

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3 No. 65409

Electronically Filed  
Aug 29 2014 03:32 p.m.

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5 **LEWIS HELFSTEIN; MADALYN HELFSTEIN; SUMMIT LASER PRODUCTS, INC;**  
6 **AND SUMMIT TECHNOLOGIES, LLC.** **Tracie K. Lindeman,**  
Clerk of Supreme Court

Petitioners,

7 vs.

8 **EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR**  
9 **THE COUNTY OF CLARK**

Respondent,

10 and

11  
12 **IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER, CIRCLE CONSULTING**  
13 **CORPORATION.**

14 Real Parties in Interest.

15  
16 Eighth Judicial District Court, Clark County, Nevada  
The Honorable Elizabeth Gonzalez, District Judge  
17 The Honorable Elissa Cadish, District Judge

18 District Court Case No. A-09-587003

19 **PETITIONER'S SUPPLEMENT TO APPENDIX TO PETITION FOR**  
20 **EXTRAORDINARY WRIT RELIEF**  
21 **VOLUME II**

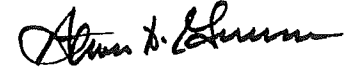
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**INDEX TO PETITIONER'S SUPPLEMENT TO APPENDIX**

**SUPREME COURT NO. 65409**

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Plaintiff's Status Report Per Court's Order Scheduling Status Check (Dated July 16, 2013)	Volume II	Pages 67 - 79

1 **NEO**  
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6 *Ira and Edythe Seaver Family Trust and*  
*Circle Consulting Corporation*

  
CLERK OF THE COURT

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 IRA AND EDYTHE SEAVAR FAMILY  
TRUST, IRA SEAVAR, CIRCLE  
11 CONSULTING CORPORATION,

12 Plaintiffs,

13 v.

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

17 Defendants.

18 AND RELATED CLAIMS

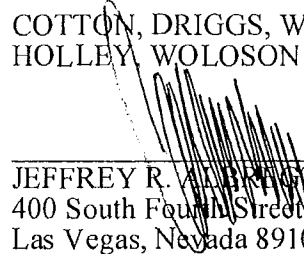
Case No.: A587003  
Dept. No.: XI

**NOTICE OF ENTRY OF  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

19 PLEASE TAKE NOTICE that FINDINGS OF FACT AND CONCLUSIONS OF LAW  
20 in the above-entitled matter were filed and entered by the Clerk of the above-entitled Court on  
the 18<sup>th</sup> day of May, 2012, a copy of which is attached hereto.

21 DATED this 21 day of May, 2012.

22  
23 COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON

24  
25   
JEFFREY R. ALBREGTS, ESQ./NBN 0066  
400 South Fourth Street, Third Floor  
26 Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*  
27 *Ira and Edythe Seaver Family Trust and*  
*Circle Consulting Corporation*  
28

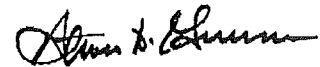
1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that, on the 21<sup>st</sup> day of May, 2012 and pursuant to NRCF  
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**  
4 **OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**, postage prepaid  
5 and addressed to:

6 Michael Lee, Esq.  
7 LAW OFFICE OF MICHAEL B. LEE  
8 2000 South Eastern Avenue  
9 Las Vegas, NV 89104  
10 *Attorneys for Defendants*

Mr. Ira Seaver  
2407 Ping Drive  
Henderson, NV 89074  
*In Proper Person*

11   
12 An employee of COTTON, DRIGGS, WALCH,  
13 HOLLEY, WOLOSON & THOMPSON  
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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: 09 A 587003

Dept. No.: XI

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Plaintiff,

Date of Trial: March 19, 2012

vs.

Time of Trial: 1:00 p.m.

UI SUPPLIES, UI TECHNOLOGIES,  
UNINET IMAGING, INC., NESTOR  
SAPORITI and DOES 1 through 20, and ROE  
entities 21 through 40, inclusive; DOES 1  
through X, inclusive; and ROE BUSINESS  
ENTITIES I through X, inclusive,

Defendants.

This cause came on regularly for a bench trial beginning on March 19, 2012 and continuing day to day, based upon the availability of the Court and Counsel, until its completion on April 25, 2012; Plaintiff IRA SEAVER ("Seaver") appearing in proper person; Plaintiffs IRA AND EDYTHE SEAVER FAMILY TRUST ("Trust"), and CIRCLE CONSULTING CORPORATION ("Circle") by and through Jeffrey R. Albregts, Esq. (Trust, Seaver, and Circle are sometimes collectively referred to as "the Plaintiffs") and Defendants UI SUPPLIES, UI TECHNOLOGIES,<sup>1</sup> UNINET IMAGING, INC. ("UniNet"), NESTOR SAPORITI ("Saporiti") appearing by and through their attorneys Michael Lee, Esq. and Gary Schnitzer, Esq.; (UI Supplies, UI Technologies, UniNet and Saporiti are sometimes collectively referred to as "the UI

<sup>1</sup> The Court granted a motion to add UI Technologies as a defendant during trial.

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CLERK OF THE COURT

1 Defendants").<sup>2</sup> Plaintiffs Complaint<sup>3</sup> asserts ten causes of action: (1) Breach of Circle  
2 Consulting Contract (against all Defendants); (2) Breach of Summit Technologies Formation  
3 Agreement (against Helfstein Defendants Only); (3) Breach of Summit Technologies Operating  
4 Agreement (against Helfstein Defendants and Summit Only); (4) Breach of Fiduciary Duty  
5 (against Helfstein Defendants Only)<sup>4</sup>; (5) Promissory Estoppel (against UniNet Defendants  
6 Only); (6) Unjust Enrichment (against UniNet Defendants Only); (7) Accounting (against  
7 Summit and Helfstein Defendants Only)<sup>5</sup>; (8) Declaratory Relief (against All Defendants); (9)  
8 Breach of Implied Covenant of Good Faith and Fair Dealing (against All Defendants)<sup>6</sup>; and (10)  
9 Alter Ego (against All Defendants)<sup>7</sup>. During trial the Court permitted amendment to add a claim  
10 for breach of fiduciary duty against the UI Defendants.

11 The Court having read the pleadings filed by the parties, listened to the testimony of the  
12 witnesses, reviewed the evidence introduced during the trial, considered the oral and written  
13 arguments of counsel, and with the intent of deciding all claims before the Court pursuant to  
14 NRCP 52(a) and 58. The Court makes the following findings of fact and conclusions of law:

15 **FINDINGS OF FACT**

- 16 1. On or about August 12, 2004, Lewis Helfstein ("Helfstein")<sup>8</sup> on behalf of Summit  
17

18 <sup>2</sup> The Court dismissed the Counterclaim at the close of the counterclaimants' case, as no  
19 evidence of damages was presented.

20 <sup>3</sup> No ruling in this case is intended to be determinative of any issue related to the Helfstein  
21 Defendants, as they did not participate in this trial. The Helfstein Defendants include LEWIS  
22 HELFSTEIN, MADALYN HELFSTEIN, and SUMMIT TECHNOLOGIES LLC.

23 <sup>4</sup> The court permitted amendment of this claim during trial to include the UI Defendants.

24 <sup>5</sup> The Court granted an NRCP 52c motion on this issue as the accounting was accomplished  
25 through discovery as part of these proceedings.

26 <sup>6</sup> The Court granted dismissal of the tortuous claims for breach of the covenant of good faith and  
27 fair dealing.

28 <sup>7</sup> The Court granted dismissal of this claim against the UI Defendants and UniNet.

<sup>8</sup> On November 23, 2009, Plaintiffs executed a voluntary dismissal of the Helfstein Defendants  
after reaching a settlement of \$60,000. While Plaintiff and the Helfstein Defendants have  
resolved their claims in this matter, but Plaintiff rescinded their Settlement Agreement with them  
on or about January 20, 2011, because of information Mr. Conant discovered. Based on the

1 Laser Products, Inc. and Ira and Edythe Family Trust entered into an operating agreement to  
2 form Summit Technologies ("Summit") with the Helfstein Defendants maintaining management  
3 and control of it but requiring them to also obtain Seaver's approval for decisions regarding its  
4 capital structure of Summit.

5 2. The Operating Agreement with the Plaintiffs for the operation of Summit as a  
6 New York limited liability company which provided, among other things, that it would maintain  
7 records and provide accountings to its members including providing quarterly reports; that 75%  
8 of the members' consent would be necessary to change its capital structure; for distribution of  
9 profits and net cash flow of 65% to Summit Laser Products and 35% to the Seaver Trust; and for  
10 health insurance.

11 3. In September 2004, Summit entered into a Technology License Agreement with  
12 LaserStar Distribution Corporation, another entity controlled by the Plaintiffs, for the "codes and  
13 programs for laser cartridge chips." The license period was for 10 years.

14 4. In September, 2004, a consulting, noncompetition and confidentiality agreement  
15 was entered into by Helfstein on behalf of Summit, and Seaver individually and as president of  
16 Circle. Seaver, by way of Circle, and Helfstein, by way of LBH Enterprises agreed to consulting  
17 agreements in lieu of salary. The Consulting Agreement contained obligations related to  
18 nondisclosure of confidential information and an agreement not to aid competition. It also  
19 contained a specific term as to assignment stating that "[t]his Agreement may not be assigned by  
20 any party hereto." ("Anti-Assignment Clause")<sup>9</sup>

21  
22 stipulation of the parties, this trial concerns only the monies due and owing from the UI  
23 Defendants to the Plaintiffs. The claims of the UI Defendants against the Helfstein Defendants  
are stayed by Nevada Supreme Court entered on 10/19/2010 in Case no. 56383.

24 <sup>9</sup> That agreement provides in pertinent part:

25 6. Disclosure of Information.

26 Consultant recognizes and acknowledges that trade secrets of the Company and its affiliates and  
27 their proprietary information and procedures, as they may exist from time to time, are valuable,  
28 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. . . . Consultant will not at any  
time during the term of this Agreement disclose in whole or in part, such secrets, information or

1           5.       Among other things, the Circle Consulting Agreement provided for payments of  
2 \$125,000 per year on a monthly basis with annual \$5,000 increases; reimbursement of expenses;  
3 and payments based on sale of laser printer chips.

4           6.       Seaver was required to exclusively perform services at the request of Summit as  
5 well as comply with the noncompete, nondisclosure and confidentiality provisions of that  
6 agreement.

7           7.       On or about August 1, 2005, Helfstein, as the managing member of Summit,  
8 notified Seaver he was suspending the consulting fee payments for the Circle Consulting  
9 Agreement based on Summit's insufficient cash flow.

10          8.       After Helfstein suspended the consulting fee payments, Seaver stopped  
11 performing consulting services.

12          9.       In late 2006, Seaver suffered an injury that required surgery which prevented him  
13 from consulting for an extended period.

14          10.      In late 2006, Helfstein and Steven Hecht, the Chief Financial Officer and  
15 President of Summit ("Hecht"), began soliciting offers to sell Summit or Summit's assets.  
16 Summit had a large bank loan and various creditors that Summit could not afford to pay.

17          11.      Sometime in October 2006, Helfstein approached Saporiti about purchasing

18  
19 processes to any person, firm corporation, association or other entity for any reason or purpose  
20 whatsoever, nor shall they make use of any such property for their own purposes of (sic) benefit  
21 of any firm person or corporation, or other entity (except the Company) under any circumstances  
22 during the term of this Agreement; provided that these restrictions shall not apply to such secrets,  
information, and processes which are (the) in public domain. . .

23 7. Agreement not to Aid Competition

24 7.1 Consultant acknowledges and agrees that during the term of this Agreement, it will not in any  
25 way, directly or indirectly, . . . engage in represent, furnish consulting services to, be employed  
26 by, or have any interest in . . . any business which manufactures, sells or distributes parts and  
27 supplies for the remanufacturing of business machine toner cartridges in competition with the  
28 Company or refills business machine toner cartridges.

\*                   \*                   \*

7.2 The Consultant is exempt with regards to this paragraph for the following activity:

Consulting with Tangerine Express, so long as their activity remains on the retail level, Raven Industries...

1 Summit's assets after unsuccessfully approaching approximately three or four other buyers.

2 12. After some exchange of information and discussions with key personnel, in early  
3 February 2007, Saporiti indicated that he would form UI Technologies and UI Supplies to  
4 purchase the assets of Summit

5 13. Saporiti informed Hecht and Helfstein that he did not want to assume the current  
6 Circle Consulting Agreement.

7 14. At some point in time Seaver became aware that the UI Defendants did not want  
8 to assume the current Circle Consulting Agreement.

9 15. Helfstein attempted to negotiate a new global agreement for Seaver and himself.  
10 This called for Seaver to receive approximately 35% of whatever Helfstein negotiated for  
11 himself through LBH Enterprises.

12 16. Seaver was aware of the attempt to negotiate a separate consulting and non-  
13 competition agreement, but his relationship and the trust between Seaver and Helfstein had  
14 deteriorated.

15 17. Seaver was concerned that the payments would flow through Helfstein, which  
16 could have been usurped by Helfstein's estate in the event of Helfstein's death.

17 18. As a result, Seaver asked the UI Defendants for a consulting agreement separate  
18 from Helfstein's.

19 19. Saporiti stated that he was interested in working with Seaver.

20 20. Hecht attempted to negotiate language that was acceptable to Seaver in terms of  
21 both compensation and the scope of the non-competition provision.

22 21. Eventually, Saporiti's newly created companies, UI Technologies and UI  
23 Supplies, entered into a transaction that was characterized as an Asset Purchase of Summit. As  
24 part of the transaction no specific intellectual property rights that were being transferred or being  
25 assigned were identified. Certain accounts receivable, contracts and cash were not transferred as  
26 part of the transaction.

27 22. The Helfstein Defendants also entered into an agreement with UI Technologies,  
28 Inc. for the purchase of all of the assets of LaserStar Distribution Corporation. As part of the

1 transaction no specific intellectual property rights that were being transferred or being assigned  
2 were identified.

3 23. After agreeing to the initial terms, Helfstein drafted the Asset Purchase  
4 Agreement which was reviewed by counsel for the UI Defendants.

5 24. Hecht negotiated portions of the agreement on behalf of the UI Defendants prior  
6 to the closing of the transaction.<sup>10</sup>

7 25. Ultimately, Seaver refused to enter into the offered replacement consulting  
8 agreement because it did not have a sufficient "carve out" to the non-compete that would allow  
9 him to operate pre-existing ventures (Tangerine Express<sup>11</sup> Raven Industries<sup>12</sup>, etc.<sup>13</sup>), and it had  
10 insufficient compensation with a payout over three years.

11 26. None of the pre-existing ventures as performed during the period of the Circle  
12 Consulting agreement prior to the acquisition by UI Technologies and UI Supplies are a violation  
13 of the noncompetition provisions of that agreement.

14 27. Seaver received notice regarding a meeting about the sale proceeding on March  
15 27, 2007, for a meeting that same day. The Notice of Meeting of Members specifically stated  
16 that a special meeting would be held on March 27, 2007 for the purpose of: (1) Authorizing the  
17 Company to enter into and perform the Agreement for Purchase and Sale of Assets By and  
18 Between UI Supplies, Inc. and Summit Technologies, LLC, dated as of March 30, 2007, for sale  
19 of substantially all of the assets of the company (the "Sales Agreement"); and (2) Authorizing  
20 Summit Laser Products, Inc., as member and manager of the Company, by its president,  
21 Helfstein, or any other office thereof, to execute and deliver any and all documents and to take  
22 such further action as may be desirable, from time to time, in furtherance of the Sales

23  
24 <sup>10</sup> It is unclear from the testimony and the evidence admitted during trial when the transaction  
closed. The dates on documents admitted in evidence, where dated, are inconsistent.

25 <sup>11</sup> Tangerine is an office supply business operated by Seaver's wife, Edythe.

26 <sup>12</sup> Seaver sold his interest in Raven, a toner manufacturer, in 1999. He had a 5-year  
27 nondisclosure agreement and an 8-year payout from the sale.

28 <sup>13</sup> Seaver also rents space to Static Control on a month-to-month basis in Camarillo, CA.

1 Agreement.

2 28. On or about March 27, 2007, Helfstein called Seaver and informed him that  
3 Summit was lucky that UI wanted to purchase its assets because the company was  
4 haemorrhaging money, putting pressure on Seaver to agree to a replacement consulting  
5 agreement.

6 29. Seaver still refused because he did not like the terms of the new consulting  
7 agreement.

8 30. When Seaver refused to negotiate or execute a replacement consulting agreement,  
9 Helfstein decided to go forward with the sale.

10 31. Helfstein represented to Saporiti that Summit did not need Seaver's approval to  
11 execute the Asset Purchase Agreement, and he would personally indemnify the UI Defendants  
12 for any judgment Seaver might receive as it related to the sale.

13 32. Seaver was not involved with the decision or subsequent negotiations for the sale  
14 of Summit's assets.

15 33. Saporiti relied upon Helfstein to document the transaction.

16 34. In late March or early April, 2007, UI and Summit entered into the Asset  
17 Purchase Agreement. Helfstein informed UI that he was the majority owner of Summit with  
18 authority to enter into the Asset Purchase Agreement for Summit.

19 35. The UI Defendants never formally assumed the Circle Consulting Agreement.  
20 The Asset Purchase Agreement was not conditioned on the UI Defendants having consulting  
21 agreements with either Helfstein or Seaver.

22 36. At some point in time, Seaver was informed that the Circle Consulting Agreement  
23 terminated after the execution of the Asset Purchase Agreement. However, inconsistent  
24 information was provided to Seaver on issues related to his health insurance and the UI  
25 Defendants' position on his continuing obligations under the Circle Consulting Agreement.

26 37. Seaver's acquiescence to comply with the terms of the Circle Consulting  
27 Agreement based upon the representations by the UI Defendants of his continuing obligation to  
28 not compete was his consent to the assumption of that agreement.

1           38.     Prior to April 2007, Seaver received health insurance benefits through the  
2 Consulting Agreement from Summit. However, after the closing of the Asset Purchase  
3 Agreement, those benefits terminated. Prior to terminating his benefits, UI extended the term of  
4 those benefits and permitted Seaver to remain on its health insurance until Seaver obtained  
5 replacement coverage through Tangerine, with Seaver reimbursing the UI Defendants for those  
6 costs.

7           39.     After April 2007, Hecht who was the former President of Summit and became a  
8 director of UI Technologies and General Manager of Summit Technologies a division of UniNet  
9 Imaging<sup>14</sup> asked Seaver not to contact any UI and/or former Summit employees working for UI  
10 because of his lack of a non-compete/confidentiality agreement. Seaver acknowledged that he  
11 was not allowed to interfere with UI's business by communicating with its employees.

12           40.     Joseph Cachia, former VP of Operations of Summit who became a director of UI  
13 Technologies and VP of Operations of UI Supplies, informed Seaver that the former employees  
14 were forbidden to speak with him about UI business, as he did not have a non-compete  
15 agreement. Seaver acknowledged that he understood this instruction.

16           41.     Representatives of the UI Defendants made representations to Seaver that the UI  
17 Defendants held and owned the rights to the Circle Consulting Agreement and that Seaver was  
18 bound by it to the extent of the nondisclosure and noncompetition provisions.

19           42.     While UniNet characterized the transactions as an Asset Purchase, it represented  
20 the transaction to the industry as a merger in a press release, which also appeared on the UI  
21 Defendant's website for most of the trial.<sup>15</sup>

22           43.     UniNet began invoicing for Summit Technologies prior to the effective date of the  
23 transaction. The invoices on several occasions identified the invoicer as "Summit Technologies,  
24 a division of UniNet".

25           44.     Summit's business continued after the transaction as a "division of UniNet".

26  
27           <sup>14</sup> Ex. 227

28           <sup>15</sup> The press release was removed from the UI Defendants company website during the trial.

1           45.     The UI Defendants, as successors-in-interest to Summit, also assumed certain  
2 other contractual obligations and rights of Summit, but claim those obligations due and owing  
3 from Summit to Seaver were not included.

4           46.     Helfstein claims he drafted Exhibit "E" to address the two consulting agreements  
5 that Helfstein and Seaver had with Summit after Seaver refused to agree to a replacement  
6 consulting agreement. Exhibit "E" of the Asset Purchase Agreement specifically set forth that  
7 "CONSULTING AGREEMENTS WITH IRA SEAVER AND LEWIS HELFSTEIN NOT  
8 BEING ASSUMED." Helfstein claims to have created Exhibit "E" as a part of the original  
9 Asset Purchase Agreement to insure that the previous consulting contracts would not be enforced  
10 against UI.

11           47.     While the UI Defendants claim that an Exhibit "E" disclaiming responsibility for  
12 the consulting agreement with Seaver was included as part of the transaction the evidence  
13 supporting this contention lacks credibility.<sup>16</sup>

14           48.     The subsequent conduct and actions of the UI and Helfstein Defendants, however,  
15 do not correspond or support the assertion on their part that the Circle Consulting Agreement  
16 was not assumed because the UI Defendants made representations to Seaver that they held and  
17 owned the rights to the Circle Consulting Agreement and that he was bound by it insofar as he  
18 could not compete with them nor disclose any information they deemed confidential.

19           49.     Seaver on behalf of Circle sent invoices and statements to the UI Defendants for  
20 the monies due to them under the Circle Consulting Agreement to which the UI Defendants did  
21 not respond.

22           50.     The UI Defendants touted and publicized their purchase of Summit along with its  
23 intellectual property technology and other proprietary information which it possessed as a result  
24 of the past efforts and work of Seaver, and continued to do so until shortly before the conclusion  
25

---

26 <sup>16</sup> During the original motion to dismiss, it came to the Court's attention that there were  
27 significant issues about the existence of the proffered Exhibit "E". Trial Exhibit 207, documents  
28 an additional occasion where the agreement was not provided. The testimony and evidence  
taken together leads the Court to the conclusion that Exhibit "E" was not created and executed at  
the time of the closing of the transaction.

1 of trial.

2 51. Seaver and Circle honored their obligations under the Circle Consulting  
3 Agreement with Summit —irrespective of the UI Defendants' claims that they did not assume  
4 the same—by not competing with the UI Defendants as well as keeping all information they  
5 deemed confidential, confidential.<sup>17</sup>

6 52. Seaver and Circle detrimentally relied on the representations related to the  
7 obligations under the Circle Consulting Agreement in not competing with the UI or Helfstein  
8 Defendants although they did not receive compensation for such.

9 53. Seaver testified that counsel for the UI Defendants informed him that he could not  
10 engage in a business venture with Static Control; as a result of that position Seaver did not accept  
11 the position with Static Control and suffered a financial loss.

12 54. Plaintiff's expert, Rodney Conant testified, based upon his review of the books  
13 and records of Summit show that Seaver, as a consequence of honoring the Circle Consulting  
14 Agreement with Summit Technologies, lost income (along with his family Trust and Circle  
15 Consulting) in the total amount of \$3,792,570.00.

16 55. No expert damages testimony was presented by the UI Defendants.

17 56. There is not a special relationship between Plaintiffs, individually or collectively,  
18 and the UI Defendants, individually or collectively, requiring the UI Defendants to protect  
19 Plaintiffs.

20 57. If any findings of fact are properly conclusions of law, they shall be treated as if  
21 appropriately identified and designated.

## 22 CONCLUSIONS OF LAW

23 1. Seaver did not breach his obligations under the Circle Consulting Agreement.  
24 Seaver did not compete with Summit although he had a relationship with Tangerine Express,  
25 received payments from a prior sale of an interest in Raven Industries, and rented space to Static  
26

---

27 <sup>17</sup> Seaver testified he originally was informed by Hecht that he could not compete with the UI  
28 Defendants because of his prior agreement. He was later informed he could not take a position  
with Static Controls by counsel for the UI Defendants.

1 Control.

2 2. Given the representations by representatives of UI Technologies and UI Supplies,  
3 including counsel, the UI Defendants are estopped from arguing that the Circle Consulting  
4 Agreement was not assumed as a result of the transaction.

5 3. Four elements comprise the theory of promissory estoppel: (1) the party to be  
6 estopped must be apprised of the true facts; (2) he must intend that his conduct be acted upon, or  
7 must act so that the other party asserting estoppel has the right to believe it was so intended; (3)  
8 the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have  
9 relied to his detriment on the conduct of the party to be estopped. *Pink v. Busch*, 100 Nev. 684,  
10 689, 691 P.2d 456, 459 (1984) (citation omitted). The doctrine of promissory estoppel also  
11 requires reliance that is foreseeable and reasonable. *American Sav. & Loan Ass'n v. Stanton-*  
12 *Cudahy Lumber Co.*, 85 Nev. 350, 359, 455 P.2d 39, 41 (1969).

13 4. The facts here support a claim for promissory estoppel. Here, Plaintiffs justifiably  
14 relied upon the representations of the UI Defendants of the obligations remaining under the  
15 Circle Consulting Agreement including the obligations not to compete, and not to disclose  
16 confidential information. Plaintiffs have established that the UI Defendants made false or  
17 misleading misrepresentations regarding the continuation of the Consulting Agreement.

18 5. The Court finds for Plaintiffs, and against the UI Defendants on the claim for  
19 promissory estoppel.

20 6. Seaver was not involved with the negotiations and lacks any personal knowledge  
21 to offer an opinion on these negotiations. While Helfstein, Hecht, and Saporiti are the persons  
22 qualified to provide "extrinsic evidence to determine the parties' intent, explain ambiguities, and  
23 supply omissions," *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004), their  
24 statements when taken with the inconclusive documentary evidence are not credible. Given the  
25 lack of credibility of Helfstein and Hecht, the Court does not find the explanation related to the  
26 Exhibit "E" provided by those persons of assistance in making this determination.

27 7. A *de facto* merger occurs where the parties have essentially achieved the result of  
28 a merger although they do not meet the statutory requirements for *de jure* merger. Village

1 Builders v. US Laboratories, 121 Nev. 261 (2005). The factors to be weighed by the court in  
2 determining whether a *de facto* merger exists are: (1) whether there is a continuation of the  
3 enterprise; (2) whether there is a continuity of shareholders; (3) whether the seller corporation  
4 ceased its ordinary business operations; and (4) whether the purchasing corporation assumed the  
5 seller's obligations. Here after weighing the factors, the Court concludes that UI's acquisition of  
6 Summit is a *de facto* merger.

7 8. After Seaver refused to enter into a new consulting agreement, Helfstein  
8 unilaterally decided to proceed with the Asset Purchase Agreement without an agreement in  
9 place for Seaver. Helfstein communicated to Saporiti that he did not need Seaver's consent to  
10 the sale since Summit's operating agreement provided him with authority to sell as the managing  
11 member.

12 9. As the Court has found that the acquisition of Summit's assets was a *de facto*  
13 merger on the facts of this case, the Court finds in favor of Plaintiffs on the first cause of action  
14 for Breach of Circle Consulting Contract and finds against the UI Defendants.

15 10. The UI Defendants' representations to Seaver that he could not work for a  
16 competitor is evidence of a breach of the implied covenant of good faith and fair dealing. The  
17 Court finds for Plaintiffs on the claim for breach of the implied covenant of good faith and fair  
18 dealing against the UI Defendants.

19 11. " 'The doctrine of unjust enrichment or recovery in quasi contract applies to  
20 situations where there is no legal contract but where the person sought to be charged is in  
21 possession of money or property which in good conscience and justice he should not retain but  
22 should deliver to another [or should pay for].' " *Leasepartners Corp. v. Robert L. Brooks Trust*  
23 *Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997) (quoting 66 Am.Jur.2d Restitution  
24 § 11 (1973)). An unjust enrichment claim is "not available when there is an express, written  
25 contract, because no agreement can be implied when there is an express agreement." *Id.*

26 12. Here, given the Court's determinations on the other claims, Plaintiffs cannot  
27 prevail on the alternative claim for unjust enrichment.

28 13. The Court does not find that Plaintiffs have unclean hands in this matter by

1 pursuit of this lawsuit against the UI Defendants. While the UI Defendants argue that certain  
2 evidence illustrates that Plaintiffs attempted to manufacture evidence to bolster this action, the  
3 Court does not find this, taken in conjunction with the evidence presented at trial, as credible.

4 14. District courts have the discretion to determine if the alter ego doctrine applies in  
5 a case. *LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000). The  
6 requirements for finding alter ego, which must be established by a preponderance of the  
7 evidence, are: (1) The corporation must be influenced and governed by the person asserted to be  
8 its alter ego; (2) There must be such unity of interest and ownership that one is inseparable from  
9 the other; and (3) The facts must be such that adherence to the fiction of separate entity would,  
10 under the circumstances, sanction a fraud or promote injustice. *Ecklund v. Nevada Wholesale*  
11 *Lumber Co.*, 93 Nev. 196, 197, 562 P.2d 479, 479-80 (1977) (citations omitted). However, that “  
12 ‘[t]he corporate cloak is not lightly thrown aside’ and that the alter ego doctrine is an exception  
13 to the general rule recognizing corporate independence.” *Loomis*, 116 Nev. at 903-04, 8 P.3d at  
14 846 (quoting *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969)).

15 15. Here, Saporiti complied with all of the corporate formalities in forming UI  
16 Supplies and UI Technologies to purchase the assets of Summit. There is no evidence that  
17 Saporiti, UniNet, UI Technologies and UI Supplies, in any combination, are inseparable.  
18 Furthermore, there is no evidence that the recognizing UI Technologies and UI Supplies as  
19 separate legal entities would have any promotion of fraud or injustice. Saporiti legally formed  
20 UI Supplies and UI Technologies to purchase the assets of Summit. He signed the Asset  
21 Purchase Agreement on behalf of UI Supplies and UI Technologies.

22 16. Despite the intertwining of the operations of the UI Defendants, Plaintiffs have  
23 not provided sufficient evidence to demonstrate that UI Supplies and UI Technologies were an  
24 alter ego of either Saporiti or UniNet.

25 17. While the UI Defendants assumed the Circle Consulting Agreement through their  
26 action and accomplished a *de facto* merger of Summit with UI Technologies and UI Supplies, the  
27 UI Defendants did not have a special duty to protect Plaintiffs from Helfstein, Hecht, or Summit.  
28 Under the common law, there is no duty to control the conduct of a third party to prevent him

1 from causing harm to another person, unless a special relationship exists.

2 18. Here, there was not a special relationship between Plaintiffs and the UI  
3 Defendants as recognized by the common law.

4 19. Two categories of damages which the Court believes are appropriate for award  
5 consistent with this decision are:

6	Lost Opportunity <sup>18</sup>	\$469,450.92
7	Loss of Health Insurance Premiums <sup>19</sup>	<u>\$ 96,146.52</u>
	TOTAL	\$565,597.44

8 20. If any conclusions of law are properly findings of fact, they shall be treated as if  
9 appropriately identified and designated.

10 **JUDGMENT IS ENTERED AS FOLLOWS:** Plaintiffs take judgment in the sum of  
11 \$565,597.44 on the claims for breach of contract, breach of the covenant of good faith and fair  
12 dealing and promissory estoppel;  
13 ...

14  
15  
16  
17  
18  
19 <sup>18</sup> The Court has used Mr. Conant's figures but has made an adjustment. His figures on Exhibit  
20 "BB" show Due 4/1/07 through 12/31/10 \$ 353,135.74  
Due 1/1/11 through 12/31/14 328,419.34  
\$ 681,555.08

21 The Court only awards Lost Opportunity damages in the amount of \$469,450.92 through 5/31/12  
22 (\$353,135.74 + \$116,315.18) as the remainder of the damages have not yet been incurred and  
may be sought if a continuing breach of the agreement occurs.

23 <sup>19</sup> The Court has used Mr. Conant's figures but has made an adjustment. His figures on Exhibit  
24 "L" show Due 4/1/07 through 12/31/10 \$ 74,865.00  
Due 1/1/11 through 12/31/14 60,089.00  
25 \$ 134,954.00

26 The Court only awards Loss of Health Insurance Premiums as damages in the amount of  
27 \$96,146.52 through 5/31/12 (\$74,865.00 + \$21,281.52) as the remainder of the damages have not  
yet been incurred and may be sought if a continuing breach of the agreement occurs.

28

**JUDGMENT IS FURTHER ENTERED AS FOLLOWS:** Plaintiffs may make a motion for attorneys' fees, if appropriate, and demand costs as provided for under the Nevada Rules of Civil Procedure, the Nevada Revised Statutes, and any other application rule, statute, or contract.

Dated this 17<sup>th</sup> day of May, 2012.

~~Elizabeth Gonzalez  
District Court Judge~~

## Certificate of Service

I hereby certify that on or about the date filed, this document was copied through e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper party as follows:

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Gary E Schnitzer, Esq. (Kravitz Schnitzer, et al)

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Dan Kutinac

  
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Attorneys for UI SUPPLIES,  
UNINET IMAGING, INC., and NESTOR SAPORITI

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Case No.: A587003  
Dept. No.: XI

Plaintiff,

vs.

UI SUPPLIES, UNINET IMAGING, INC.,  
NESTOR SAPORITI and DOES 1 through 20,  
and ROE entities 21 through 40, inclusive;  
DOES I through X, inclusive; and ROE  
BUSINESS ENTITIES I through X, inclusive,

Defendants.

**MOTION TO ALTER OR AMEND  
JUDGMENT, OR IN THE  
ALTERNATIVE, FOR SATISFACTION  
OF JUDGMENT BASED ON  
SETTLEMENT WITH SUMMIT  
TECHNOLOGIES**

Date of Hearing:

Time of Hearing:

UI Supplies ("UIS"), UI Technologies ("UIT"), UniNet Imaging (UIS, UIT and UniNet Imaging are collectively referred to as "UniNet"), and Nestor Saporiti ("Mr. Saporiti") (UIS, UIT, UniNet, and Mr. Saporiti are collectively referred to as the "UniNet Defendants"), by and through their attorneys of record, the law firms of Kravitz, Schnitzer, Sloane, & Johnson, Chtd. and Michael B. Lee, P.C., hereby respectfully file Motion to Alter or Amend Judgment, or in the Alternative, for Satisfaction of Judgment Based on Settlement With Summit Technologies

MICHAEL B. LEE, P.C.  
2000 SO. EASTERN AVENUE  
LAS VEGAS, NEVADA 89104  
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1 ("Motion"). Plaintiffs Ira and Edythe Seaver Family Trust, Ira Seaver ("Mr. Seaver"), and Circle  
2 Consulting Corporation ("Circle Consulting") are collectively referred to as "Plaintiffs." Lewis  
3 Helfstein ("Helfstein"), Summit Technologies, Inc. ("Summit"), Summit Laser Products, Inc.  
4 ("Laser Products"), and Steven Hecht ("Hecht") are collectively referred to as "Summit  
5 Defendants."

6 Dated this 5 day of June, 2012.

7 MICHAEL B. LEE, P.C.

8 /s/ Michael Lee  
MICHAEL B. LEE, ESQ.  
Nevada Bar No. 10122  
MICHAEL B. LEE, P.C.  
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Attorney for UI Defendants

13  
14  
15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that Plaintiffs will bring the above and foregoing this  
17 **MOTION TO ALTER OR AMEND JUDGMENT, OR IN THE ALTERNATIVE, FOR**  
18 **SATISFACTION OF JUDGMENT BASED ON SETTLEMENT WITH SUMMIT**

19 **TECHNOLOGIES** on for hearing on the 6 day of July, 2012, at the hour of  
20 In Chambers  
   :     .m., or as soon thereafter as the matter can be heard before this Honorable Court.

21 Dated this 5 day of June, 2012.

22 MICHAEL B. LEE, P.C.

23 /s/ Michael Lee  
24 MICHAEL B. LEE, ESQ.  
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28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

**A. Overview**

UIS and UIT are entitled to amendment of the findings of fact and conclusions of law based on Plaintiffs voluntarily dismissal all claims against Summit and Laser Products on November 23, 2009. Plaintiffs, by way of a settlement agreement with the Helfstein Defendants, agreed to release all claims against Summit and Laser Product's successors. Under the theory of *de facto* merger, UIS and UIT are the successors of Summit and Laser Products. However, this Honorable Court's findings of fact and conclusions of law omitted this information. Therefore, UIS and UIT respectfully request that this Court amend the judgment accordingly.

Alternatively, UIS and UIT seek an order finding that the settlement agreement satisfies the judgment. Plaintiffs' filing of a motion for determination of good faith settlement illustrates that the settlement agreement contains material terms requiring the release of all claims asserted in this action against Summit. As UIT and UIS are Summit and Laser Product's successors-in-interest by operation of law, the settlement agreement satisfies the judgment.

**B. Statement of the Facts**

The following facts are taken from the findings of fact and conclusions of law. On or about August 12, 2004, Helfstein, on behalf of Summit, and the Trust entered into an operating agreement to form Summit with Helfstein Defendants maintaining management and control of it but requiring them to also obtain Seaver's approval for decisions regarding its capital structure of Summit. Findings of Fact ("FOC") at ¶ 1 p. 2. The Operating Agreement with the Plaintiffs for the operation of Summit as a New York limited liability company which provided, among other things, that it would maintain records and provide accountings to its members including providing quarterly reports; that 75% of the members' consent would be necessary to change its capital structure; for distribution of profits and net cash flow of 65% to Summit and 35% to the Trust; and for health insurance. *Id.* at ¶ 2 p. 3. In September 2004, Summit entered into a Technology License Agreement with LaserStar Distribution Corporation, another entity controlled by the Plaintiffs, for the "codes and programs for laser cartridge chips." *Id.* at ¶ 3 p. 3.

1 The license period was for 10 years. *Id.*

2 In September, 2004, a consulting, noncompetition and confidentiality agreement was  
3 entered into by Helfstein on behalf of Summit, and Seaver individually and as president of  
4 Circle. *Id.* at ¶ 4 p. 3. Seaver, by way of Circle, and Helfstein, by way of LBH Enterprises  
5 agreed to consulting agreements in lieu of salary. The Consulting Agreement contained  
6 obligations related to nondisclosure of confidential information and an agreement not to aid  
7 competition. *Id.* It also contained a specific term as to assignment stating that “[t]his Agreement  
8 may not be assigned by any party hereto.” (“Anti-Assignment Clause”) *Id.* Among other things,  
9 the Circle Consulting Agreement provided for payments of \$125,000 per year on a monthly basis  
10 with annual \$5,000 increases; reimbursement of expenses; and payments based on sale of laser  
11 printer chips. *Id.* at ¶ 5 p. 4. Seaver was required to exclusively perform services at the request  
12 of Summit as well as comply with the noncompete, nondisclosure and confidentiality provisions  
13 of that agreement. *Id.* at ¶ 6 p. 4.

14 On or about August 1, 2005, Helfstein, as the managing member of Summit, notified  
15 Seaver that he was suspending the consulting fee payments for the Circle Consulting Agreement  
16 based on Summit's insufficient cash flow. *Id.* at ¶ 7 p. 4. After Helfstein suspended the  
17 consulting fee payments, Seaver stopped performing consulting services. *Id.* at ¶ 8 p. 4.  
18 Furthermore, in late 2006, Seaver suffered an injury that required surgery which prevented him  
19 from consulting for an extended period. *Id.* at ¶ 9 p. 4.

20 In late 2006, Helfstein and Hecht, the Chief Financial Officer and President of Summit,  
21 began soliciting offers to sell Summit or Summit's assets. *Id.* at ¶ 10 p. 4. Summit had a large  
22 bank loan and various creditors that Summit could not afford to pay. *Id.* Sometime in October  
23 2006, Helfstein approached Saporiti about purchasing Summit's assets after unsuccessfully  
24 approaching approximately three or four other buyers. *Id.* at ¶ 11 pp. 4 - 5. After some  
25 exchange of information and discussions with key personnel, in early February 2007, Saporiti  
26 indicated that he would form UI Technologies and UI to purchase the assets of Summit. *Id.* at ¶  
27 12 p. 5.

28 ////

1 Saporiti informed Hecht and Helfstein that he did not want to assume the current Circle  
2 Consulting Agreement. *Id.* at ¶ 13 p. 5. At some point in time Seaver became aware that UI  
3 Defendants did not want to assume the current Circle Consulting Agreement. *Id.* at ¶ 14 p. 5.  
4 Helfstein attempted to negotiate a new global agreement for Seaver and himself. This called for  
5 Seaver to receive approximately 35% of whatever Helfstein negotiated for himself through LBH  
6 Enterprises. *Id.* at ¶ 15 p. 5.

7 Seaver was aware of the attempt to negotiate a separate consulting and non-competition  
8 agreement, but his relationship and the trust between Seaver and Helfstein had deteriorated. *Id.*  
9 at ¶ 16 p. 5. Seaver was concerned that the payments would flow through Helfstein, which could  
10 have been usurped by Helfstein's estate in the event of Helfstein's death. *Id.* at ¶ 17 p. 5. As a  
11 result, Seaver asked UI Defendants for a consulting agreement separate from Helfstein's. *Id.* at ¶  
12 18 p. 5. Saporiti stated that he was interested in working with Seaver. *Id.* at ¶ 19 p. 5. Hecht  
13 attempted to negotiate language that was acceptable to Seaver in terms of both compensation and  
14 the scope of the non-competition provision. *Id.* at ¶ 20 p. 5.

15 Eventually, Saporiti's newly created companies, UI Technologies and UI, entered into a  
16 transaction that was characterized as an Asset Purchase of Summit. *Id.* at ¶ 21 p. 5. As part of  
17 the transaction no specific intellectual property rights that were being transferred or being  
18 assigned were identified. Certain accounts receivable, contracts and cash were not transferred as  
19 part of the transaction. *Id.* Helfstein Defendants also entered into an agreement with UI  
20 Technologies for the purchase of all of the assets of Laser Star Distribution Corporation. *Id.* at ¶  
21 22 pp. 5-6. As part of the transaction no specific intellectual property rights that were being  
22 transferred or being assigned were identified. *Id.* After agreeing to the initial terms, Helfstein  
23 drafted the Asset Purchase Agreement which was reviewed by counsel for UI Defendants. *Id.* at  
24 ¶ 23 p. 5. Hecht negotiated portions of the agreement on behalf of the UI Defendants prior to the  
25 closing of the transaction. *Id.* at ¶ 24 p. 6. Seaver was not involved with the decision or  
26 subsequent negotiations for the sale. *Id.* at ¶ 32 p. 7.

27 Ultimately, Seaver refused to enter into the offered replacement consulting agreement  
28 because it did not have a sufficient "carve out" to the non-compete that would allow him to

1 operate pre-existing ventures (Tangerine Express, Raven Industries, etc.), and it had insufficient  
2 compensation with a payout over three years. *Id.* at ¶ 25 p. 6. None of the pre-existing ventures  
3 as performed during the period of the Circle Consulting agreement prior to the acquisition by UI  
4 Technologies and UI are a violation of the noncompetition provisions of that agreement. *Id.* at ¶  
5 26 p. 6.

6 Seaver received notice regarding a meeting about the sale proceeding on March 27, 2007,  
7 for a meeting that same day. The Notice of Meeting of Members specifically stated that a special  
8 meeting would be held on March 27, 2007 for the purpose of: (1) Authorizing the Company to  
9 enter into and perform the Agreement for Purchase and Sale of Assets By and Between UI, Inc.  
10 and Summit Technologies, LLC, dated as of March 30, 2007, for sale of substantially all of the  
11 assets of the company (the "Sales Agreement"); and (2) Authorizing Summit Laser Products,  
12 Inc., as member and manager of the Company, by its president, Helfstein, or any other office  
13 thereof, to execute and deliver any and all documents and to take such further action as may be  
14 desirable, from time to time, in furtherance of the Sales Agreement. *Id.* at ¶ 27 pp. 6-7.

15 On or about March 27, 2007, Helfstein called Seaver and informed him that Summit was  
16 lucky that UI wanted to purchase its assets because the company was hemorrhaging money,  
17 putting pressure on Seaver to agree to a replacement consulting agreement. *Id.* at ¶ 28 p. 7.  
18 Seaver still refused because he did not like the terms of the new consulting agreement. *Id.* at ¶  
19 29 p. 7. When Seaver refused to negotiate or execute a replacement consulting agreement,  
20 Helfstein decided to go forward with the sale. *Id.* at ¶ 30 p. 7. Helfstein represented to Saporiti  
21 that Summit did not need Seaver's approval to execute the Asset Purchase Agreement, and he  
22 would personally indemnify UI Defendants for any judgment Seaver might receive as it related  
23 to the sale. *Id.* at ¶ 31 p. 7. Saporiti relied upon Helfstein to document the transaction. *Id.* at ¶  
24 33 p. 7.

25 In late March or early April, 2007, UI and Summit entered into the Asset Purchase  
26 Agreement. *Id.* at ¶ 34 p. 7. Helfstein informed UI that he was the majority owner of Summit  
27 with authority to enter into the Asset Purchase Agreement for Summit. *Id.* UI Defendants never  
28 formally assumed the Circle Consulting Agreement. *Id.* at ¶ 35 p. 7. The Asset Purchase

1 Agreement was not conditioned on UI Defendants having consulting agreements with either  
2 Helfstein or Seaver. *Id.*

3 At some point in time, Seaver was informed that the Circle Consulting Agreement  
4 terminated after the execution of the Asset Purchase Agreement. *Id.* at ¶ 36 p. 7. However,  
5 inconsistent information was provided to Seaver on issues related to his health insurance and UI  
6 Defendants' position on his continuing obligations under the Circle Consulting Agreement. *Id.*  
7 Seaver's acquiescence to comply with the terms of the Circle Consulting Agreement based upon  
8 the representations by UI Defendants of his continuing obligation to not compete was his consent  
9 to the assumption of that agreement. *Id.* at ¶ 37 p. 7.

10 Prior to April 2007, Seaver received health insurance benefits through the Consulting  
11 Agreement from Summit. *Id.* at ¶ 38 p. 8. However, after the closing of the Asset Purchase  
12 Agreement, those benefits terminated. *Id.* Prior to terminating his benefits, UI extended the  
13 term of those benefits and permitted Seaver to remain on its health insurance until Seaver  
14 obtained replacement coverage through Tangerine, with Seaver reimbursing UI Defendants for  
15 those costs. *Id.*

16 After April 2007, Hecht who was the former President of Summit and became a director  
17 of UI Technologies and General Manager of Summit Technologies a division of UniNet Imaging  
18 asked Seaver not to contact any UI and/or former Summit employees working for UI because of  
19 his lack of a non-compete/confidentiality agreement. *Id.* at ¶ 39 p. 9. Seaver acknowledged that  
20 he was not allowed to interfere with UI's business by communicating with its employees. *Id.*  
21 Similarly, Joseph Cachia, former VP of Operations of Summit who became a director of UI  
22 Technologies and VP of Operations of UI, informed Seaver that the former employees were  
23 forbidden to speak with him about UI business, as he did not have a non-compete agreement. *Id.*  
24 at ¶ 40 p. 8. Seaver acknowledged that he understood this instruction. *Id.*

25 Representatives of UI Defendants made representations to Seaver that UI Defendants  
26 held and owned the rights to the Circle Consulting Agreement and that Seaver was bound by it to  
27 the extent of the nondisclosure and noncompetition provisions. *Id.* at ¶ 41 p. 8. While UniNet  
28 characterized the transactions as an Asset Purchase, it represented the transaction to the industry

1 as a merger in a press release, which also appeared on UI Defendant's website for most of the  
2 trial. *Id.* at ¶ 42 p. 8. UniNet began invoicing for Summit Technologies prior to the effective  
3 date of the transaction. *Id.* at ¶ 43 p. 8. The invoices on several occasions identified the invoice  
4 as "Summit Technologies, a division of UniNet". *Id.* Summit's business continued after the  
5 transaction as a "division of UniNet." *Id.* at ¶ 44 p. 8.

6 UI Defendants, as successors-in-interest to Summit, also assumed certain other  
7 contractual obligations and rights of Summit, but claim those obligations due and owing from  
8 Summit to Seaver were not included. *Id.* at ¶ 45 p. 9. Helfstein claims he drafted Exhibit "E" to  
9 address the two consulting agreements that Helfstein and Seaver had with Summit after Seaver  
10 refused to agree to a replacement consulting agreement. *Id.* at ¶ 46 p. 9. Exhibit "E" of the  
11 Asset Purchase Agreement specifically set forth that "CONSULTING AGREEMENTS WITH  
12 IRA SEAVER AND LEWIS HELFSTEIN NOT BEING ASSUMED." *Id.* Helfstein claims to  
13 have created Exhibit "E" as a part of the original Asset Purchase Agreement to insure that the  
14 previous consulting contracts would not be enforced against UI. *Id.* While UI Defendants claim  
15 that an Exhibit "E" disclaiming responsibility for the consulting agreement with Seaver was  
16 included as part of the transaction the evidence supporting this contention lacks credibility based  
17 on the district court's prior dispositive motions early in the case. *Id.* at ¶ 47 n. 16 p. 9.

18 The subsequent conduct and actions of UI and Helfstein Defendants, however, do not  
19 correspond or support the assertion on their part that the Circle Consulting Agreement was not  
20 assumed because UI Defendants made representations to Seaver that they held and owned the  
21 rights to the Circle Consulting Agreement and that he was bound by it insofar as he could not  
22 compete with them nor disclose any information they deemed confidential. *Id.* at ¶ 48 p. 9.  
23 Seaver on behalf of Circle sent invoices and statements to UI Defendants for the monies due to  
24 them under the Circle Consulting Agreement to which UI Defendants did not respond. *Id.* at ¶  
25 49 p. 9. UI Defendants touted and publicized their purchase of Summit along with its intellectual  
26 property technology and other proprietary information which it possessed as a result of the past  
27 efforts and work of Seaver, and continued to do so until shortly before the conclusion of trial. *Id.*  
28 at ¶ 50 pp. 9-10.

1 Seaver and Circle honored their obligations under the Circle Consulting Agreement with  
2 Summit -irrespective of UI Defendants' claims that they did not assume the same-by not  
3 competing with UI Defendants as well as keeping all information they deemed confidential,  
4 confidential. *Id.* at ¶ 51 p. 10. Seaver and Circle detrimentally relied on the representations  
5 related to the obligations under the Circle Consulting Agreement in not competing with UI or  
6 Helfstein Defendants although they did not receive compensation for such. *Id.* at ¶ 52 p. 10.  
7 Seaver testified that counsel for UI Defendants informed him that he could not engage in a  
8 business venture with Static Control; as a result of that position Seaver did not accept the  
9 position with Static Control and suffered a financial loss. *Id.* at ¶ 53 p. 10.

10 Plaintiff's expert, Rodney Conant testified, based upon his review of the books and  
11 records of Summit show that Seaver, as a consequence of honoring the Circle Consulting  
12 Agreement with Summit, lost income (along with his family Trust and Circle Consulting) in the  
13 total amount of \$3,792,570.00. *Id.* at ¶ 54 p. 10. No expert damages testimony was presented by  
14 UI Defendants. *Id.* at ¶ 55 p. 10.

15 There is not a special relationship between Plaintiffs, individually or collectively, and UI  
16 Defendants, individually or collectively, requiring UI Defendants to protect Plaintiffs. *Id.* at ¶ 56  
17 p. 10.

18 **B. Statement of Procedure**

19 On April 3, 2009, Plaintiffs filed a Complaint against Helfstein Defendants and UI  
20 Defendants. In the Complaint, Plaintiffs asserted ten causes of action: (1) Breach of Circle  
21 Consulting Contract (against all Defendants); (2) Breach of Summit Technologies Formation  
22 Agreement (against Helfstein Defendants Only); (3) Breach of Summit Technologies Operating  
23 Agreement (against Helfstein Defendants and Summit Only); (4) Breach of Fiduciary Duty  
24 (against Helfstein Defendants Only – amended at trial to include UI Defendants); (5) Promissory  
25 Estoppel (against UniNet Defendants Only); (6) Unjust Enrichment (against UniNet Defendants  
26 Only); (7) Accounting (against Summit and Helfstein Defendants Only – dismissed at the close  
27 of Plaintiffs' case); (8) Declaratory Relief (against All Defendants); (9) Breach of Implied  
28 Covenant of Good Faith and Fair Dealing (against All Defendants – district court dismissed

1 tortuous breach of the covenant of good faith and faith dealing at the close of Plaintiffs' case);  
2 and (10) Alter Ego (against All Defendants – district court dismissed claims against UI  
3 Defendants at the close of Plaintiffs' case).

4 In late 2009, Plaintiffs reached a settlement/confidentiality agreement and mutual release  
5 of all claims ("Summit Settlement") with the Helfstein Defendants. Summit Settlement  
6 Agreement attached as **Exhibit A**. The Summit Settlement was the product of ten months of  
7 negotiations between the Trust and Circle Consulting's counsel and Mr. Helfstein. Pls.' Mot.  
8 Det. Good Faith Set. at Ex. C ¶ 4 attached as Exhibit B (omitting all other exhibits except C  
9 [Exhibit A is the Consulting Agreement; Exhibit B is an incomplete Asset Purchase  
10 Agreement]). The Summit Settlement specifically included Summit and Laser Star. *Id.* at Ex. C  
11 ¶ 2. The Summit Settlement expressly released Summit and Laser Star, "as well as their  
12 respective attorneys, agents, employees, principals, assignees, assignors, successors and/or heirs  
13 from any and all liability, obligations, debts, claims, demands and lawsuits of any kind or nature  
14 whatsoever." Ex. A at 1. On or about November 23, 2009, Plaintiffs voluntarily dismissed all  
15 claims against Summit and Laser Products. Ex. B, Mot. at Ex. D.

16 On May 18, 2012, this Honorable Court found in favor of Plaintiffs on the claims for  
17 promissory estoppel, breach of contract, and breach of the implied covenant of good faith and  
18 fair dealing for damages, as of May 31, 2012, for \$565,597.44. Plaintiffs entered this judgment  
19 on May 21, 2012. The result of the de facto merger finding makes UI Supplies and UI  
20 Technologies the successors of Summit and Laser Products as a matter of law. As such,  
21 Plaintiffs voluntarily dismissed any and all claims against UIS and UIT on November 23, 2009  
22 in exchange for the good and valuable consideration of \$60,000.00. Exs. A,B.

## 23 **II. DISCUSSION**

24 Amending the findings of fact and conclusions of law to include information about the  
25 Summit Settlement is appropriate as a matter of law. Alternatively, finding that the Summit  
26 Settlement satisfied the judgment entered in this matter is also appropriate since Plaintiffs'  
27 voluntarily agreed to release all claims against Summit, which includes UIS and UIT as  
28 Summit's successors-in-interest. In support, the following Discussion is organized into three

1 Parts. Part A sets forth the standards to alter and amend, successor-in-interest status of surviving  
2 de facto merger corporation, and enforcing a settlement agreement. Part B contains the  
3 requested alterations and amendments to the findings of fact and conclusions of law. Finally,  
4 Part C, in the alternative, seeks satisfaction of the judgment based on the Summit Settlement.

5 **A. Standards**

6 1. Motion to Alter and Amend

7 Nevada Rule of Civil Procedure 52 governs findings of the court. Rule 52(a) states that  
8 for interlocutory injunctions, the court shall set forth findings of facts specially and conclusions  
9 of law that constitute the grounds of its action. Further, it states that "Findings of fact shall not be  
10 set aside unless clearly erroneous." *Id.* As to amending or altering a court's findings of fact and  
11 conclusions of law, a party must file a motion no later than 10 days after service of written notice  
12 of entry of judgment. Nev. R. Civ. Pro 52(b). Thereafter, "the court may amend its findings or  
13 make additional findings and may amend the judgment accordingly." *Id.*

14 The Nevada Supreme Court requires District Courts to make specific findings of fact and  
15 conclusions of law of a sufficient basis to indicate the factual basis for the court's ultimate  
16 conclusions. *Robison v. Robison*, 100 Nev. 668, 691 P.2d 451 (1984) (citing *Bing Constr. v.*  
17 *Vasey-Scott Eng'r*, 100 Nev. 72, 674 P.2d 1107 (1984)). Although a detailed explanation is  
18 unnecessary, its findings should be sufficient to establish the basis for the ruling. *See Bing*  
19 *Constr.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984). Moreover, there must be sufficient  
20 evidence supporting the findings of fact and conclusions of law to substantiate the Order. *See*  
21 *Griffin v. Westergard*, 96 Nev. 627, 632, 615 P.2d 235, 238 (1980). Failure to properly evidence  
22 a finding will result in it being set aside. *See Waldman v. Waldman*, 97 Nev. 546, 547, 635 P.2d  
23 289, 290 (1981).

24 2. De Facto Merger Finding Makes UIS and UIT Summit and Laser  
25 Product's Successor-in-Interest

26 The *de facto* merger exception permits courts to hold the purchaser of a business's assets  
27 liable for the seller corporation's conduct when the parties have essentially achieved the result of  
28 a merger although they do not meet the statutory requirements for a *de jure* merger. *Village*,

1 121 Nev. at 269, 112 P.3d at 1087 (citing *Kleen Laundry & Dry Cleaning v. Total Waste Mgt.*,  
2 817 F.Supp. 225, 230 (D.N.H. 1993) (“Kleen Laundry I”). A de facto merger occurs when a  
3 transaction, although not in form a merger, is in substance “a consolidation or merger of seller  
4 and purchaser.” *Schumacher v. Richards Shear Co.*, 59 N.Y.2d 239, 245, 451 N.E.2d 195, 198,  
5 464 N.Y.S.2d 437, 440 (1983).

6 3. Enforcement of a Settlement Agreement

7 “[A] settlement agreement is a contract, its construction and enforcement are governed by  
8 principles of contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005)  
9 (citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F.Supp. 952, 954 (N.D.Ill.1985)). Basic contract  
10 principles require, for an enforceable contract, an offer and acceptance, meeting of the minds,  
11 and consideration. *Keddie v. Beneficial Insurance, Inc.*, 94 Nev. 418, 421, 580 P.2d 955, 956  
12 (1978). A contract can be formed when the parties have agreed to the material terms, even  
13 though the contract’s exact language is not finalized until later. *Matter of the Estate of Kern*, 107  
14 Nev. 988, 991, 823 P.2d 275, 277 (1991). In the case of a settlement agreement, a court can  
15 compel compliance when material terms are certain. *May*, 121 Nev. at 672, 119 P.3d at 1257  
16 (citations omitted).

17 B. Judgment Should Be Amended to Include Findings That UIS and UIT are  
18 Successors of Summit Settlement

19 This Honorable Court’s Findings of Fact and Conclusions of Law do not reflect the  
20 Summit Settlement and Plaintiffs’ voluntary dismissal of claims against Summit and Laser  
21 Products. UIS and UIT respectfully request an additional finding of fact, replacing 58 with the  
22 following:

23 58. In late 2009, Plaintiffs reached a settlement/confidentiality agreement and mutual  
24 release of all claims (“Summit Settlement”) with the Helfstein Defendants. The Summit  
25 Settlement was the product of ten months of negotiations between the Trust and Circle  
26 Consulting’s counsel and Mr. Helfstein. The Summit Settlement specifically included Summit  
27 and Laser Star, whom the UI Defendants are the successors-in-interest to.

28 ////

1           59.     The Summit Settlement expressly hereby expressly released Summit and Laser  
2     Star, "as well as their respective attorneys, agents, employees, principals, assignees, assignors,  
3     successors and/or heirs from any and all liability, obligations, debts, claims, demands and  
4     lawsuits of any kind or nature whatsoever."

5           60.     On or about November 23, 2009, Plaintiffs voluntarily dismissed all claims  
6     against Summit and Laser Products.

7           61.     If any findings of fact are properly conclusions of law, they shall be treated as if  
8     appropriately identified and designated.

9           Additionally, UIS and UIT respectfully request that this Honorable Court amend the  
10    conclusions of law by including, after original finding 18:

11          19.     "[A] settlement agreement is a contract, its construction and enforcement are  
12    governed by principles of contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254,  
13    1257 (2005) (citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F.Supp. 952, 954 (N.D.Ill.1985)).  
14    Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of  
15    the minds, and consideration. *Keddie v. Beneficial Insurance, Inc.*, 94 Nev. 418, 421, 580 P.2d  
16    955, 956 (1978). A contract can be formed when the parties have agreed to the material terms,  
17    even though the contract's exact language is not finalized until later. *Matter of the Estate of*  
18    *Kern*, 107 Nev. 988, 991, 823 P.2d 275, 277 (1991). In the case of a settlement agreement, a  
19    court can compel compliance when material terms are certain. *May*, 121 Nev. at 672, 119 P.3d  
20    at 1257 (citations omitted).

21          20.     The Summit Settlement reached in late 2009, was clear as to the material terms  
22    agreed to by Plaintiffs and Summit/Laser Products. The Summit Settlement was the product of  
23    ten months of arms' length negotiations by the parties. The Summit Settlement specifically  
24    included Summit and Laser Star. The Summit Settlement expressly released Summit and Laser  
25    Star, "as well as their respective attorneys, agents, employees, principals, assignees, assignors,  
26    successors and/or heirs from any and all liability, obligations, debts, claims, demands and  
27    lawsuits of any kind or nature whatsoever." On or about November 23, 2009, Plaintiffs  
28    voluntarily dismissed all claims against Summit and Laser Products. The UI Defendants are

1 included in the Summit Settlement as the successors-in-interest to Summit.

2 UIS and UIT respectfully request that this Honorable Court strike conclusion of law 19  
3 and replace it with:

4 21. Plaintiffs expressly released Summit “as well as their respective attorneys, agents,  
5 employees, principals, assignees, assignors, successors and/or heirs from any and all liability,  
6 obligations, debts, claims, demands and lawsuits of any kind or nature whatsoever.” On or about  
7 November 23, 2009, Plaintiffs voluntarily dismissed all claims against Summit. As such, by  
8 operation of *de facto* merger, the UI Defendants are the “successors” provided for in the Summit  
9 Settlement and released from all claims.

10 UIS and UIT respectfully request that this Honorable Court strike the judgment in favor  
11 of Plaintiffs in the sum of \$565,597.44 and replace it with the following:

12 **JUDGMENT IS ENTERED AS FOLLOWS:** Plaintiffs have settled and resolved all  
13 claims against Summit, and by way of *de facto* merger, against the UI Defendants, for good and  
14 valuable consideration of \$60,000.00. Based on the Summit Settlement, Plaintiffs completely  
15 released Summit, and by way of *de facto* merger, the UI Defendants, which entitles them to take  
16 no judgment on the claims asserted in this action.

17 **C. Alternatively, UIS and UIT Seek Satisfaction of Judgment Based on Summit**  
18 **Settlement**

19 The Summit Settlement completely satisfies the judgment rendered by this Honorable  
20 Court. Plaintiffs’ motion for determination of good faith illustrates that Plaintiffs and the  
21 Helfstein Defendants, including Summit and Laser Products, negotiated for the material terms of  
22 the Summit Settlement. Ex. B *et seq.* In particular, Plaintiffs covenanted expressly to release  
23 Summit and Laser Star, “as well as their respective attorneys, agents, employees, principals,  
24 assignees, assignors, successors and/or heirs from any and all liability, obligations, debts, claims,  
25 demands and lawsuits of any kind or nature whatsoever.” Ex. A at 1. Furthermore, on or about  
26 November 23, 2009, Plaintiffs voluntarily dismissed all claims against Summit and Laser  
27 Products. Ex. B, Mot. at Ex. D. As UIS and UIT are the successors-in-interest of Summit and  
28 Laser Products, Plaintiffs voluntarily released the claims against them on November 23, 2009 in

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1 consideration for \$60,000.00. As such, UIS and UIT respectfully request an order finding  
2 satisfaction of judgment.

3 **III. CONCLUSION**

4 Based on the foregoing, Defendants respectfully request that this Honorable Court grant  
5 the Motion, or in the alternative, enter a finding of satisfaction of judgment.

6 Dated this 5 day of June, 2012.

7 MICHAEL B. LEE, P.C.

8 /s/ Michael Lee  
MICHAEL B. LEE, ESQ. (NSB 10122)  
2000 So. Eastern Avenue  
Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
mike@mblnv.com

12 Attorneys for UI SUPPLIES, UNINET IMAGING,  
13 INC., and NESTOR SAPORITI

MICHAEL B. LEE, P.C.  
2000 SO. EASTERN AVENUE  
LAS VEGAS, NEVADA 89104  
TEL -- (702) 477-7030; FAX -- (702) 477-0096

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 5 day of June, 2012, I e-mailed a copy and placed a copy of the **MOTION TO ALTER OR AMEND JUDGMENT, OR IN THE ALTERNATIVE, FOR SATISFACTION OF JUDGMENT BASED ON SETTLEMENT WITH SUMMIT TECHNOLOGIES** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below.

Jeffrey R. Albregts, Esq. (NBN 0066)	Ira Seaver
SANTORO, DRIGGS, WALCH, KEARNEY,	2407 Ping Drive
HOLLEY & THOMPSON	Henderson, NV 89074
400 South Fourth Street, Third Floor	<a href="mailto:iseaver@aol.com">iseaver@aol.com</a>
Las Vegas, Nevada 89101	In Proper Person
Tel: (702) 791-0308	
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<a href="mailto:jalbregts@nevadafirm.com">jalbregts@nevadafirm.com</a>	
Attorneys for Circle Consulting and Seaver	
Family Trust	

/s/ Desy Wang  
An employee of MICHAEL B. LEE, P.C.

# Exhibit A

# Exhibit A

**SETTLEMENT/CONFIDENTIALITY AGREEMENT  
AND MUTUAL RELEASE OF ALL CLAIMS**

The undersigned, IRA AND EDYTHE SEAVER FAMILY TRUST, IRA SEAVER and CIRCLE CONSULTING CORPORATION ("Seaver Plaintiffs") on one side; and LEWIS HELFSTEIN, MADALYN HELFSTEIN, SUMMIT LASER PRODUCTS, INC. and SUMMIT TECHNOLOGIES, LLC (hereinafter "Helfstein Defendants") on the other side; for good and valuable consideration in the amount of SIXTY THOUSAND DOLLARS (\$60,000.00), already paid by the Helfstein Defendants to the Seaver Plaintiffs and which is on deposit in the trust account of Santoro, Driggs, Walch, Kearney, Holley & Thompson; hereby expressly release each other in this matter as well as their respective attorneys, agents, employees, principals, assignees, assignors, successors and/or heirs from any and all liability, obligations, debts, claims, demands and lawsuits of any kind or nature whatsoever and, to that end, hereby acknowledge, represent and warrant that this mutual release is accepted in full compromise settlement and satisfaction of, and as sole consideration for the final release and discharge of all claims, actions, debts, obligations and demands whatsoever that now exist or may hereafter occur which have been asserted or could have been asserted by the undersigned in that lawsuit pending between these parties filed in District Court, Clark County, Nevada, entitled Ira and Edythe Seaver Family Trust, Ira Seaver and Circle Consulting Corporation v. Lewis Helfstein, Madalyn Helfstein, Summit Laser Products, Inc., Summit Technologies LLC, UI Supplies, Uninet Imaging, Inc. and Nestor Saporiti (Case No. A587003).

The consideration and/or covenants for this Agreement are (1) the payment of \$60,000 by the Helfstein Defendants to the Seaver Plaintiffs; (2) the dismissal of said legal action (Case No. A587003) with prejudice as to the Helfstein Defendants only, each side to bear their own attorney's fees and costs of suit incurred therein; (3) that Lewis Helfstein also hereby agrees to

cooperate in providing testimony and evidence in said case on behalf of the Seaver Plaintiffs and, in the event it becomes necessary for Helfstein to travel to Nevada more than once, Seaver will pay for the cost of as much (but only after Helfstein's first trip there); and (4) the provisions set forth hereinbelow.

By accepting and executing this Settlement/Confidentiality Agreement And Mutual Release ("Agreement"), no party hereto admits any liability whatsoever and they each accept this duly executed Mutual Release solely for the purpose of resolving the issues that were caused by the above referenced lawsuit and do not make any admission of any kind whatsoever, and that the execution of this Mutual Release, in conjunction or contemporaneously with the dismissal of the aforescribed legal action with prejudice, extinguishes any and all claims and/or defenses that have been asserted or may have been asserted in the aforescribed litigations or under aforescribed contracts by them and, accordingly, this mutual release and the dismissal of said legal actions with prejudice shall be and are hereby subject to the principles and doctrines of res judicata and/or collateral estoppel.

That this Agreement is the entire, complete sole and only understanding and agreement of, by and between the undersigned releasees, pertaining to the subject matter expressed herein and there are no independent, collateral, different, additional or other outstanding agreements, oral or written, or obligations to be performed, things to be done, or payments to be made; and further, no promise, inducement or consideration other than the execution of this release. This release is accepted in full compromise, settlement and satisfaction of, and as sole consideration for, the final release and discharge of all actions, claims, debts, obligations and demands at issue in said lawsuit.

The terms of this Agreement shall be kept confidential by the undersigned and their agents, representative, heirs and attorneys and shall not be disclosed by them to any unauthorized

third party (excluding directors, officers, employees, attorneys, accountants and successors) without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Further, the undersigned hereby agree not to disparage each other regarding the subject matter of this lawsuit. The term "disparage" is used herein to mean and include any defamatory comment or writing, or any comment or writing which a reasonable person would understand to be intended by the person making the comment or publishing the writing as a demeaning or deprecating comment concerning the person or entity who is the subject of the comment.

**BY SIGNING THIS SETTLEMENT/CONFIDENTIALITY AGREEMENT  
AND MUTUAL RELEASE OF ALL CLAIMS  
THE UNDERSIGNED ACKNOWLEDGE AND WARRANT:**

That this Agreement was carefully read in its entirety by the undersigned and is understood and known to be a full and final compromise, settlement, release, accord and satisfaction and discharge of all claims, actions and causes of action and suits, as state above and that this document is signed and executed voluntarily without reliance upon any statement or representation of or by any party, or any of their representatives, agents, employees or affiliated entities. All of the terms and conditions of this release are contractual and not mere recitals; the undersigned are of legal age and capacity, competent to sign this document and accepts full responsibility for the same. In the event that the undersigned violate these provisions of confidentiality, nondisparagement, and/or disclose the terms and conditions of this settlement to any unauthorized third party (excluding directors, officers, employees, attorneys, accountants and successors) without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, they hereby agree to pay the attorneys' fees and costs incurred by the other releasee(s) in having to enforce this agreement and its confidentiality and

nondisparagement provisions. The undersigned hereby acknowledge and understand that these confidentiality provisions are material to the terms and conditions of this Agreement.

**THE UNDERSIGNED HAVE READ THE FOREGOING  
SETTLEMENT/CONFIDENTIALITY AGREEMENT AND MUTUAL RELEASE  
AND FULLY UNDERSTAND SAID RELEASE AND AGREEMENT**

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**IRA AND EDYTHE SEAVER  
FAMILY TRUST**

\_\_\_\_\_  
**IRA SEAVER**

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**CIRCLE CONSULTING  
CORPORATION**

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**LEWIS HELFSTEIN**

\_\_\_\_\_  
**MADALYN HELFSTEIN**

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

Read and signed on this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**SUMMIT LASER  
PRODUCTS, INC.**

\_\_\_\_\_  
**SUMMIT TECHNOLOGIES, LLC**

STATE OF NEVADA        }  
COUNTY OF CLARK       } ss.

On this \_\_\_\_\_ day of November, 2009, before me, a notary public, personally appeared **IRA SEAVER** on behalf of **IRA AND EDYTHE SEAVER FAMILY TRUST**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same

in his authorized capacity, and that his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF NEVADA

COUNTY OF CLARK

} ss.

On this \_\_\_\_\_ day of November, 2009, before me, a notary public, personally appeared **IRA SEAVER**, an individual, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and that his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEVADA

COUNTY OF CLARK

} ss.

On this \_\_\_\_\_ day of November, 2009, before me, a notary public, personally appeared **LEWIS HELFSTEIN**, an individual, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and that his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEVADA

COUNTY OF CLARK

} ss.

On this \_\_\_\_\_ day of November, 2009, before me, a notary public, personally appeared **MADALYN HELFSTEIN**, an individual, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and that his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEVADA        }  
COUNTY OF CLARK       } ss.

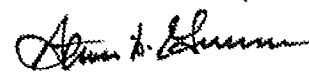
On this \_\_\_\_\_ day of November, 2009, before me, a notary public, personally appeared **LEWIS HELFSTEIN** on behalf of **SUMMIT LASER PRODUCTS, INC. and SUMMIT TECHNOLOGIES, LLC**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT B**

**EXHIBIT B**

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CLERK OF THE COURT

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18 Facsimile: (702) 791-1912  
  
19 Attorneys for Plaintiffs,  
IRA AND EDYTHE SEAVER FAMILY TRUST,  
20 IRA SEAVER, CIRCLE CONSULTING CORPORATION

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 \* \* \*

24 IRA AND EDYTHE SEAVER FAMILY	)	CASE NO.: A587003
TRUST, IRA SEAVER, CIRCLE	)	DEPT. NO.: XI
25 CONSULTING CORPORATION,	)	
	)	
26 Plaintiffs	)	
	)	
27 v.	)	
	)	
28 LEWIS HELFSTEIN, MADALYN	)	

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

1 HELFSTEIN, SUMMIT LASER PRODUCTS, )  
2 INC., SUMMIT TECHNOLOGIES LLC, UI )  
3 SUPPLIES, UNINET IMAGING, INC., )  
4 NESTOR SAPOKIJ and DOES 1 through 20, )  
5 and ROE entities 21 through 40, inclusive, )  
6 Defendants. )

2009-02-21 7:31

7 PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT


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

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

16 DATED this 19 day of February, 2010.

17 THARPE & HOWELL

18 By:

19   
20 Byron L. Ames, Esq.  
21 Nevada Bar No.: 7581  
22 Jonathan D. Blum, Esq.  
23 Nevada Bar No.: 9515  
24 3425 Cliff Shadows Pkwy., Suite 150  
25 Las Vegas, Nevada 89129

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

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing MOTION on for hearing before the above entitled Court on the 25 day of March, 2010, in Department 21 at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

DATED this \_\_\_\_\_ day of February, 2010.

THARPE & HOWELL

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

Byron L. Ames, Esq.  
Nevada Bar No.: 7581  
Jonathan D. Bhan, Esq.  
Nevada Bar No.: 9515  
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Attorneys for Plaintiffs,  
IRA AND EDYTHE SEAYER FAMILY TRUST,  
IRA SEAYER, CIRCLE CONSULTING  
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Las Vegas, Nevada 89129

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3425 Cliff Shadows Parkway  
Suite 150  
Las Vegas, Nevada 89129

**POINTS AND AUTHORITIES**

**I. BACKGROUND/OVERVIEW**

**A. The Parties**

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

**B. The Agreements**

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

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

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1 Summit's assets.

2 **C. Procedural Posture**

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

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

16 **D. Facts**

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

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

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Suite 150  
Las Vegas, Nevada 89129

1 Plaintiffs approximately \$400,000 for that time period. Plaintiffs received only approximately  
2 \$180,000 throughout these 30 months. Thus, Plaintiffs were still owed roughly \$210,000 at the time  
3 of the filing of this lawsuit. It is recovery of these damages that Plaintiffs sought in the instant suit  
4 against the Summit Defendants.

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

## 12 II. ARGUMENT

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

### 18 A. Legal Standard

19 NRS 17.245 provides, in pertinent part:

20 1. When a release or a covenant not to sue or not to enforce judgment is  
21 given in good faith to one of two or more persons liable in tort for the same  
injury or the same wrongful death:

22 a. It does not discharge any of the other tortfeasors from liability for  
23 the injury or wrongful death unless its terms so provide, but it reduces  
24 the claim against the others to the extent of any amount stipulated by  
the release or the covenant, or in the amount of the consideration paid  
for it, whichever is greater; and

25 b. It discharges the tortfeasor to whom it is given from all liability for  
26 contribution and for equitable indemnity to any other tortfeasor.

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

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Suite 150  
Las Vegas, Nevada 89129

1 that should be used by the District Court in determining the merits of such a motion. The District  
2 Court is to consider the factors outlined in In Re MGM Grand Hotel Fire Litigation, 570 F. Supp.  
3 913 (D. Nev. 1983), and use its discretion as provided in Velsicol Chemical Corp. v. Davidson, 107  
4 Nev. 356, 360, 811 P.2d 561 (1991). In Velsicol, the Court found:

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

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

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

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

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

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

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Las Vegas, Nevada 89129

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

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

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

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

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

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

1     **III.   CONCLUSION**

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

6             DATED this 19 day of February, 2010.

7  
8                             THARPE & HOWELL

9  
10                            By: 

11                           Byron L. Ames, Esq.  
12                           Nevada Bar No.: 7581  
13                           Jonathan D. Blum, Esq.  
14                           Nevada Bar No.: 9815  
15                           3425 Cliff Shadow Pkwy., Suite 150  
16                           Las Vegas, Nevada 89129

17                           Attorneys for Plaintiffs.  
18                           IRA AND EDY THE SEAYER FAMILY TRUST,  
19                           IRA SEAYER, CIRCLE CONSULTING  
20                           CORPORATION  
21  
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THARPE & HOWELL  
3425 Cliff Shadow Pkwy  
Suite 150  
Las Vegas, Nevada 89129

CERTIFICATE OF MAILING

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

Jeffrey R. Albregts, Esq.  
SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON  
400 South Fourth Street, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 791-6308  
Fax: (702) 791-1913  
*Co-Counsel for Plaintiffs*

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

  
An Employee of Tharpe & Howell

THARPE & HOWELL  
3423 Cliff Shadows Parkway  
Suite 150  
Las Vegas, Nevada 89129

## **EXHIBIT C**

**DECLARATION OF JEFFREY R. ALBREGTS, ESQ.**

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

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

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

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

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

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

///

///

///

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

Dated this 10 day of February, 2010.

  
\_\_\_\_\_  
JEFFREY R. ADAMS, ESQ.

## **EXHIBIT D**

ORIGINAL

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

FILED  
NOV 23 2009  
CLERK OF COURT

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.

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

AND RELATED MATTERS.

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

Dated this 23 day of November, 2009.

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

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

07650-03/529868.doc

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

SDW

CERTIFICATE OF MAILING


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

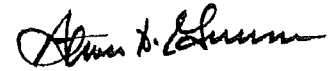
Lewis Helfstein  
Madalyn Helfstein  
10 Meadowgate East  
St. James, NY 11780  
*Defendants*

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

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

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

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



CLERK OF THE COURT

1 **SR**  
2 JEFFREY R. ALBREGTS, ESQ.  
3 Nevada Bar No. 0066  
4 E-mail: jalbregts@nevadafirm.com  
5 COTTON, DRIGGS, WALCH,  
6 HOLLEY, WOLOSON & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912  
*Attorneys for Plaintiffs*

7  
8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 IRA AND EDYTHE SEAVER FAMILY  
12 TRUST, et al.,  
13 Plaintiffs,

14 v.

15 LEWIS HELFSTEIN, et al.,  
16 Defendants.

Case No.: 09-A-587003  
Dept. No.: XI

**PLAINTIFF'S STATUS REPORT PER  
COURT'S ORDER SCHEDULING  
STATUS CHECK (Dated July 16, 2013)**

**Date of Hearing: July 23, 2013  
Time of Hearing: 8:30 AM**

17  
18 Plaintiffs, and each of them, hereby submit and file their "Status Report" in this case  
19 pursuant to this Honorable Court's Order Scheduling Status Check dated July 16, 2013.  
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STATUS REPORT

1. Plaintiffs believe that all claims, disputes and/or matters of any kind between them and Mr. Saporiti and the UI Defendants have been entirely resolved insofar as those parties have satisfied all of the terms and conditions of their Settlement Agreement.<sup>1</sup> In other words, because there are no remaining issues or disputes between Plaintiffs and the UI Defendants (including Mr. Saporiti), this case may now be dismissed with prejudice as against those Defendants pursuant to their Settlement Agreement with Plaintiffs.
2. Plaintiffs are ready, willing and able to deposit the \$60,000 in settlement funds they received from the Helfstein Defendants into a blocked interest bearing account (to be agreed upon by said parties) as previously ordered by this Court, as soon as counsel for the Helfstein Defendants responds to this writer's inquiries in this regard.<sup>2</sup> With that said, this \$60,000 was deposited into this writer's law firm's Trust Account by Plaintiffs after the last hearing before this Court and prior to the Helfstein Defendant's motion to disqualify (this) Judge from hearing this case any further.
3. Since the last hearing before this Court, Plaintiff's expert witness in this case, Rodney Conant, has passed away and, therefore, obviously is no longer available to testify or be deposed in this case. Plaintiffs are currently determining whether they will need another expert witness in furtherance of the opinions already expressed in this case by Mr. Conant, as well as the evidence proffered by him and admitted at trial as an expert witness for Plaintiffs.
4. Other than this one unfortunate circumstance beyond the control of any party in this case, meaning the death of Mr. Conant, Plaintiffs are ready to proceed with limited discovery and anticipate taking anywhere from five to six depositions including of Mr. and Mrs.

---

<sup>1</sup> This writer has inquired more than once of Mr. Silvestri whether this is indeed the case but has yet to receive a response from him. A true and correct copy of this writer's latest correspondence to Mr. Silvestri in this regard is attached hereto as Exhibit 1.

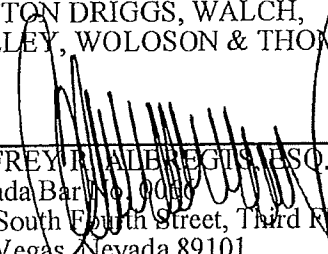
<sup>2</sup> Attached hereto as Exhibit 2 is a true and correct copy of this writer's email to Mr. Oakes in this regard, as well as the bank's requirements for as much.

1 Helfstein and Mr. Hecht. Plaintiffs defer to this Court regarding whether the scope of  
2 those depositions will be limited to some extent by virtue of those individuals being  
3 previously deposed in this case. Plaintiffs anticipate that they will need at least 120 days  
4 to conduct this discovery and prepare for the evidentiary hearing to be held by this Court.

- 5 5. For these reasons, Plaintiffs respectfully submit that the evidentiary hearing should be  
6 held later this year in the Fall, preferably in November, so that such limited discovery  
7 may be conducted by these parties before then.

8 Dated this 18th day of July, 2013.

9 COTTON DRIGGS, WALCH,  
10 HOLLEY, WOLOSON & THOMPSON

11   
12 JEFFREY R. ALBRECHTS, ESQ.,  
13 Nevada Bar No. 00880  
14 400 South Fourth Street, Third Floor  
15 Las Vegas, Nevada 89101  
16 *Attorneys for Plaintiffs*

**CERTIFICATE OF MAILING**

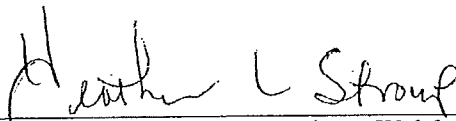
I HEREBY CERTIFY that, on the 9<sup>th</sup> day of July, 2013, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **Plaintiff's Status Report Per Court's Scheduling Order**, postage prepaid and addressed to:

J. Michael Oakes, Esq.  
Foley & Oakes  
850 East Bonneville Ave.  
Las Vegas, NV 89101  
*Attorneys for Lewis Helfstein, Madelyn  
Helfstein, Summit Laser Products, Inc., and  
Summit Technologies, LLC.*

Michael Lee, Esq.  
LAW OFFICE OF MICHAEL B. LEE  
2000 South Eastern Avenue  
Las Vegas, NV 89104  
*Attorneys for Defendants*

Jeffrey A. Silvestri, Esq.  
Seth T. Floyd, Esq.  
McDONALD CARANO WILSON LLP  
2300 W. Sahara Avenue,  
Suite 1200  
Las Vegas, NV 89102  
*Attorneys for Defendants*

Gary E. Schnitzer, Esq.  
KRAVITZ, SCHNITZER, SLOANE  
& JOHNSON, CHTD.  
8985 South Eastern Avenue  
Suite 200  
Las Vegas, NV 89123  
*Attorneys for Defendants*

  
An employee of Cotton, Driggs, Walch,  
Holley, Woloson & Thompson

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## EXHIBIT 1

COPY OF ORDER  
HOLLEYVILLE, MISSISSIPPI

DENNIS R. HANEY  
JOHN H. COTTON  
KENNETH A. WOLOSON  
GREGORY J. WALCH  
J. DOUGLAS DRIGGS, JR.  
RICHARD F. HOLLEY  
RONALD J. THOMPSON  
VICTORIA L. NELSON

JEFFREY R. ALBRECHTS  
DEAN S. BENNETT  
OGONNA M. ATAMOH  
BRIAN W. BOSCHEE  
BRYCE K. EARL  
JAMES D. BOYLE  
F. THOMAS EDWARDS  
CODY T. WINTERTON

STACY D. HARROP  
KIMBERLY J. COOPER  
SHEMILLY A. BRISCOE  
DONNA M. WITTIG  
ADAM A. SCHNEIDER  
CHRISTOPHER G. RIGLER  
JOHN J. SAVAGE

WILLIAM N. MILLER  
BRIANNA SMITH

OF COUNSEL:  
JAMES W. PUZEY  
MICHAEL D. NAVRATIL  
KATHIERINE L. TURPEN  
CHARLES L. ITUS (1948-2009)

WRITER'S EMAIL: JALBRECHTS@NEVADAFIRM.COM

July 18, 2013

*Via Electronic and U.S. Mail*

Jeffrey A. Silvestri, Esq.  
McDONALD CARANO WILSON LLP  
2300 W. Sahara Avenue  
Suite 1200  
Las Vegas, NV 89102

RE: *Ira and Edythe Seaver Family Trust, et al. v. UI Supplies, et al.*  
Case No.: A 587003; Dept. XI

Dear Jeff:

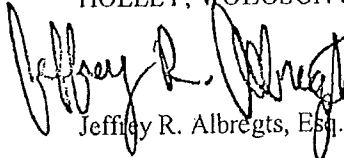
By cover of this letter I provide to you a Stipulation and Order to dismiss the above action with prejudice as against your clients pursuant to Paragraph 1(c) of their Settlement Agreement. As I have not received the courtesy of a response from you to my prior phone calls or emails in this regard, I felt compelled to write you a formal letter and enclose the Stipulation itself, especially given that the Court has scheduled a Status Check hearing for next Tuesday, July 23, 2013. I have also referenced this issue in the Status Report the Court ordered us to file by tomorrow, too. If for some reason you cannot agree to execute this Stipulation, please let me know as well as any underlying reasons so that I may report them to the Court next Tuesday. Of course, if you wish to attend and report to the Court yourself, you obviously may do so, I only ask that you provide me the courtesy of at least letting me know before then whether we are resolved with our clients as I previously inquired.

As always, thank you for your professional courtesy and cooperation in this regard.

Jeffrey A. Silvestri, Esq.  
July 18, 2013  
Page 2

Very truly yours,

COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON



Jeffrey R. Albrechts, Esq.

JRA/hls  
Enclosure (1) Proposed  
Stipulation and Order

cc: Ira Seaver  
Edy Seaver  
Michael Oakes, Esq.

1 **SODW**  
2 JEFFREY R. ALBREGTS, ESQ.  
3 Nevada Bar No. 0066  
4 COTTON, DRIGGS, WALCH,  
5 HOLLEY, WOLOSON & THOMPSON  
6 400 South Fourth Street, Third Floor  
7 Las Vegas, Nevada 89101  
8 [jalbregts@nevadafirm.com](mailto:jalbregts@nevadafirm.com)  
9 Telephone: (702) 791-0308  
10 Facsimile: (702) 791-1912  
11 *Attorneys for Plaintiffs*  
12 *Ira and Edythe Seaver Family Trust and*  
13 *Circle Consulting Corporation*

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

IRA AND EDYTHE SEEVER FAMILY  
TRUST, IRA SEEVER, 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.: A-587003  
Dept. No.: XI

**STIPULATION AND ORDER  
DISMISSING NESTOR SAPORITI AND  
UI DEFENDANTS WITH PREJUDICE**

AND RELATED CLAIMS

IT IS HEREBY AGREED AND STIPULATED, by and between Plaintiffs, and each of  
them, by and through their attorney, JEFFREY R. ALBREGTS, ESQ, of COTTON, DRIGGS,  
WALCH, HOLLEY, WOLOSON & THOMPSON; and Defendants NESTOR SAPORITI, UI  
SUPPLIES and UNINET IMAGING, INC., ("UI Defendants"), by and through their attorney,  
JEFFREY A. SILVESTRI, of McDONALD CARANO WILSON, LLP, as follows:

- 1 1. That this action and Plaintiffs' claims may, shall be and are hereby dismissed with  
2 prejudice as against the UI Defendants only (their Settlement Agreement), but shall  
3 remain pending against the Helfstein Defendants, pursuant to the Settlement  
4 Agreement executed by Plaintiffs and the UI Defendants.  
5  
6 2. That this action and any counterclaims by NESTOR SAPORITI and the UI  
7 Defendants against Plaintiffs may, shall be and hereby are dismissed with prejudice  
8 as against Plaintiffs only, NESTOR SAPORITI and the UI Defendants reserving  
9 whatever rights and claims they may have against the Helfstein Defendants, too,  
10 albeit not in this case.  
11  
12 3. Pursuant to their Settlement Agreement, these parties shall bear their own attorneys'  
13 fees and costs incurred herein.  
14  
15 4. No trial date has been set yet in this matter and nothing remains to be heard or  
16 accomplished between Plaintiffs and the UI Defendants in this case.

17 Dated this 18th day of July, 2013.

18 **COTTON DRIGGS, WALCH,  
19 HOLLEY, WOLOSON & THOMPSON**

20 JEFFREY R. ALBREGTS, ESQ.,  
21 Nevada Bar No. 0066  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

22 **McDONALD CARANO WILSON, LLP**

23 Jeffrey A. Silvestri, NSB No. 5779  
24 2300 West Sahara Avenue  
25 Suite 1200  
26 Las Vegas, NV 89102  
27 *Attorney for Defendants*  
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ORDER

It is so Ordered.

Entered this \_\_\_\_ day of July, 2013.

\_\_\_\_\_  
ELIZABETH GONZALEZ  
DISTRICT JUDGE

Submitted by:

COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON

\_\_\_\_\_  
JEFFREY R. ALBREGTS, ESQ.  
Nevada Bar No. 0066  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

*Attorneys for Plaintiffs  
Ira and Edythe Seaver Family Trust and  
Circle Consulting Corporation*

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## EXHIBIT 2

COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON

DENNIS R. HANEY  
JOHN H. COTTON  
KENNETH A. WOLOSON  
GREGORY J. WALCH  
J. DOUGLAS DRIGGS, JR.  
RICHARD F. HOLLEY  
RONALD J. THOMPSON  
VICTORIA L. NELSON

JEFFREY R. ALBREGTS  
DEAN S. BENNETT  
OGONNA M. ATAMOH  
BRIAN W. BOSCHEE  
BRYCE K. EARL  
JAMES D. BOYLE  
F. THOMAS EDWARDS  
CODY T. WINTERTON

STACY D. HARROP  
KIMBERLY J. COOPER  
SHEMILLY A. BRISCOE  
DONNA M. WITIG  
ADAM A. SCHNEIDER  
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MICHAEL D. NAVRATIL  
KATHERINE L. TURNER  
CHARLES L. TITUS (1948-2009)

WRITER'S EMAIL: JALBREGTS@NEVADAFIRM.COM

July 18, 2013

Michael J. Oaks, Esq.  
FOLEY & OAKS, P.C.  
850 E. Bonneville  
Las Vegas, Nevada 89101

RE: *Ira and Edythe Seaver Family Trust, et al. v. Helfstein, et al.*  
Case No. 09A587003

Dear Mike:

Per the Judge's Minute Order a couple of months ago in the above-referenced case, please let me know to what bank you are agreeable to depositing the \$60,000 into a blocked, interest bearing account. Please also let me know any other parameters or conditions you want in this regard (such as who may access the account and on what terms). For the record, my clients deposited the \$60,000 into our Trust Account after the last court hearing, but we did not proceed any further on this or any other issue because of the motion to disqualify you filed previously. Given that motion has now been denied, we can proceed accordingly per the Court's last Minute Order.

As always, thank you for your professional courtesy and cooperation in this regard.

Very truly yours,

COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON

  
Jeffrey R. Albregts, Esq.

JRA:hls  
cc: Mr. Ira Seaver  
Ms. Edy Seaver  
Mr. Jeff Silvestri

07650-03/1114018

PSA000078

## Jeff Albregts

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**From:** Timi Cereghino  
**Sent:** Thursday, July 18, 2013 11:45 AM  
**To:** Jeff Albregts  
**Subject:** FW: Blocked Account

FYI

---

**From:** Bonnie Miller [<mailto:BMiller@BankofNevada.com>]  
**Sent:** Thursday, July 18, 2013 11:40 AM  
**To:** Timi Cereghino  
**Subject:** RE: Blocked Account

Hi Timi,

This appears to be minutes and not a court order. We would need an actual court order that is signed and stamped by the court giving us specific instructions. The court orders give us instruction as to who is the guardian/custodian of the funds and would give us specific instruction about how and when the funds would be released. We could put the funds in a court blocked money market account when we get the proper paperwork. We would need the information (ID, address etc) of the guardian for the signature card and the account.

Bonnie Miller  
Operations Officer  
Grand Central Parkway Office  
Ph. 702-696-6702  
Fax 702-253-6002

---

**From:** Timi Cereghino [<mailto:tcereghino@nevadafirm.com>]  
**Sent:** Thursday, July 18, 2013 10:55 AM  
**To:** Bonnie Miller  
**Subject:** Blocked Account


Hi Bonnie,

Attached is a minute order which details the opening of the blocked account (yellow highlighted area). Unfortunately, not much detail. Can you please respond with what the bank needs in order to open this account?

Thanks,  
Timi

Timora A. Cereghino, CLM  
Legal Administrator

[tcereghino@nevadafirm.com](mailto:tcereghino@nevadafirm.com)  
t: (702) 791-0308 f: (702) 791-1912  
400 South Fourth St. 3rd Floor Las Vegas Nevada 89101

 COTTON, DRISGS, WALCH,  
HOLLEY WOLSON & THOMPSON

[click here for v-card](#)