time-barred.

Ninth Affirmative Defense

Defendants are informed and believe and thereon allege that as to each alleged cause of action, Plaintiffs have failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

Tenth Affirmative Defense

Defendants are informed and believe and thereon allege that the Complaint and each and every cause of action contained therein is barred by the applicable Statutes of Limitation.

Eleventh Affirmative Defense

Defendants are informed and believe and on that basis allege that Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

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Twelfth Affirmative Defense

Defendants are informed and believe and thereon allege that the injuries and damages of which Plaintiffs complain were proximately caused by, or contributed to, by the acts of other Third-Party Defendants, Defendants, persons and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiffs complain, thus barring Plaintiffs from any recovery against Defendants.

Thirteenth Affirmative Defense

It has been necessary for Defendants to retain the services of an attorney to defend this action and it is entitled to a reasonable sum as and for attorneys' fees.

Fourteenth Affirmative Defense

Defendants are informed and believe and thereon allege that the claims of Plaintiffs are reduced, modified and/or barred by the Doctrine of Unclean Hands.

Fifteenth Affirmative Defense

Defendants are informed and believe that the Plaintiffs lack standing to assert one or more of the claims made in its Complaint, such that it may not recover damages for said claims, thereby barring or diminishing Plaintiffs' recovery herein.

Sixteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' claims are barred by the doctrine of laches.

Seventeenth Affirmative Defense

In further answering, Defendants state that Plaintiffs fail to state a claim upon which relief may be granted.

Eighteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of lack of jurisdiction over the subject matter of the action.

Nineteenth Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of lack of jurisdiction over the person.

Twentieth Affirmative Defense

In further answering, Defendants state that venue is improper.

Twenty-First Affirmative Defense

In further answering, Defendants state that Plaintiffs' Claims are barred because of insufficiency of process.

Twenty-Second Affirmative Defense

In further answering, Defendants state that Plaintiffs' complaint is wholly insubstantial, frivolous, and not advanced in good faith.

Twenty-Third Affirmative Defense

In further answering, Defendants state that the alleged agreement is contrary to the statue of frauds, and therefore unenforceable.

Twenty-Fourth Affirmative Defense

In further answering, Defendants state that Plaintiffs waived any right to payment they may have had under the alleged agreement.

Twenty-Fifth Affirmative Defense

In further answering, Defendants state that if there was an agreement between Plaintiffs and Defendants, Plaintiffs breached the agreement, therefore, Plaintiffs are not

entitled to prevail in this action.

Twenty-Sixth Affirmative Defense

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for responding party after reasonable inquiry upon the filing of the answering Defendants' Answer to Plaintiffs' Complaint, and therefore Defendants reserve the right to amend their Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, These Answering Defendants request for relief and pray for judgment against Plaintiffs, and each of them, as follows:

a. That Plaintiffs take nothing by way of the Complaint on file herein;

b. For reasonable attorneys' fees and costs of suit incurred herein; and

c. Such other and further relief the Court may deem just and proper.

COUNTER CLAIM

COMES NOW, Counter-Claimants UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI, ("Counter-Claimants"), by and through their attorneys, the law firm of Kravitz, Schnitzer, Sloane & Johnson, Chtd., and hereby files this Counter-Claim as follows against Counter-Defendants IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION:

1. At all times relevant herein, IRA AND EDYTHE SEAVER FAMILY TRUST ("Seaver Trust"), is organized pursuant to the laws of the State of Nevada. IRA SEAVER ("Ira Seaver") is a resident of the State of Nevada. CIRCLE CONSULTING CORPORATION ("Circle Consulting") is a Nevada Corporation whose principal place of business is Clark County, Nevada (collectively "Counter-Defendants").

2. At all times relevant herein, NESTOR SAPORITI was and is a resident of California, UI SUPPLIES is and was a New York Corporation, and UNINET IMAGING is and was a California Corporation (collectively "Counter-Claimants").

3. Upon information and belief, Circle Consulting entered into a consulting agreement on or about September 1, 2004, for the exclusive performance of services at the request for Summit Technologies LLC ("Summit") (the "Consulting Agreement).

4. Upon information and belief, the Consulting Agreement contained a provision stating that Ira Seaver was to exclusively perform services at the request of Summit and required to honor restrictive covenants related to non-competition, non-disclosure of non-public information and trade secrets, and confidentiality.

5. However, this Consulting Agreement contained an express provision that it was unassignable. A waiver of this provision required a written writing by Circle Consulting, through Ira Seaver, and Summit.

6. No written modification of the anti-assignment provision of the Consulting Agreement was executed.

7. Thus, the Consulting Agreement is and was unassignable based on its plain language.

8. Ira Seaver and Circle Consulting violated the Consulting Agreement through the actions of Ira Seaver through Ira Seaver's engagement of activities that violated the restrictive covenants of the Consulting Agreement.

9. Counter-Defendants do not have a right to assert claims against Counter-Plaintiffs as a matter of law since the Consulting Agreement is unassignable. However, in the alternative, assuming that the Consulting Agreement is assignable, Counter-

Defendants breached that agreement.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

10. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 9, inclusive, as if fully set forth at this point and incorporates them herein by reference.

11. The Consulting Agreement provided various obligations and terms of dealings between the Helfstein Defendants (defined by Counter-Defendants' Complaint) and Counter-Defendants.

12. Counter-Defendants breached the terms of the Consulting Agreement by IRA SEAVER's action and conduct.

13. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

14. In order to prosecute this action, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Consulting Agreement.

SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

15. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 14, inclusive, as if fully set forth at this point and incorporates them herein by reference.

16. Each contract in Nevada carries with it the duty of good faith and fair dealing.

17. As a result of Counter-Defendants' actions, they breached their obligations of good faith and fair dealing toward Counter-Claimants with respect to the Consulting Agreement.

18. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

19. As a result of Counter-Defendants' breach of good faith and fair dealing, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Consulting Agreement.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

20. Counter-Claimants repeat and reallege their allegations in Paragraphs 1 through 19, inclusive, as if fully set forth at this point and incorporates them herein by reference.

21. Counter-Defendants have a contractual duty to, among other things, deal honestly, fairly, confidently, and professionally with Counter-Claimants. Counter-Defendants also have a duty to comply with the Consulting Agreement and their dealings with Counter-Claimants.

22. Counter-Defendants refused to comply with the Consulting Agreement and perform as specified.

23. Counter-Defendants breached and/or failed and refused to comply with their aforementioned duties and obligations under the Consulting Agreement. As such, Counter-Defendants have been unjustly enriched.

24. As a direct and proximate result of the foregoing, Counter-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

25. In order to prosecute this action, Counter-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Agreement.

WHEREFORE, Counter-Claimants pray for judgment against Counter-Defendants as follows:

1. For this Court to declare the Consulting Agreement terminated based on IRA SEAVER'S default of his obligations.

2. For this Court to declare that Counter-Defendants are in material breach for their failure of the Consulting Agreement based IRA SEAVER'S violations of the restrictive covenants.

3. For breach of contract damages as requested above;

4. For damages associated with breach of the covenant of good faith and fair dealings as stated above;

5. For damages associated with unjust enrichment as stated above;

6. For attorneys' fees and costs incurred herein;

7. For exemplary damages; and

8. For such other and further relief as the Court may deem just and proper.

CROSS-CLAIM

COMES NOW, the Defendants, UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI (collectively referred to as "Cross-Claimants"), by and through

their counsel of record, Gary E. Schnitzer, Esq. and Michael B. Lee, Esq. of the law firm KRAVITZ, SCHNITZER, SLOANE & JOHNSON, CHTD., and hereby file their Cross-Claim against Defendants, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., SUMMIT TECHNOLOGIES LLC (collectively referred to as "Cross-Defendants"), as follows:

1. At all times relevant herein, IRA AND EDYTHE SEAVER FAMILY TRUST ("Seaver Trust"), is organized pursuant to the laws of the State of Nevada. IRA SEAVER ("Ira Seaver") is a resident of the State of Nevada. CIRCLE CONSULTING CORPORATION ("Circle Consulting") is a Nevada Corporation whose principal place of business is Clark County, Nevada (collectively "Counter-Defendants").

2. At all times relevant herein, NESTOR SAPORITI was and is a resident of California, UI SUPPLIES is and was a New York Corporation, and UNINET IMAGING is and was a California Corporation.

3. On or about March 30, 2007, Cross-Defendants and Cross-Claimants entered into the AGREEMENT FOR PURCHASE AND SALE OF ASSETS by and between UI SUPPLIES, INC. and SUMMIT TECHNOLOGIES, LLC. ("Sales Agreement").

4. During the negotiations of the Sales Agreement, Cross-Claimants expressly stated to Cross-Defendants that they did not want to assume the Consulting & Non-Competition Agreement between Summit Technologies, LLC and Circle Consulting Corporation ("Consulting Agreement).

5. In turn, Cross-Claimants and Cross-Defendants executed "Exhibit E" the Sales Agreement that expressly provided that, "CONSULTING AGREEMENTS WITH

IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED."

6. Cross-Claimants relied on this provision in entering the Sales Agreement.

7. However, Plaintiffs IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATION ("Plaintiffs") have instigated litigation against Cross-Claimants attempting to enforce the Consulting Agreement against them.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

8. Cross-Claimants repeat and reallege their allegations in Paragraphs 1 through 7, inclusive, as if fully set forth at this point and incorporates them herein by reference.

9. The Sales Agreement provided various obligations and terms of dealings between Cross-Defendants and Cross-Claimants.

10. Cross-Defendants breached the terms of the Sales Agreement by exposing Cross-Claimants to alleged damages claimed by Plaintiffs related to the Consulting Agreement.

11. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

12. In order to prosecute this action, Cross-Claimants had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Consulting Agreement.

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SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

13. Cross-Claimants repeat and reallege their allegations in Paragraphs 1 through 12, inclusive, as if fully set forth at this point and incorporates them herein by reference.

14. Each contract in Nevada carries with it the duty of good faith and fair dealing.

15. As a result of Cross-Defendants' actions, they breached their obligations of good faith and fair dealing toward Cross-Claimants with respect to the Consulting Agreement.

16. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

17. As a result of Cross-Defendants' breach of good faith and fair dealing, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

18. Cross-Claimants repeat and reallege their allegations in Paragraphs 1 through 17, inclusive, as if fully set forth at this point and incorporates them herein by reference.

19. Cross-Defendants have a contractual duty to, among other things, deal honestly, fairly, confidently, and professionally with Cross-Claimants. Cross-Defendants also have a duty to comply with the Sales Agreement and the representations made

surrounding those dealings with Cross-Claimants.

20. Cross-Defendants did not comply with their duties under the Sales Agreement nor with their underlying representations made as to the Consulting Agreement.

21. Cross-Defendants breached and/or failed and refused to comply with their aforementioned duties and obligations under the Sales Agreement. As such, Cross-Defendants have been unjustly enriched.

22. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

23. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees, expenses, and costs associated with enforcing the Agreement.

FOURTH CLAIM FOR RELIEF
(Fraud)

24. Cross-Claimants repeat and reallege the allegations contained in Paragraphs 1 through 23, above, as though fully set forth herein.

25. Through the Sales Agreement Cross-Defendants explicitly stated that "CONSULTING AGREEMENTS WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED."

26. Cross-Claimants relied on this statement in entering the Sales Agreement.

27. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, the representations mentioned above were false when Cross-Defendants made them, in that the Consulting Agreement was allegedly assigned to Cross-Claimants.

28. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants knew the representations were false when made, or made the representations mentioned above with a reckless disregard for their truth or falsity, in that the Consulting Agreement was assigned to Cross-Claimants although Cross-Defendants explicitly represented that it would not be.

29. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants made the representations mentioned above with the intent and for the purpose of deceiving Cross-Claimants and to induce Cross-Claimants into relying on the representations.

30. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants, in reliance on the representations mentioned above, were induced to enter into the Sales Agreement by Cross-Defendants.

31. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants's reliance on the representations mentioned above was reasonable under the circumstances in that the Sales Agreement clearly specified that the Consulting Agreement would not be assigned to Cross-Claimants.

32. As a direct and proximate result of Cross-Defendants' fraud, Cross-Claimants have suffered, and will continue to suffer, monetary loss and injury.

33. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

34. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees;

namely, attorneys' fees, expenses, and costs associated with defending against Cross-Defendants' fraud.

FIFTH CLAIM FOR RELIEF
(Fraudulent Misrepresentation)

35. Cross-Claimants repeat and reallege the allegations contained in Paragraphs 1 through 34, above, as though fully set forth herein.

36. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants made a false representation with knowledge or belief that their representation was false or that they have an insufficient basis of information for making the representation. Cross-Defendants intended to induce Cross-Claimants to act on the misrepresentation regarding the non-assignment of the Consulting Agreement to have them enter into the Sales Agreement. Cross-Claimants have been damaged as a result of relying on the misrepresentation by Cross-Defendants.

37. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, during the negotiations for the Sales Agreement, Cross-Defendants submitted information to Cross-Claimants that set forth false, fraudulent, incomplete and/or misleading information concerning material facts about the Consulting Agreement.

38. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, the representations mentioned above were false when Cross-Defendants made them, in that Cross-Defendants knowingly induced Cross-Claimants' reliance in executing the Sales Agreement premised on the representation that the Consulting Agreement would not be assigned to Cross-Claimants.

39. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants knew the representations were false when made, or made

the representations mentioned above with a reckless disregard for their truth or falsity, in that Cross-Defendants sought to induce Cross-Claimants into entering the Sales Agreement.

40. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants, in reliance on the representations mentioned above, were induced into executing the Sales Agreement.

41. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants' reliance on the false representations mentioned above was reasonable under the circumstances, in that the false statements were made by Cross-Defendants in a manner that explicitly stated the Consulting Agreement was not being assigned to Cross-Claimants.

42. Cross-Defendants induced Cross-Claimants into executing the Sales Agreement.

43. As a direct and proximate result of Cross-Defendants' fraudulent misrepresentation, Cross-Claimants suffered, and will continue to suffer, monetary loss and injury.

44. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

45. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with prosecuting an action for Cross-Defendants' fraudulent misrepresentation.

SIXTH CLAIM FOR RELIEF
(Intentional Misrepresentation)

46. Cross-Claimants repeat and reallege the allegations contained in Paragraphs 1 through 45, above, as though fully set forth herein.

47. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants assert a false representation with the knowledge or belief that it is false or without sufficient foundation regarding the non-assignment of the Consulting Agreement.

48. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants intended to induce Cross-Claimants into executing the Sales Agreement by representing that the Consulting Agreement was not being assumed by Cross-Claimants.

49. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, the representations mentioned above were false when Cross-Defendants made them, in that Cross-Defendants knowingly induced Cross-Claimants' reliance in executing the Sales Agreement.

50. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants made the representations mentioned above with the intent and for the purpose of deceiving Cross-Claimants and to induce Cross-Claimants into relying on the representations.

51. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants, in reliance on the representations mentioned above, were induced into executing the Sales Agreement.

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52. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Claimants' reliance on the false representations mentioned above were reasonable under the circumstances, in that the false statements were made in the Sales Agreement with the express statement that "CONSULTING AGREEMENT WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED."

53. As a direct and proximate result of Cross-Defendants' fraud, Cross-Claimants suffered, and will continue to suffer, monetary loss and injury.

54. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

55. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with prosecuting an action for Cross-Defendants' fraud.

SEVENTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

56. Cross-Claimants repeat and reallege the allegations contained in Paragraphs 1 through 55, above, as though fully set forth herein.

57. Cross-Defendants owed a duty of due care to Cross-Claimants to exercise that degree of skill normally expected of skilled professionals particularly where they knew that their representations would form the basis for Cross-Claimants' reliance.

58. The Sales Agreement explicitly states that "CONSULTING AGREEMENT WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED." Cross-Claimants justifiably relied on this language and are exposed to

litigation and potential damages caused to them by their justifiable reliance upon the information. Cross-Defendants failed to exercise reasonable care or competence in obtaining or communicating information regarding the non-assignment of the Consulting Agreement.

59. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants, in promoting the Sales Agreement, recklessly disregarded the potential assignment of the Consulting Agreement, and otherwise failed to exercise the degree of care, skill, and competence which should be exercised by Cross-Defendants.

60. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, as a result, Cross-Defendants' failure to exercise their duty of care, they recklessly *misrepresented the non-assignment* of the Consulting Agreement.

61. Cross-Defendants were aware that their representations would be relied upon by Cross-Claimants in their business dealings regarding the Sales Agreement. Cross-Claimants relied upon the Cross-Defendants' representation that the Consulting Agreement was not being assigned to Cross-Claimants.

62. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, Cross-Defendants' representations were seriously flawed as a result of Cross-Defendants' negligence.

63. Cross-Claimants relied on Cross-Defendants' representations in executing the Sales Agreement.

64. Cross-Claimants suffered actual damages as a result of entering into the Sales Agreement based upon their reliance upon the reckless and grossly negligent misrepresentations of Cross-Defendants.

65. In the alternative, if the Consulting Agreement was assigned to Cross-Claimants, if Cross-Defendants reasonably and properly performed their duties and correctly, Cross-Claimants would not be exposed to potential liability to Plaintiffs for the Consulting Agreement.

66. Cross-Defendants are liable for all losses to Cross-Claimants as a result of the above-mentioned violations of their duties and gross negligence.

67. As a direct and proximate result of Cross-Defendants' actions, Cross-Claimants have suffered, and will continue to suffer, monetary loss and injury.

68. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

69. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with prosecuting an action for Cross-Defendants' negligence.

EIGHTH CLAIM FOR RELIEF
(Breach of Express and Implied Warranties)

70. Cross-Claimants repeat and reallege the allegations contained in Paragraphs 1 through 69, above, as though fully set forth herein.

71. Cross-Claimants are informed and believe and thereon allege that pursuant to the Sales Agreement between Cross-Claimants and Cross-Defendants, it impliedly and expressly warranted that the "CONSULTING AGREEMENTS WITH IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED."

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72. Further, the Sales Agreement provides that "All representations and warranties by Seller in this Agreement . . . are, to the best of Sellers [sic] knowledge, true and correct in all material respects on and as of the Closing Date, as through such representations and warranties were made on as of that date."

73. Similarly, the Sales Agreement provides "All necessary 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."

74. Cross-Claimants relied upon these warranties and believed that the Consulting Agreement was not being assigned to them.

75. Cross-Claimants are informed and believe and thereon allege that Cross-Defendants, and each of them, breached the Sales Agreement based on the allegations by Plaintiffs in the underlying action.

76. As a proximate result of the breach of express and implied warranties by Cross-Defendants, Cross-Claimants allege that they will suffer damages in a sum equal to any sums paid by way of settlement, or in the alternative, judgment rendered against Cross-Claimants in the underlying action based upon Plaintiffs' Complaint.

77. The breach(es) of the aforementioned warranties by each Cross-Defendant was and is the actual and proximate cause of damages to Cross-Claimants in excess of $10,000.00.

78. In order to defend this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending this action.

NINTH CLAIM FOR RELIEF
(Implied Indemnity)

79. Cross-Claimants refer to and incorporate herein by reference Paragraphs 1 through 78 as though fully set forth herein.

80. Cross-Claimants are informed and believe and thereon allege that Cross-Claimants entered into written, oral and implied agreements with the Cross-Defendants.

81. By reason of the foregoing, if Plaintiffs recover against Cross-Claimants, then Cross-Claimants are entitled to implied contractual indemnity from Cross-Defendants, and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid by way of settlement, or in the alternative, judgment rendered against Cross-Claimants in the underlying action based upon Plaintiffs' Complaint or any claims filed.

82. In order to defend this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending this action.

TENTH CLAIM FOR RELIEF
(Equitable Indemnity)

83. Cross-Claimants refer to and incorporates herein by reference Paragraphs 1 through 82 as though fully set forth herein.

84. Cross-Claimants are informed and believe and thereon allege that the claims alleged by Plaintiffs in their Complaint involve damages, if any, caused by Cross-Defendants.

85. In equity and good conscience, if Plaintiffs recover against Cross-Claimants herein, then Cross-Claimants are entitled to equitable indemnity,

apportionment of liability, and contribution among and from the Cross-Defendants according to their respective faults for the injuries and damages allegedly sustained by Plaintiffs, if any, by way of sums paid by settlement, or in the alternative, judgment rendered against Cross-Claimants based upon Plaintiffs' Complaint.

86. In order to defend this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending this action.

ELEVENTH CLAIM FOR RELIEF
(Apportionment)

87. Cross-Claimants refer to and incorporate herein by reference Paragraphs 1 through 86 as though fully set forth herein.

88. Cross-Claimants are entitled to an apportionment of liability among Cross-Defendants, and each of them.

89. In order to defend this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with defending this action.

TWELFTH CLAIM FOR RELIEF
(Equitable Estoppel)

90. Cross-Claimants refer to and incorporate herein by reference Paragraphs 1 through 89 as though fully set forth herein.

91. Cross-Defendants were apprised of the fact that Cross-Claimants did not want to assume the Consulting Agreement. Thus, during the negotiations surrounding the formation of the Sales Agreement, Cross-Defendants represented to Cross-Claimants that they were not assigning the Consulting Agreement to Cross-Claimants.

92. Cross-Defendants intended that these statements induce Cross-Claimants into entering the Sales Agreement. Cross-Defendants entered into the Sales Agreement with the belief that the Consulting Agreement was unassignable. However, Cross-Claimants relied on this information to their detriment as Plaintiffs are alleging that the Consulting Agreement was assigned through the Sales Agreement.

93. Cross-Defendants are liable for all losses to Cross-Claimants as a result of the above-mentioned representations.

94. As a direct and proximate result of Cross-Defendants' inducement, Cross-Claimants have suffered, and will continue to suffer, monetary loss and injury.

95. As a direct and proximate result of the foregoing, Cross-Claimants have been damaged in an amount in excess of $10,000.00, said amount to be determined at trial.

96. In order to prosecute this action, Cross-Claimants have had to retain attorneys to represent them, and they are entitled to fair and reasonable attorneys' fees; namely, attorneys' fees, expenses, and costs associated with prosecuting an action for Cross-Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Defendants/Cross-Claimants, UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI, pray for judgment as follows:

1. For damages associated with breach of contract;

2. For damages associated with breach of the covenant of good faith and fair dealing;

3. For damages associated with unjust enrichment;

4. For damages associated with fraud;

5. For damages associated with fraudulent misrepresentation;

6. For damages associated with intentional misrepresentation;

7. For damages associated with negligent misrepresentation;

8. For damages associated with breach of express and implied warranties;

9. That liability be borne directly on Cross-Defendants who should indemnify and hold Cross-Claimants harmless for any of Cross-Defendants' acts and Plaintiffs' alleged resulting injuries.

10. For apportionment;

11. For damages associated with equitable estoppel;

12. For reasonable attorneys' fees and costs incurred in this action; and

13. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 11 day of January, 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/Cross-Claimants UI Supplies, Uninet Imaging and Nestor Saporiti

CERTIFICATE OF FACSIMILE AND MAILING

I HEREBY CERTIFY that on this 19 day of January, 2010, I faxed and placed a copy of the foregoing **DEFENDANTS UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI'S FIRST AMENDED ANSWER TO COMPLAINT, COUNTERCLAIM, AND CROSS CLAIM** in the United States mail, postage pre-paid, and addressed as follows:

Jeffrey R. Albregts, Esq. (NBN 0066)
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
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Attorneys for Plaintiffs

Byron L. Ames, Esq. (NBN 7581)
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Attorneys for Plaintiffs

Kristin Parker

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

O:\gen\DATA\Saporiti adv Seaver\Pleadings\Answer to Complaint - 002 - 11172009 (First Amended).wpd

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CLERK OF THE COURT

J. Michael Oakes, Esq.
Nevada Bar No. 1999
FOLEY & OAKES, PC
850 East Bonneville Avenue
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
mike@foleyoakes.com
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, /Cross-Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORATIOIN,

Plaintiffs,

vs.

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.

UI SUPPLIES, UNINET IMAGING, INC., NESTOR SAPORITI,

Counter-Claimants,

vs.

IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING CORPORAITON, and ROE CORPORATIONS 101-200,

Counter-Defendants.

CASE NO. A587003
DEPT. NO. XI

CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION

DATE:_____
TIME:_____

FOLEY & OAKES

UI SUPPLIES, UNINET IMAGING AND NESTOR SAPORITI,

Cross-Claimants,

vs.

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

Cross-Defendants.

COMES NOW Cross - Defendants, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., and SUMMIT TECHNOLOGIES, LLC, (collectively referred to herein as "the Summit Parties"), by and through their attorneys, J. Michael Oakes, of the law firm of Foley & Oakes, PC, and hereby submit their Motion for Stay or Dismissal, and to Compel Arbitration. This Motion is based upon the grounds that the Crossclaim against them arises out of a written agreement containing a mandatory arbitration clause and a choice of venue provision requiring that venue for any litigation be conducted in Nassau County, New York. This Motion is based upon the pleadings and papers on file herein, the Memorandum of Points Authorities which follows, and such argument as will be heard at the time of the hearing of this Motion.

DATED this 26th day of April, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC,Cross-Defendants

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NOTICE OF MOTION

TO: Michael B. Lee, Esq., attorney for Defendants, UI Supplies, Uninet Imaging and Nestor Saporiti, and

TO: Jeffrey R. Albregts, Esq., attorney for Plaintiffs, Ira and Edythe Seaver Family Trust, Ira Seaver, Circle Consulting Corporation, and

TO: Byron L. Ames, Esq., attorney for Plaintiffs, Ira and Edythe Seaver Family Trust, Ira Seaver, Circle Consulting Corporation, and

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the following MOTION FOR STAY OR DISMISSAL, AND TO COMPEL ARBITRATION on for hearing before the above-entitled Court on the 25 day of May, 2010, at the hour of 9:00 a.m. of said date, in Department No. XI, or as soon thereafter as counsel can be heard.

DATED this 27th day of April, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 384-2070

FOLEY & OAKES

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Crossclaim in this case arises out of an Agreement for Purchase and Sale of Assets (the "Agreement"), dated March 30, 2007, which contained a broad form mandatory arbitration provision and a venue provision designating Nassau County, New York as the sole venue for any action or arbitration arising from the Agreement. The Agreement recites that it was made in New York, and was between two entities domiciled in New York.

This Motion is asking the Court for a dismissal of the cross claim, without prejudice, in order to give effect to the intentions of the parties concerning arbitration and venue as described in the Agreement. Alternatively, this Motion is requesting that the cross claim be stayed, pending conclusion of any arbitration.

This motion is supported by the Affidavit of Lewis Helfstein, which is attached as Exhibit A, and the demand for arbitration in Nassau County, which is attached as exhibit B.[1]

II.

STATEMENT OF THE CASE

The cross claim against the movants (which is really a third party claim) is seeking indemnity for any amounts that the cross claimant is obligated to pay to the Plaintiffs. The cross claim states that "Cross-Defendants breached the term of the Sales Agreement by exposing Cross-Claimants to alleged damages by Plaintiffs related to the Consulting Agreement." (See paragraph 10 of the cross-claim). The Sales Agreement that is referenced in

[1] Exhibit A – Affidavit of Lewis Helfstein - Due to the short filing deadline, the attached Affidavit of Lewis Helfstein only contains the facsimile signature. The original will be filed with the Court promptly hereafter.

paragraph 10 of the cross claim contains the broad form mandatory arbitration provision and the venue provision that is described above.

The movants had originally been named as co-defendants in this case. However, the movants never filed a responsive pleading and, instead, settled with the Plaintiffs and were voluntarily dismissed from the case on November 23, 2009.

Thereafter, the Plaintiffs amended their Complaint against the non-settling defendants, and, in turn, the non-settling defendants filed their answer, counterclaim, and this "cross claim" against the moving parties. The cross-claimants served their cross claim and are now demanding an appearance in the case by the movants, notwithstanding the clear terms of the Agreement regarding venue and arbitration.

Concerning the Agreement, the Court should note that:

On Page 1 of the Agreement, it states that "This agreement is made as of March 30, 2007, at Bohemia, New York..."

On page 15 of the Agreement, it states that "Any controversy or claim arising out of or relating to this Agreement..." shall be settled by binding arbitration and that venue for the arbitration shall be Nassau County, New York.

On pages 15 and 16 of the Agreement, both Seller and Buyer gave New York addresses for the giving of any notices required under the Agreement.

On page 17 of the Agreement, it states that the substantive laws of the State of New York shall apply to any disputes, and again states that Nassau County, New York shall be the sole venue for any action or arbitration.

The cross-claim (which is really a third party claim for indemnity) is brought by the New York corporation, its California corporation parent company, and its California resident officer and principal shareholder against a New York limited

liability company, a shareholder that is a New York limited liability company, and two New York residents.

III.

LEGAL ARGUMENT

A. AGREEMENTS TO ARBITRATE ARE ENFORCEABLE

The Agreement contains a choice of law provision stating that New York law will apply to any dispute. However, regardless of whether New York or Nevada law applies, both states have a strong policy in favor of the enforcement of arbitration provisions.

Under New York law, the case of Harris vs. Shearson Hayden Stone, 82 A.D. 87, 441 N.Y.S.2d 70 (N.Y.A.D. 1981), aff'd 56 N.Y.2d 627, 435 N.E.2d 1097, 450 N.Y.S.2d 482 [1982]), held that:

> "[T]his State favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting parties." *(Matter of Nationwide Gen. Ins. Co. v Investors Ins. Co. of Amer.*, 37 NY2d 91, 95; see *Matter of Maye* [*Bluestein*], 40 NY2d 113.) Moreover, "[p]arties to a contract may agree, if they will, that any and all controversies growing out of it in any way shall be submitted to arbitration. If they do, the courts of New York will give effect to their intention." *(Matter of Marchant v Mead-Morrison Mfg. Co.*, 252 NY 284, 298.)"It has long been this State's policy that, where parties enter into an agreement and, in one of its provisions, promise that any dispute arising out of or in connection with it shall be settled by arbitration, any controversy which arises between them and is within the compass of the provision must go to arbitration." *(Matter of Exercycle Corp.* [*Maratta*], 9 NY2d 329, 334, citing cases.)

The strong policy in favor of arbitration is similarly well known in Nevada. NRS 38.035 states:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to

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> arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the revocation of any contract. NRS 38.015 to 38.205, inclusive, also apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

As described in Phillips v. Parker, 106 Nev. 415, 794 P.2d 716 (1990), the Nevada Supreme Court has emphasized the desirability of enforcement of an arbitration agreement between the parties. The Phillips decision contains the following pronouncements of Nevada law on the subject:

> "There is a strong public policy favoring contractual provisions requiring arbitration of a dispute resolution mechanism. Consequently, when there is an agreement to arbitrate we have said that there is a "presumption of arbitrability."
>
> ...
>
> "We have previously held that once an arbitrable issue has been found to exist, all doubts concerning the arbitrability of the subject matter should be resolved in favor of arbitration. Exber, Inc. v. Sletten Constr. Co., 92 Nev. 721, 729, 558 P.2d 517, 522 (1976). Courts are not to deprive the parties of the benefits of arbitration they have bargained for, and arbitration clauses are to be construed liberally in favor of arbitration." See 106 Nev. at 417.

The cross-claimant's own allegations point directly to the Agreement containing the arbitration provision as the basis for the relief they are seeking. Thus, there is no doubt that the issues involved in this controversy, as between the cross-claimants and the movants, are subject to the arbitration provisions. The Court should give effect to those provisions and grant this motion.

B. FORUM SELECTION CLAUSES ARE ENTITLED TO ENFORCEMENT

The Agreement relied upon for the cross claim contains a forum selection clause, designating Nassau County, New York as the forum for any litigation or arbitration.

"Where such forum selection provisions have been obtained through `freely negotiated' agreements and are not `unreasonable and unjust,' their enforcement does not offend Due Process." See: Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, n.14 (1985).

Since the Agreement was made in New York among New York entities, there is nothing "unreasonable and unjust" about enforcing the venue provision as written. As stated before:

The Agreement was between a New York corporation and a New York limited liability company.

On Page 1 of the Agreement, it states that "This agreement is made as of March 30, 2007, at Bohemia, New York..."

On page 15 of the Agreement, it states that "Any controversy or claim arising out of or relating to this Agreement..." shall be settled by binding arbitration and venue for the arbitration shall be Nassau County, New York.

On pages 15 and 16 of the Agreement, both Seller and Buyer give New York addresses for the giving of any notices required under the Agreement.

On page 17 of the Agreement, it states that the substantive laws of the State of New York shall apply to any disputes, and again states that Nassau County, New York shall be the sole venue for any action or arbitration.

It is worth mentioning that there is no rule whatsoever that would require this cross-claim/third party claim for indemnity to be heard at the same time in the same place as the underlying case. There is no such thing as a "compulsory" cross claim or third party claim. Thus, the granting of this motion will have no effect upon the litigation of the Complaint and Counterclaim.

Under Nevada law, venue for this cross claim is improper, even if there was no venue provision or arbitration provision in the Agreement.

NRS 13.010 states:

> "Where actions are to be commenced.
>
> 1. When a person has contracted to perform an obligation at a particular place, and resides in another county, the action must be commenced, and, subject to the power of the court to change the place of trial as provided in this chapter, must be tried in the county in which such obligation is to be performed or in which the person resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed, unless there is a special contract to the contrary."

NRS 13.040 states:

> Venue in other cases.
>
> In all other cases, the action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action; or, if none of the defendants reside in the State, or if residing in the State the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in the complaint; and if any defendant, or defendants, may be about to depart from the State, such action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the court to change the place of trial as provided in this chapter.

NRS 13.050 states:

> Cases in which venue may be changed.
>
> 1. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant before the time for answering expires demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of the parties, or by order of the court, as provided in this section.

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> 2. The court may, on motion, change the place of trial in the following cases:
>
> (a) When the county designated in the complaint is not the proper county.
>
> (b) When there is reason to believe that an impartial trial cannot be had therein.
>
> (c) When the convenience of the witnesses and the ends of justice would be promoted by the change.
>
> 3. When the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of the court, and the papers shall be filed or transferred accordingly.

None of the cross- claimants and none of the cross defendants reside in Clark County, as none of them are even residents or domiciliaries of Nevada. Furthermore, the obligation was incurred is Bohemia, New York, not Clark County.

Given the improper venue, the clear forum selection clause, the New York residency and domicile of the parties, and the making of the Agreement in New York, it is clear that Nassau County, New York, is the more appropriate forum for the

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adjudication of these claims. Alternatively, it should also be viewed as the more convenient forum. In either event, the cross- claim should be dismissed.

DATED this 20th day of April, 2010.

FOLEY & OAKES, PC

J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
Attorneys for Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies, LLC, Cross-Defendants

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CERTIFICATE OF SERVICE BY MAIL AND BY FACSIMILE

I hereby certify that a true and correct copy of the foregoing CROSS-DEFENDANTS, LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC., AND SUMMIT TECHNOLOGIES, LLC'S MOTION FOR STAY OR DISMISSAL AND TO COMPEL ARBITRATION was served to those persons designated below on the 20th day of April, 2010:

__X__ By placing a copy in the United States mail to the following parties and/or their attorneys at their last known address(es), postage thereon *fully paid*, addressed as follows below.

__X__ By faxing to an operable facsimile machine of the following parties and/or their attorneys at the fax numbers designated below. A copy of the transmit confirmation report is attached hereto.

Gary E. Schnitzer, Esq.
Michael B. Lee, Esq.
Kravitz, Schnitzer, Sloane & Johnson Chtd.
8985 S. Eastern Avenue, Suite 200
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Facsimile No. 702-362-2203
Attorneys for Defendants UI Supplies, Uninet Imaging and Nestor Saporiti

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Facsimile No. 702-562-3305
Attorneys for Plaintiffs

An Employee Of Foley & Oakes, PC

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EXHIBIT A

STATE OF NEW YORK)
: SS
COUNTY OF SUFFOLK)

AFFIDAVIT OF LEWIS HELFSTEIN

Lewis Helfstein, after being first duly sworn, deposes and states the following:

1. I have personal knowledge of the facts and statements set forth herein.

2. On or about March 30, 2007, UI Supplies, Inc. and Summit Technologies, LLC entered into an Agreement for Purchase and Sale of Assets (the "Agreement"), a copy of which is attached hereto as Exhibit 1.

3. As described in the Agreement, UI Supplies, Inc. is a New York corporation and Summit Technologies, LLC is a New York limited liability company, having its principal office at Bohemia, New York. As shown on page 18 of the Agreement, the Agreement was executed in Bohemia, New York, by Lewis Helfstein for Summit Technologies, LLC and by Nestor Saporiti for UI Supplies, Inc.

4. The Crossclaim that has been filed against me and the other Cross-Defendants, Madalyn Helfstein, Summit Laser Products, Inc., and Summit Technologies, LLC arises out of the Agreement.

5. The Agreement contained the following provisions:

> "12. Arbitration
> 12.1 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."

> "14.1(e) 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."

6. The Crossclaim identifies UI Supplies, Inc., Uninet Imaging, Inc., and Nestor

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Saporiti as the Cross-Claimants. UI Supplies is the New York corporation that was a party to the Agreement. Uninet Imaging is the parent company of UI Supplies, Inc., and Nestor Saporiti is the President and principal owner of UI Supplies, Inc.

7. Madalyn Helfstein is my wife. She and I both reside in the State of New York. Summit Laser Products, Inc. is a New York corporation and Summit Technologies, LLC is a New York limited liability company. Summit Laser Products, Inc. is a shareholder of Summit Technologies, LLC.

DATED this 19th day of April, 2010.

Lewis Helfstein

Subscribed and Sworn to
before me this ____ day of
_____, 2010.

Notary Public

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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**").

1. **Sale and Purchase of Assets**

1.1 **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**").

1.2 **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.

1.3 **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.

1.4 Returns

2. **Purchase Price and Payment for Acquired Assets**

2.1 **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:

(a) On the Closing Date, Buyer will pay by wire transfer to Seller, the sum of $150,000;

(b) 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 $100,000 payable in two 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.

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

(a) Good will and intangible Acquired Assets – $150,000;

(b) Manufacturing equipment – $80,000; and

(c) Other tangible Acquired Assets – $20,000.

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

(a) 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 be part of the Acquired Asset at a price of 1% of Seller's cost.

(b) 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 85% of said value except for chip components valued at 90%. The Buyer shall transfer this amount by wire transfer into Seller's designated account on the Closing Date, pursuant to Schedule H, attached.

2.4 **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.

2.5 **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

3. **Liabilities and Sales Tax**

3.1 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.

3.2 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**").

3.3 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.

3.4 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.

3.5 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.

3.6 **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