UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELENOR NANIA,
Plaintiff
v.

ARTERY CLEANERS CORP.,
Defendant

) Civil Action No. 00 CV 12298-RGS

ANSWER AND DEMAND FOR TRIAL BY JURY

Jurisdiction

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in Paragraph 2 of the Complaint as it relates to Count II only. Defendant denies the allegations contained in Paragraph 2 of the Complaint as it relates to Count III.

Parties

3. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the complaint, except to deny the allegation that the name of the Defendant is Artery Cleaners Corp.. Defendant's name is Artery Cleaners and Launderers Corp..

Facts

5. Defendant admits the allegations contained in Paragraph 5 of the Complaint as it relates to the Plaintiff's period of employment. Defendant denies so much of Paragraph 5 as it relates to the Plaintiff's alleged position with the company.

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID H. JUDSON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO.**
	§	
INFONAUTICS, INC.	§	
	§	**JURY DEMANDED**
Defendant.	§	

01-10464RWZ

ORIGINAL COMPLAINT

Plaintiff, David H. Judson ("Judson"), files this Original Complaint *Pro Se* against Defendant, Infonautics, Inc. ("Infonautics"), and for his cause of action would show the Court the following:

1. Judson is an individual residing in Marblehead, Massachusetts. Judson is a Member in good standing of the Bar of the State of Texas.

2. Infonautics is a corporation organized and existing under the laws of the State of Pennsylvania and having a principal place of business at 590 North Gulph Road King of Prussia, Pa 19406-2800. Infonautics sometimes does business under the name Infonautics Corporation.

3. At all times material herein, Defendant has engaged in business in Massachusetts and is amenable to personal jurisdiction in Massachusetts.

4. This case is an action for infringement of United States patents arising under the patent laws of the United States, Title 35, United States Code, and in particular, 35 U.S.C. § 271. Jurisdiction is based on 28 U.S.C. § §1331 and 1338(a).

5. Venue is proper within this judicial district.

THE PATENTS-IN-SUIT

6. On November 7, 1996, United States Patent No. 5,572,643 ("the '643 patent") entitled "Web Browser With Dynamic Display of Information Objects During Linking" was duly and legally issued to Judson. A copy of the '643 patent is attached hereto as Exhibit "A." Judson owns the '643 patent.

7. On April 7, 1998, United States Patent No. 5,737,619 ("the '619 patent") entitled "World Wide Web Browsing With Content Delivery Over An Idle Connection And Interstitial Content Display" was duly and legally issued to Judson. A copy of the '619 patent is attached hereto as Exhibit "B." Judson owns the '619 patent.

8. On February 6, 2001, United States Patent No. 6,185,586 ("the '586 patent") entitled "Content Display During Idle Time As A User Waits For Information During An Internet Transaction" was duly and legally issued to Judson. A copy of the '586 patent is attached hereto as Exhibit "C." Judson owns the '586 patent.

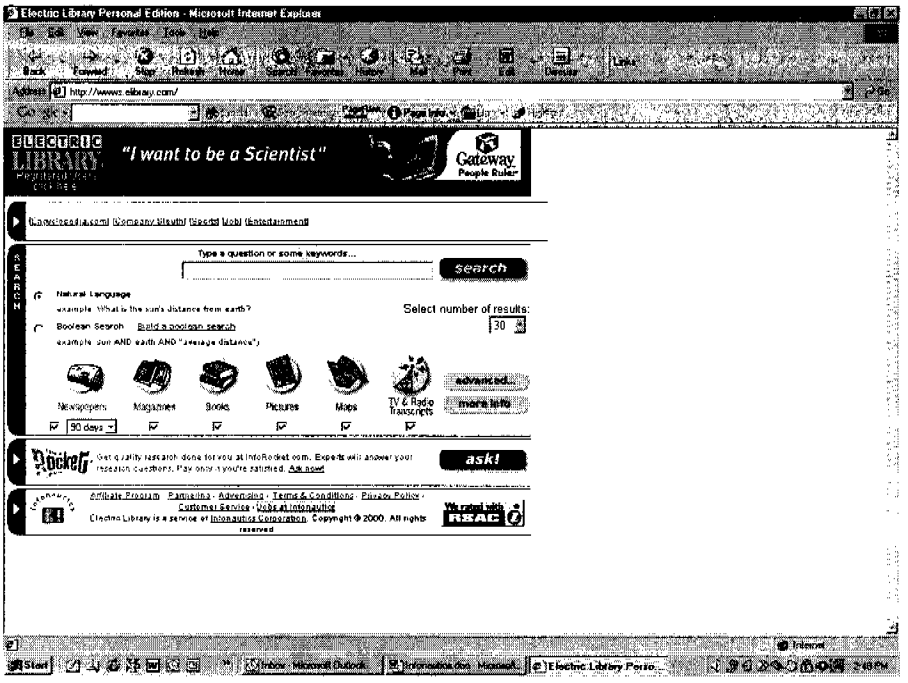
DEFENDANT'S ACTIVITIES

9. Infonautics is an Internet information services company and provider of online information. Infonautics operates a network of Web sites.

10. Infonautics operates a web site at the Internet address www.elibrary.com and known as Electric Library. Electric Library provides individual users on the Web with a digital library made up of well-known published sources. According to recent reports published by Infonautics, the site currently has approximately 100,000 registered paying users making it one of the largest paid subscription sites on the Internet. The site enables users to satisfy their general and special interest information requirements in a manner highly differentiated from other search engines and directories. The site also provides users with the ability to see related Internet

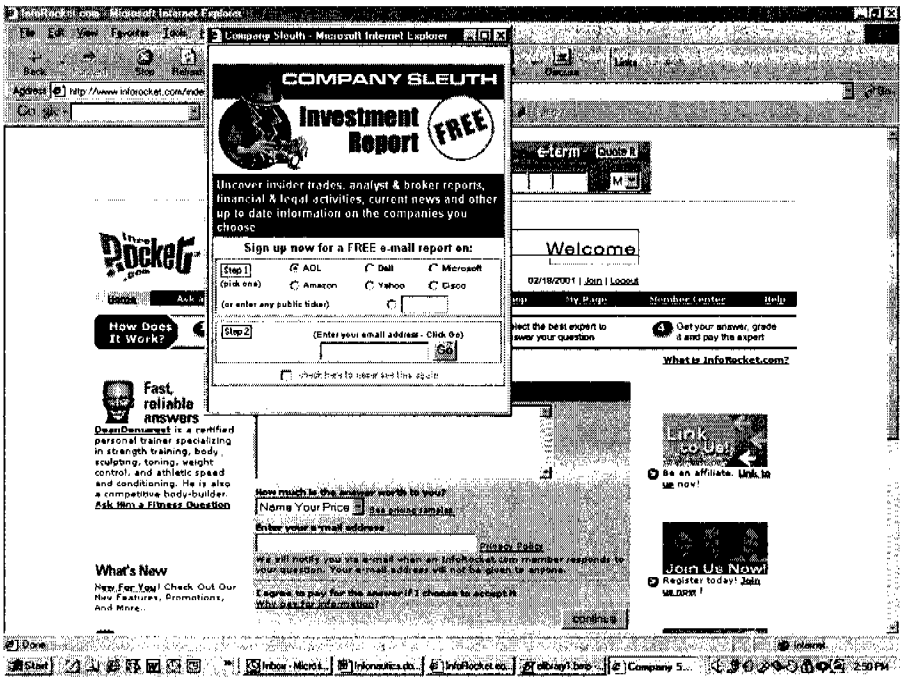
content from thousands of Web sites. Users are able to access Electric Library through any standard web browser. The Electric Library site is marketed to end-users through paid advertisements, bounty and royalty incentive arrangements, and a variety of other methods including affiliates.

11. The following is a fair and accurate representation of the home page of the Electric Library web site available to an end user running web browser software on or about February 18, 2001, as well as currently.



12. The home page of the Electric Library site, as illustrated above, includes number of links to other resources on the Internet including, e.g., an inforocket.com image link:

13. The following is a fair and accurate representation of a screen display following an end user's selection of the inforocket.com image link on the home page shown in Paragraph 11:



14. The screen display in Paragraph 13 illustrates a window commonly referred to as a "popup." The popup window is separate from the inforocket.com web page that loads in the main browser window.

15. The popup window shown in the screen display in Paragraph 13 includes an advertisement. This advertisement is comprised of separate web page and a set of graphics files. The web page has a Uniform Resource Locator (URL), its Internet address, of http://www.elibrary.com/interstital1.html. This page includes at least a pair of graphics files identified by the separate URLs: http://www.elibrary.com/top.gif and http://www.elibrary.com/bot.gif.

16. The Electric Library site serves web pages. The home page shown in Paragraph 11 above is one such page. Infonautics operates the Electric Library web site and, as a consequence, makes this page available for delivery over the Internet, a computer network, to a requesting user's browser running on a personal computer.

17. Content that is available from the Electric Library web site is delivered from a computer known generally as a "server." At least one server from which the Electric Library home page is delivered receives page requests from requesting end users running browser software. The home page is a document formatted according to the hypertext markup language ("HTML").

18. The inforocket.com image as it exists on the site's home page illustrated in Paragraph 11 is commonly referred to as a link. Activation of this link, for example, by directing a personal computer mouse cursor to the image and clicking the mouse, navigates the user's web browser to a another resource on the Internet, in this case the inforocket.com home page. The inforocket.com home page is also a hypertext document.

19. The source code of the Electric Library home page included the following line of code on February 18, 2001, and this code is included in the page today:

ONUNLOAD="return open_window('http://www.elibrary.com/interstital1.html')

20. The execution of this code by a web browser (together with other code in the page) is designed to and does, in fact, generate a popup window on the web browser. The screen display in Paragraph 13 above illustrates the popup window, and this window is independent of the Electric Library home page and the inforocket.com home page. The popup window is an interstitial web page that is displayed on an end user's web browser when a link in the Electric Library home page is selected.

21. One or more of the graphics files identified as ".../top.gif" and ".../bot.gif" in Paragraph 15 above may be stored in an end user's personal computer for some time period after these files are first downloaded to the user's machine because these graphics files are not associated with any specific expiration date. Once stored in an end user's personal computer, the graphics files identified as ".../top.gif" and ".../bot.gif" are hidden from the end user's view when other pages are displayed on the end user's web browser.

22. Once stored in an end user's personal computer, the graphics files identified as ".../top.gif" and ".../bot.gif" are retrievable by a web browser for display in the interstital1.html page at a later time. For example, if these graphics files are stored in the end user's personal computer, they are retrieved and displayed in the interstital1.html page whenever an end user selects a link on the Electric Library home page and that page unloads from the web browser.

23. Infonautics operates a content notification web site that it calls Entertainment Sleuth. This service provides users with daily news on today's Hollywood and music stars and is designed to help entertainment fans find the latest information on their favorite celebrities. The site investigates over 1,000 entertainment Web sites every day and notifies registered users about newly discovered celebrity content in a daily e-mail. The site provides a wide-range of information including multimedia, photos, gossip, interviews and news on over 5,000 current stars.

24. On information and belief, Infonautics has used popup advertising on the Entertainment Sleuth web site. Infonautics is currently using popup advertising on the Entertainment Sleuth web site.

25. Infonautics operates a research web site that it calls Encyclopedia.com. This web site has used and is currently using popup advertising.

26. Infonautics publishes an online Media Kit. The Media Kit describes how third parties may purchase advertising on the Infonautics network of web sites. This Media Kit offers for sale "Interstitials" as a form of site advertising.

27. Infonautics has described publicly that its business model for the Infonautics network of web sites relies in part on site advertising including banner and sponsor ads.

COUNT 1
PATENT INFRINGEMENT

28. Infonautics provides an information service to Internet end users in this district. At least some of the nearly 100,000 subscribers to the Electric Library site are believed to actually reside in this district. When an Internet end user navigates to or from an Infonautics web site, given advertising content is displayed to the end user in a popup window. On information and belief, Infonautics earns revenues from the display of this advertising content in this district. By providing the information service advertising display to end users, Infonautics is directly or indirectly operating within the scope of at least Claims 6 and 9 of the '643 patent, at least Claim 12 of the '619 patent, and at least Claims 5 and 9 of the '586 patent.

29. Infonautics has directly, or by contribution or inducement, infringed the '643, '619 and '586 patents under 35 U.S.C. § 271(a)-(c) by making, using, selling and/or offering for sale the information service advertising display to prospective advertisers and end users in this judicial district.

30. Judson has complied with 35 U.S.C. § 287. Infonautics has both actual and constructive notice of its infringement of the '643, '619 and '586 patents.

31. In particular, on or about February 20, 2001, Judson notified Infonautics of the patents and requested a license. Judson had become aware of the Infonautics infringement

shortly before that date. On March 9, 2001, Infonautics, through its counsel, rejected Judson's offer.

32. On information and belief, by the time Infonautics counsel delivered its response to Judson on March 9, 2001, Infonautics counsel had not reviewed the Patent & Trademark Office prosecution histories for any of the Judson patents.

33. To date, and on information and belief, Infonautics counsel has not rendered a written opinion to Infonautics regarding alleged infringement of any of the Judson patents. Further, Infonautics continues to provide the interstitial advertising display in the same manner that it did prior to receiving Judson's offer of a license.

34. The Judson '643 patent was one of the earliest Internet-related patents to issue from the United States Patent & Trademark Office. It has been cited as relevant prior art by approximately 300 other later patents, indicating its importance as an early development in the field. The '643 patent has been cited by the Patent & Trademark Office during the prosecution of several patent applications filed by Infonautics or an affiliate thereof. Thus, Infonautics or its counsel were aware of this patent for some time before receiving Judson's offer of a license.

35. Infonautics's infringing activities have been and are now being conducted willfully and deliberately, with full knowledge of the Judson patents.

36. Infonautics's conduct constitutes willful and deliberate infringement of the Judson patents and justifies an increase of three times the damages to be assessed under 35 U.S.C. § 284. Such conduct further characterizes this suit as an exceptional case supporting the award of attorneys' fees pursuant to 35 U.S.C. § 285.

37. As a result of said infringement, Judson has suffered and will continue to suffer irreparable injury and damage to his business opportunities with respect to the patents. Judson

has suffered a loss of revenues and profits, as a result of Defendant's infringement, for which Judson requests damages. Alternatively, Judson requests the award of a reasonable royalty suffered by him for Defendant's infringement.

REQUEST FOR JURY TRIAL

38. Judson requests a jury trial.

WHEREFORE, Judson requests:

(a) that Infonautics, its officers, agents, employees, directors, servants, successors, and assigns, and all those acting in concert with it or them, or any of them, be restrained and enjoined both during the pendency of this action and permanently thereafter from directly or indirectly infringing the '643, '619 and '586 patents;

(b) that Judson be awarded actual damages he has suffered as a result of the infringement of the '643, '619 and '586 patents by Infonautics, and that such damages be trebled because of the willful and deliberate character of the infringement;

(c) that Judson be awarded his costs of court;

(d) that Judson be awarded pre-judgment and post-judgment interest in the maximum legal amount; and,

(e) that Judson be awarded such other and further relief as this Court shall deem just and proper.

Respectfully submitted,

David H. Judson, Pro Se
Pursuant To Local Rule 83.5.3(c)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARK DAPONTE, MARIA F. DAPONTE STEPHANIE DAPONTE and MARK AND MARIE DAPONTE as parents and natural guardians of MARK DAPONTE, JR., minor	:	
VS.	:	Civil Action No.: 00-11277-RWZ
DANAHER CORP., EASCO HAND TOOLS, INC. d/b/a DANAHER TOOL GROUP, J.S. TECHNOLOGIES, INC. and CAMPBELL SUPPLY CO., INC.	:	

ANSWER OF DEFENDANT J.S. TECHNOLOGIES, INC.
TO THE SECOND AMENDED COMPLAINT

FIRST DEFENSE

1. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 4.

5. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 5.

6. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 6.

7. Defendant admits it is a corporation organized and existing under the laws of the

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State of Delaware with a principle place of business in the State of Pennsylvania; except as so admitted lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 8.

COUNT I

9. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 8 of the complaint.

10. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 10.

11. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 11.

12. Admits the allegations of paragraph 12.

13. Denies the allegations of paragraph 13.

14. Denies the allegations of paragraph 14.

15. Denies the allegations of paragraph 15.

16. Denies the allegations of paragraph 16.

17. Denies the allegations of paragraph 17.

18. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 18.

19. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 19.

20. Denies the allegations of paragraph 20.

21. Denies the allegation of paragraph 21.

22. Denies the allegations of paragraph 22.

23. Lack knowledge or information sufficient to form a belief as to paragraph 23 of the complaint.

COUNT II

24. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 23 of the complaint.

25. Denies the allegations of paragraph 25.

26. Denies the allegations of paragraph 26.

COUNT III

27. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 26 of the complaint.

28. Denies the allegations of paragraph 28.

29. Denies the allegations of paragraph 29.

30. Admits that on or about November 10, 2000 defendant received a written demand for relief which identified the claimant; except as so admitted, denies the allegations of paragraph 30 of the complaint.

31. Denies the allegations of paragraph 31.

COUNT IV

32. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 31 of the complaint.

33. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 33.

34. Denies the allegations of paragraph 34.

COUNT V

35. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 34 of the complaint.

36. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 36.

37. Denies the allegations of paragraph 37.

COUNT VI

38. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 37 of the complaint.

39. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 39.

40. Denies the allegations of paragraph 40.

SECOND DEFENSE

41. Plaintiff, Mark Daponte, was negligent and his negligence caused or contributed to plaintiffs' injuries, if any.

THIRD DEFENSE

42. Plaintiff, Mark Daponte, assumed the risk of his injuries, if any.

FOURTH DEFENSE

43. Plaintiffs' injuries, if any, result from the negligence of others for whom this defendant is not responsible.

FIFTH DEFENSE

44. This court lacks personal jurisdiction over this defendant.

SIXTH DEFENSE

45. The complaint fails to state a claim for relief upon which relief may be granted against this defendant.

WHEREFORE, defendant J.S. Technologies, Inc., hereby demands judgment dismissing plaintiff's complaint with prejudice, and costs.

Defendant J.S. Technologies, Inc. hereby demands trial by jury.

DEFENDANT
By its attorneys,

Thomas W. Lyons
STRAUSS, FACTOR & LOPES
403 South Main Street
Providence, RI 02903
(401) 456-0700
BBO No.: 631582

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of ~~January,~~ March 2001, I mailed a copy of the within to Michael G. Sarli, Esq., Gidley, Sarli & Marusak, LLP, One Turks Head Place, Suite 900, Providence, RI 02903 and William O. Monahan, Esq., Monahan & Associates, 175 Federal Street, Boston, MA 02110.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARK DAPONTE, MARIA F. DAPONTE STEPHANIE DAPONTE and MARK AND MARIE DAPONTE as parents and natural guardians of MARK DAPONTE, JR., minor

VS.

DANAHER CORP., EASCO HAND TOOLS, INC. d/b/a DANAHER TOOL GROUP, J.S. TECHNOLOGIES, INC. and CAMPBELL SUPPLY CO., INC.

Civil Action
No.: 00-11277-RWZ

ANSWER OF DEFENDANT EASCO HAND TOOLS, INC. d/b/a DANAHER TOOL GROUP TO THE SECOND AMENDED COMPLAINT

FIRST DEFENSE

1. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 4.

5. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 5.

6. Defendant admits it is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in the State of Pennsylvania; except as

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so admitted, lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 6.

7. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 7.

8. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 8.

COUNT I

9. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 8 of the complaint.

10. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 10.

11. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 11.

12. Admits the allegations of paragraph 12.

13. Denies the allegations of paragraph 13.

14. Denies the allegations of paragraph 14.

15. Denies the allegations of paragraph 15.

16. Denies the allegations of paragraph 16.

17. Denies the allegations of paragraph 17.

18. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 18.

19. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 19.

20. Denies the allegations of paragraph 20.

21. Denies the allegation of paragraph 21.

22. Denies the allegations of paragraph 22.

23. Lack knowledge or information sufficient to form a belief as to paragraph 23 of the complaint.

COUNT II

24. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 23 of the complaint.

25. Denies the allegations of paragraph 25.

26. Denies the allegations of paragraph 26.

COUNT III

27. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 26 of the complaint.

28. Denies the allegations of paragraph 28.

29. Denies the allegations of paragraph 29.

30. Admits that on or about November 10, 2000 defendant received a written demand for relief which identified the claimant; except as so admitted, denies the allegations of paragraph 30 of the complaint.

31. Denies the allegations of paragraph 31.

COUNT IV

32. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 31 of the complaint.

33. Lacks knowledge or information sufficient to form a belief as to the allegations

of paragraph 33.

34. Denies the allegations of paragraph 34.

COUNT V

35. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 34 of the complaint.

36. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 36.

37. Denies the allegations of paragraph 37.

COUNT VI

38. The defendant repeats and incorporates herein by reference its responses to paragraphs 1 through 37 of the complaint.

39. Lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 39.

40. Denies the allegations of paragraph 40.

SECOND DEFENSE

40. Plaintiff, Mark Daponte, was negligent and his negligence caused or contributed to plaintiffs' injuries, if any.

THIRD DEFENSE

41. Plaintiff, Mark Daponte assumed the risk of his injuries, if any.

FOURTH DEFENSE

42. Plaintiffs' injuries, if any, result from the negligence of others for whom this defendant is not responsible.

FIFTH DEFENSE

43. This court lacks personal jurisdiction over this defendant.

SIXTH DEFENSE

44. The complaint fails to state a claim for relief upon which relief may be granted against this defendant.

WHEREFORE, defendant Easco Hand Tools, Inc., hereby demands judgment dismissing plaintiff's complaint with prejudice, and costs.

Defendant Easco Hand Tools, Inc. hereby demands trial by jury.

DEFENDANT
By its attorneys,

Thomas W. Lyons
STRAUSS, FACTOR & LOPES
403 South Main Street
Providence, RI 02903
(401) 456-0700
BBO No.: 631582

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of ~~January~~ March, 2001, I mailed a copy of the within to Michael G. Sarli, Esq., Gidley, Sarli & Marusak, LLP, One Turks Head Place, Suite 900, Providence, RI 02903 and William O. Monahan, Esq., Monahan & Associates, 175 Federal Street, Boston, MA 02110.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-

COMPUTER RECOGNITION SYSTEMS, INC.,
Plaintiffs,
v.

ADESTA COMMUNICATIONS, INC. d/b/a ADESTA TRANSPORTATION and SOUTHERN ALUMINUM & STEEL CORPORATION,
Defendants.

01 10491 MEL

COMPLAINT AND JURY DEMAND

BACKGROUND

Plaintiff Computer Recognition Systems, Inc. ("CRS") brings this action against Adesta Communications, Inc. d/b/a Adesta Transportation ("Adesta") and Southern Aluminum and Steel Corporation ("SASCO") (collectively "Defendants") for breach of contract, misappropriation of trade secrets, conversion, violation of Mass. Gen. L. c. 93A and related claims. CRS sells proprietary Violation Enforcement Systems ("System" or "Systems") used to monitor motorist compliance with highway toll collection points. Defendants requested that CRS modify certain components of its proprietary system to interface with a system used by Defendants. CRS agreed to do so, but only after the execution of a confidentiality agreement. After CRS shared its confidential information and trade secrets with the Defendants and delivered nearly half of the components, the Defendants wrongfully cancelled the contract. CRS subsequently

learned that Defendants used CRS' proprietary and confidential information to develop its own components in place of those provided by CRS.

For cause of action and by way of Complaint, the Plaintiff states as follows:

PARTIES

1. Plaintiff CRS is a Massachusetts corporation with a usual place of business located at 625 Massachusetts Avenue, Cambridge, Middlesex County, Massachusetts.

2. Defendant Adesta is a Delaware Corporation with usual place of business located at 200 East Park Drive, Suite 600, Mt. Laurel, New Jersey.

3. Defendant SASCO is a Florida Corporation with a usual place of business located at 405 Atlantis Road, Suite D, Cape Canaveral, Florida.

JURISDICTION AND VENUE

4. Diversity jurisdiction is based on 28 U.S.C. § 1332(a)(2) because CRS is a Massachusetts corporation with its principal place of business in the Commonwealth of Massachusetts, Adesta is a Delaware Corporation, registered to do business in the Commonwealth of Massachusetts, with its principle place of business in the State of New Jersey, and SASCO is a Florida corporation with its principle place of business in the State of Florida. The amount in controversy exceeds the sum of Seventy-five Thousand Dollars ($75,000), exclusive of interest and costs.

5. This Court has personal jurisdiction over SASCO pursuant to Mass. Gen. L. c. 223A, § 3(a) because, in its dealings with CRS, SASCO has transacted business in the Commonwealth of Massachusetts and has minimum contacts sufficient to submit itself to the jurisdiction of the Massachusetts' courts.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

FACTS COMMON TO ALL COUNTS

7. For twenty years, CRS has been in the business of the design and development of License Plate Readers, and for the last seven years Violation Enforcement Systems ("System" or "Systems") for use in monitoring motorist compliance at toll collection points on highways throughout the United States. CRS's System was created through thousands of hours of engineering, research and development.

8. The operation of CRS's System relies upon proprietary technology consisting of video capture cards, commonly referred to as boards ("Boards"), software for use in capturing digital images of automobiles and their license plates as they pass through toll plazas, and the configuration of the System. The System developed by CRS is generally more reliable than other similar systems on the market.

9. The software developed by CRS contains a computer code, or algorithm ("Algorithm"), that optimizes the license plate imaging process by automatically adjusting the camera's parameters, including the shutter speed, gain, and f-stop, based on the time of day, and the current lighting conditions.

10. CRS's Algorithm is unique in that it uses the camera's sensor to determine the lighting conditions at any particular time, and adjust the camera parameters accordingly in order to obtain a license plate image of a sufficient quality.

11. The Algorithm provides CRS with a competitive advantage in comparison to its competitors because CRS's System offers superior performance, and fewer component parts.

12. CRS has treated the System as a trade secret by, among other things, insisting on entering into confidentiality agreements with those with whom it shares its proprietary information.

13. In February of 1999, Adesta and CRS entered into a purchase agreement pursuant to which CRS was to supply ninety-four (94) Systems, consisting of cameras, camera mounts and enclosures, lights, boards, software, and software licenses, to Adesta for Phase I of the New York/New Jersey Regional Consortium Project ("Regional Consortium Project"), a highway project being constructed in Delaware and New Jersey. The ninety-four (94) Systems provided by CRS were to be installed in ninety-four (94) toll lanes on the Delaware Turnpike and the Atlantic City Expressway.

14. During the period in which CRS was fulfilling the purchase orders on Phase I, Adesta requested that CRS work with Adesta to modify CRS's software and Algorithm so that it would work with two other operating systems used by Adesta, CExec and Lynx in connection with Phase II of the Regional Consortium Project ("Phase II"). CRS's Algorithm was originally developed to work with the Windows NT operating system.

15. Accordingly, Adesta issued a purchase order for this development work. CRS and Adesta agreed that upon successful completion of the development work, CRS would be issued purchase orders to supply components for the Systems for Phase II. Unlike Phase I where CRS supplied the entire System consisting of cameras, camera mounts and enclosures, lights, and an industrial computer including Boards, software, and software licenses, CRS and Adesta agreed that on Phase II, CRS would be requested to supply only Boards, software, and software licenses.

16. In connection with this development work, CRS insisted upon entering into a Confidentiality Agreement with Adesta in order to protect CRS's trade secret and proprietary information. A true and correct copy of the Confidentiality Agreement is attached hereto as Exhibit A.

17. Pursuant to the terms of the Confidentiality Agreement, CRS and Adesta agreed to:

> develop a combined lane controller and violation image capture system in which [Adesta] and CRS would jointly perform product development, during the course of which CRS may be required to provided proprietary information related to violation image capture and specifically camera control algorithms . . .. In the course of this development, the Parties may exchange information and data that is confidential and proprietary, and in such event the Parties agree that such information shall be governed by this Agreement.

18. Further, pursuant to the Confidentiality Agreement, CRS and Adesta specifically agreed to restrict the use and disclosure of information classified as confidential pursuant to the Confidentiality Agreement as follows:

> Each Party agrees to use Confidential Information received from the other Party only (i) to perform the specific scope of work defined in Paragraph I above and (ii) to collaborate on other Projects after the Parties have agreed to do so, but not for any other purpose.

19. Near the completion of the development work, Adesta indicated to CRS that the purchase orders for Phase II of the Regional Consortium Project would be issued through SASCO, Adesta's sister company.

20. In a subsequent letter, SASCO requested that CRS provide a price for CRS to supply Boards, software, and software licenses ("Units") for Phase II of the Regional Consortium Project.

21. CRS quoted SASCO a price of $1,750 for each Unit. Thereafter, Adesta contacted CRS to negotiate a lower price. CRS again submitted a quote to SASCO, this time at a lower price of $1575 per Unit. Accordingly, SASCO issued the two purchase orders, PO Nos. F99-1986-3019 dated December 17, 1999 and F99-1988-3021 dated December 20, 1999, offering to purchase 834 Units for a total price of $1,313,550.

22. By facsimile dated January 20, 2001, CRS accepted SASCO's offer by indicating shipment dates for the Units.

23. Over the next year, while CRS was providing Units under the first of the two purchase orders, CRS also provided significant technical consultation to remedy Adesta's defective installation of the Units. CRS's consultation was provided at no cost to SASCO or Adesta. Although CRS was prompt and timely with all of its shipments to Adesta, and generous with its technical guidance, SASCO and Adesta were consistently slow to pay, and CRS communicated frequently with SASCO and Adesta regarding outstanding payments.

24. From January 1, 2000 to December 31, 2000, CRS made eleven (11) shipments to Adesta and delivered 340 of the 387 Units under PO No. PO No. F99-1986-3019. CRS issued eleven (11) invoices for the 340 Units in the total amount of $546,552. Of that amount, Adesta paid CRS directly on two invoices, in the total amount of $120,600. SASCO paid the remaining invoices in the total amount of $425,952.

25. During a telephone conversation in late December of 2000, Adesta advised CRS that Adesta no longer required CRS to provide its software or software licenses with the Units, but, instead, only required delivery of the boards. Adesta claimed that CRS's software, containing CRS's secret Algorithm, was not functioning properly,

and, accordingly, Adesta had developed its own software to replace that provided by CRS. This was the first time in the six months that CRS was supplying Units pursuant to the Contract that CRS was notified that Adesta was unhappy with the performance of CRS's software.

26. By letter dated January 3, 2001 from Adesta to SASCO, Adesta requested that the purchase orders be modified both quantitatively and substantively. SASCO forwarded this request to CRS in a letter dated January 4, 2001. Specifically, Adesta requested that PO No. F99-1986-3019 for 387 Units be reduced to 358 Units, and that PO No. F99-1988-3021 for 447 Units be reduced to 341 Units. Further, Adesta requested that the purchase orders be changed such that CRS provide only the boards, and not the software, or software licenses for the balance of the purchase orders.

27. Adesta notified CRS through SASCO that the reason for this requested modification to the Purchase Orders was that Adesta had developed its own algorithm to replace the Algorithm developed by CRS.

28. Since it was not clear to CRS exactly what Adesta wanted, CRS attempted to obtain clarification by telephone. Neither Adesta, nor SASCO, responded to CRS's inquiries. Accordingly, CRS continued to perform in good faith pursuant to the Contract, and shipped 30 Units that had already been manufactured to Adesta on January 22, 2001. Adesta refused delivery.

29. In an effort to accommodate SASCO, CRS responded to SASCO's requests to modify the Purchase Orders with a letter dated January 29, 2001 indicating that the requested changes to the purchase orders would cause an increase in the price per Unit. Further CRS indicated that the remaining 17 Units for PO No. F99-1986-3019, as

well as 63 Units for PO No. F99-1988-3021, were scheduled to ship on February 14, 2001. CRS also stated that due to the requests to re-price, it had put its manufacturing of remaining Units on hold pending clarification of SASCO's request to re-price. Finally, CRS notified SASCO that the algorithm developed by Adesta to replace CRS's Algorithm likely violated the Confidentiality Agreement between CRS and Adesta.

30. By letter dated February 8, 2001, SASCO cancelled all remaining Units to be provided under the two purchase orders claiming that CRS's boards and software were not required since Adesta had developed its own algorithm and necessarily obtaining boards elsewhere.

31. The Units manufactured by CRS were custom made for SASCO and Adesta and cannot be readily resold.

COUNT I – BREACH OF CONTRACT

32. CRS restates the allegations contained in paragraphs 1 through 31 of the Complaint as if fully set forth herein.

33. CRS and Defendants entered into a Contract pursuant to which CRS was to deliver 834 Units.

34. Defendants' refusal to accept delivery of Units supplied in good faith by CRS, and subsequent cancellation of the Contract in the absence of any contractual right to do so, was a breach of contract.

35. CRS and Adesta entered into a Confidentiality Agreement dated March 31, 1999 the purpose of which was to protect CRS's trade secrets.

36. Adesta breached the Confidentiality Agreement by improperly using CRS's trade secrets and confidential information.

37. As a result of Defendants' breaches, CRS incurred, and continues to incur damages.

38. All conditions precedent to the maintenance of this action have been performed.

COUNT II – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

39. CRS restates the allegations contained in paragraphs 1 through 38 of the Complaint as if fully set forth herein.

40. The Contract between CRS and Defendants pursuant to the Purchase Orders, as well as the Confidentiality Agreement, carry with them implied covenants of good faith and fair dealing.

41. Defendants conduct, as set forth above, constitutes a violation of the obligation of good faith and fair dealing implicit in these contracts.

42. As a direct and proximate result, CRS incurred, and continues to incur damages.

COUNT III - MISAPPROPRIATION OF TRADE SECRETS MASS. GEN. L. c. 93, § § 42 and 42A AND MASSACHUSETTS COMMON LAW

43. CRS restates the allegations contained in paragraphs 1 through 42 of the Complaint as if fully set forth herein.

44. CRS maintained its System as a trade secret.

45. CRS had possession or an immediate right to possession of trade secret and/or confidential information. Defendants were, and remain, under a duty not to use or disclose CRS's trade secrets and confidential information.

46. On information and belief, Defendants have and continues to exercise dominion and control over CRS's trade secrets and confidential information in a manner inconsistent with CRS's rights.

47. On information and belief, Defendants unlawfully took CRS's trade secrets for its own use in violation of common law and of Mass. Gen. L. c. 93.

48. CRS has and continues to suffer irreparable harm and other damages as a result of Defendants' conduct.

COUNT IV – CONVERSION

49. CRS restates the allegations contained in paragraphs 1 through 48 of the Complaint as if fully set forth herein.

50. CRS has an immediate right to possession of its trade secrets and confidential information.

51. Defendants have intentionally and wrongfully exercised dominion and/or control over CRS's trade secrets and confidential information.

52. As a result of Defendants' conversion of CRS's property, CRS has suffered and continues to suffer substantial damage.

COUNT V – UNFAIR AND DECEPTIVE TRADE PRACTICES MASS. GEN. L. C. 93A

53. CRS restates the allegations contained in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. At all times relevant to this Complaint, CRS and the Defendants were engaged in trade or commerce as defined by Mass. Gen. L. c. 93A.

55. The conduct of the Defendants described herein constitutes unfair and deceptive trade practices.

56. Defendant's conduct was committed knowingly and willingly.

57. As a result of Defendants violations of Mass. Gen. L. c. 93A, CRS has suffered substantial damages.

WHEREFORE, CRS respectfully requests that the Court grant the following relief:

(A) Issue an Order enjoining Defendants from further use or disclosure of CRS's trade secrets or confidential information;

(B) Enter judgment on behalf of CRS in an amount to be determined at trial plus treble damages, interest, costs and attorneys fees; and

(C) Grant such other or additional relief as the Court deems just and proper under the circumstances.

JURY DEMAND

CRS respectfully request a trial by jury on all issues so triable.

COMPUTER RECOGNITION SYSTEMS, INC.

By its Attorneys,

John R. Halkal, BBO# 559473
John P. Giffune, BBO# 636599
GADSBY HANNAH LLP
225 Franklin Street
Boston, MA 02110
(617) 345-7000

March 22, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-

COMPUTER RECOGNITION SYSTEMS, INC.,
Plaintiffs,
v.

ADESTA COMMUNICATIONS, INC. d/b/a ADESTA TRANSPORTATION and SOUTHERN ALUMINUM & STEEL CORPORATION,
Defendants.

01 10491 MEL

COMPLAINT AND JURY DEMAND

BACKGROUND

Plaintiff Computer Recognition Systems, Inc. ("CRS") brings this action against Adesta Communications, Inc. d/b/a Adesta Transportation ("Adesta") and Southern Aluminum and Steel Corporation ("SASCO") (collectively "Defendants") for breach of contract, misappropriation of trade secrets, conversion, violation of Mass. Gen. L. c. 93A and related claims. CRS sells proprietary Violation Enforcement Systems ("System" or "Systems") used to monitor motorist compliance with highway toll collection points. Defendants requested that CRS modify certain components of its proprietary system to interface with a system used by Defendants. CRS agreed to do so, but only after the execution of a confidentiality agreement. After CRS shared its confidential information and trade secrets with the Defendants and delivered nearly half of the components, the Defendants wrongfully cancelled the contract. CRS subsequently

learned that Defendants used CRS' proprietary and confidential information to develop its own components in place of those provided by CRS.

For cause of action and by way of Complaint, the Plaintiff states as follows:

PARTIES

1. Plaintiff CRS is a Massachusetts corporation with a usual place of business located at 625 Massachusetts Avenue, Cambridge, Middlesex County, Massachusetts.

2. Defendant Adesta is a Delaware Corporation with usual place of business located at 200 East Park Drive, Suite 600, Mt. Laurel, New Jersey.

3. Defendant SASCO is a Florida Corporation with a usual place of business located at 405 Atlantis Road, Suite D, Cape Canaveral, Florida.

JURISDICTION AND VENUE

4. Diversity jurisdiction is based on 28 U.S.C. § 1332(a)(2) because CRS is a Massachusetts corporation with its principal place of business in the Commonwealth of Massachusetts, Adesta is a Delaware Corporation, registered to do business in the Commonwealth of Massachusetts, with its principle place of business in the State of New Jersey, and SASCO is a Florida corporation with its principle place of business in the State of Florida. The amount in controversy exceeds the sum of Seventy-five Thousand Dollars ($75,000), exclusive of interest and costs.

5. This Court has personal jurisdiction over SASCO pursuant to Mass. Gen. L. c. 223A, § 3(a) because, in its dealings with CRS, SASCO has transacted business in the Commonwealth of Massachusetts and has minimum contacts sufficient to submit itself to the jurisdiction of the Massachusetts' courts.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

FACTS COMMON TO ALL COUNTS

7. For twenty years, CRS has been in the business of the design and development of License Plate Readers, and for the last seven years Violation Enforcement Systems ("System" or "Systems") for use in monitoring motorist compliance at toll collection points on highways throughout the United States. CRS's System was created through thousands of hours of engineering, research and development.

8. The operation of CRS's System relies upon proprietary technology consisting of video capture cards, commonly referred to as boards ("Boards"), software for use in capturing digital images of automobiles and their license plates as they pass through toll plazas, and the configuration of the System. The System developed by CRS is generally more reliable than other similar systems on the market.

9. The software developed by CRS contains a computer code, or algorithm ("Algorithm"), that optimizes the license plate imaging process by automatically adjusting the camera's parameters, including the shutter speed, gain, and f-stop, based on the time of day, and the current lighting conditions.

10. CRS's Algorithm is unique in that it uses the camera's sensor to determine the lighting conditions at any particular time, and adjust the camera parameters accordingly in order to obtain a license plate image of a sufficient quality.

11. The Algorithm provides CRS with a competitive advantage in comparison to its competitors because CRS's System offers superior performance, and fewer component parts.

12. CRS has treated the System as a trade secret by, among other things, insisting on entering into confidentiality agreements with those with whom it shares its proprietary information.

13. In February of 1999, Adesta and CRS entered into a purchase agreement pursuant to which CRS was to supply ninety-four (94) Systems, consisting of cameras, camera mounts and enclosures, lights, boards, software, and software licenses, to Adesta for Phase I of the New York/New Jersey Regional Consortium Project ("Regional Consortium Project"), a highway project being constructed in Delaware and New Jersey. The ninety-four (94) Systems provided by CRS were to be installed in ninety-four (94) toll lanes on the Delaware Turnpike and the Atlantic City Expressway.

14. During the period in which CRS was fulfilling the purchase orders on Phase I, Adesta requested that CRS work with Adesta to modify CRS's software and Algorithm so that it would work with two other operating systems used by Adesta, CExec and Lynx in connection with Phase II of the Regional Consortium Project ("Phase II"). CRS's Algorithm was originally developed to work with the Windows NT operating system.

15. Accordingly, Adesta issued a purchase order for this development work. CRS and Adesta agreed that upon successful completion of the development work, CRS would be issued purchase orders to supply components for the Systems for Phase II. Unlike Phase I where CRS supplied the entire System consisting of cameras, camera mounts and enclosures, lights, and an industrial computer including Boards, software, and software licenses, CRS and Adesta agreed that on Phase II, CRS would be requested to supply only Boards, software, and software licenses.

16. In connection with this development work, CRS insisted upon entering into a Confidentiality Agreement with Adesta in order to protect CRS's trade secret and proprietary information. A true and correct copy of the Confidentiality Agreement is attached hereto as Exhibit A.

17. Pursuant to the terms of the Confidentiality Agreement, CRS and Adesta agreed to:

> develop a combined lane controller and violation image capture system in which [Adesta] and CRS would jointly perform product development, during the course of which CRS may be required to provided proprietary information related to violation image capture and specifically camera control algorithms . . .. In the course of this development, the Parties may exchange information and data that is confidential and proprietary, and in such event the Parties agree that such information shall be governed by this Agreement.

18. Further, pursuant to the Confidentiality Agreement, CRS and Adesta specifically agreed to restrict the use and disclosure of information classified as confidential pursuant to the Confidentiality Agreement as follows:

> Each Party agrees to use Confidential Information received from the other Party only (i) to perform the specific scope of work defined in Paragraph I above and (ii) to collaborate on other Projects after the Parties have agreed to do so, but not for any other purpose.

19. Near the completion of the development work, Adesta indicated to CRS that the purchase orders for Phase II of the Regional Consortium Project would be issued through SASCO, Adesta's sister company.

20. In a subsequent letter, SASCO requested that CRS provide a price for CRS to supply Boards, software, and software licenses ("Units") for Phase II of the Regional Consortium Project.

21. CRS quoted SASCO a price of $1,750 for each Unit. Thereafter, Adesta contacted CRS to negotiate a lower price. CRS again submitted a quote to SASCO, this time at a lower price of $1575 per Unit. Accordingly, SASCO issued the two purchase orders, PO Nos. F99-1986-3019 dated December 17, 1999 and F99-1988-3021 dated December 20, 1999, offering to purchase 834 Units for a total price of $1,313,550.

22. By facsimile dated January 20, 2001, CRS accepted SASCO's offer by indicating shipment dates for the Units.

23. Over the next year, while CRS was providing Units under the first of the two purchase orders, CRS also provided significant technical consultation to remedy Adesta's defective installation of the Units. CRS's consultation was provided at no cost to SASCO or Adesta. Although CRS was prompt and timely with all of its shipments to Adesta, and generous with its technical guidance, SASCO and Adesta were consistently slow to pay, and CRS communicated frequently with SASCO and Adesta regarding outstanding payments.

24. From January 1, 2000 to December 31, 2000, CRS made eleven (11) shipments to Adesta and delivered 340 of the 387 Units under PO No. PO No. F99-1986-3019. CRS issued eleven (11) invoices for the 340 Units in the total amount of $546,552. Of that amount, Adesta paid CRS directly on two invoices, in the total amount of $120,600. SASCO paid the remaining invoices in the total amount of $425,952.

25. During a telephone conversation in late December of 2000, Adesta advised CRS that Adesta no longer required CRS to provide its software or software licenses with the Units, but, instead, only required delivery of the boards. Adesta claimed that CRS's software, containing CRS's secret Algorithm, was not functioning properly,

and, accordingly, Adesta had developed its own software to replace that provided by CRS. This was the first time in the six months that CRS was supplying Units pursuant to the Contract that CRS was notified that Adesta was unhappy with the performance of CRS's software.

26. By letter dated January 3, 2001 from Adesta to SASCO, Adesta requested that the purchase orders be modified both quantitatively and substantively. SASCO forwarded this request to CRS in a letter dated January 4, 2001. Specifically, Adesta requested that PO No. F99-1986-3019 for 387 Units be reduced to 358 Units, and that PO No. F99-1988-3021 for 447 Units be reduced to 341 Units. Further, Adesta requested that the purchase orders be changed such that CRS provide only the boards, and not the software, or software licenses for the balance of the purchase orders.

27. Adesta notified CRS through SASCO that the reason for this requested modification to the Purchase Orders was that Adesta had developed its own algorithm to replace the Algorithm developed by CRS.

28. Since it was not clear to CRS exactly what Adesta wanted, CRS attempted to obtain clarification by telephone. Neither Adesta, nor SASCO, responded to CRS's inquiries. Accordingly, CRS continued to perform in good faith pursuant to the Contract, and shipped 30 Units that had already been manufactured to Adesta on January 22, 2001. Adesta refused delivery.

29. In an effort to accommodate SASCO, CRS responded to SASCO's requests to modify the Purchase Orders with a letter dated January 29, 2001 indicating that the requested changes to the purchase orders would cause an increase in the price per Unit. Further CRS indicated that the remaining 17 Units for PO No. F99-1986-3019, as

well as 63 Units for PO No. F99-1988-3021, were scheduled to ship on February 14, 2001. CRS also stated that due to the requests to re-price, it had put its manufacturing of remaining Units on hold pending clarification of SASCO's request to re-price. Finally, CRS notified SASCO that the algorithm developed by Adesta to replace CRS's Algorithm likely violated the Confidentiality Agreement between CRS and Adesta.

30. By letter dated February 8, 2001, SASCO cancelled all remaining Units to be provided under the two purchase orders claiming that CRS's boards and software were not required since Adesta had developed its own algorithm and necessarily obtaining boards elsewhere.

31. The Units manufactured by CRS were custom made for SASCO and Adesta and cannot be readily resold.

COUNT I – BREACH OF CONTRACT

32. CRS restates the allegations contained in paragraphs 1 through 31 of the Complaint as if fully set forth herein.

33. CRS and Defendants entered into a Contract pursuant to which CRS was to deliver 834 Units.

34. Defendants' refusal to accept delivery of Units supplied in good faith by CRS, and subsequent cancellation of the Contract in the absence of any contractual right to do so, was a breach of contract.

35. CRS and Adesta entered into a Confidentiality Agreement dated March 31, 1999 the purpose of which was to protect CRS's trade secrets.

36. Adesta breached the Confidentiality Agreement by improperly using CRS's trade secrets and confidential information.

37. As a result of Defendants' breaches, CRS incurred, and continues to incur damages.

38. All conditions precedent to the maintenance of this action have been performed.

COUNT II – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

39. CRS restates the allegations contained in paragraphs 1 through 38 of the Complaint as if fully set forth herein.

40. The Contract between CRS and Defendants pursuant to the Purchase Orders, as well as the Confidentiality Agreement, carry with them implied covenants of good faith and fair dealing.

41. Defendants conduct, as set forth above, constitutes a violation of the obligation of good faith and fair dealing implicit in these contracts.

42. As a direct and proximate result, CRS incurred, and continues to incur damages.

COUNT III - MISAPPROPRIATION OF TRADE SECRETS MASS. GEN. L. c. 93, § § 42 and 42A AND MASSACHUSETTS COMMON LAW

43. CRS restates the allegations contained in paragraphs 1 through 42 of the Complaint as if fully set forth herein.

44. CRS maintained its System as a trade secret.

45. CRS had possession or an immediate right to possession of trade secret and/or confidential information. Defendants were, and remain, under a duty not to use or disclose CRS's trade secrets and confidential information.

46. On information and belief, Defendants have and continues to exercise dominion and control over CRS's trade secrets and confidential information in a manner inconsistent with CRS's rights.

47. On information and belief, Defendants unlawfully took CRS's trade secrets for its own use in violation of common law and of Mass. Gen. L. c. 93.

48. CRS has and continues to suffer irreparable harm and other damages as a result of Defendants' conduct.

COUNT IV – CONVERSION

49. CRS restates the allegations contained in paragraphs 1 through 48 of the Complaint as if fully set forth herein.

50. CRS has an immediate right to possession of its trade secrets and confidential information.

51. Defendants have intentionally and wrongfully exercised dominion and/or control over CRS's trade secrets and confidential information.

52. As a result of Defendants' conversion of CRS's property, CRS has suffered and continues to suffer substantial damage.

COUNT V – UNFAIR AND DECEPTIVE TRADE PRACTICES MASS. GEN. L. C. 93A

53. CRS restates the allegations contained in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. At all times relevant to this Complaint, CRS and the Defendants were engaged in trade or commerce as defined by Mass. Gen. L. c. 93A.

55. The conduct of the Defendants described herein constitutes unfair and deceptive trade practices.

56. Defendant's conduct was committed knowingly and willingly.

57. As a result of Defendants violations of Mass. Gen. L. c. 93A, CRS has suffered substantial damages.

WHEREFORE, CRS respectfully requests that the Court grant the following relief:

(A) Issue an Order enjoining Defendants from further use or disclosure of CRS's trade secrets or confidential information;

(B) Enter judgment on behalf of CRS in an amount to be determined at trial plus treble damages, interest, costs and attorneys fees; and

(C) Grant such other or additional relief as the Court deems just and proper under the circumstances.

JURY DEMAND

CRS respectfully request a trial by jury on all issues so triable.

COMPUTER RECOGNITION SYSTEMS, INC.

By its Attorneys,

John R. Halkal, BBO# 559473
John P. Giffune, BBO# 636599
GADSBY HANNAH LLP
225 Franklin Street
Boston, MA 02110
(617) 345-7000

March 22, 2001

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

ACCESS 123, INC. and DAVID HEIM, Plaintiffs	)	**Civil Action No. 01 CV 10467 RWZ**
vs.	)	**ANSWER OF THE DEFENDANT**
GERALD N. SEYMOUR d/b/a THE WILDWOOD RESTAURANT, Defendants	)	

NOW comes the Defendant in the above entitled matter and does hereby Answer the Complaint of the Plaintiffs as follows:

1. The Defendant admits that the Court has original jurisdiction of this matter.
2. The Defendant admits that proper venue in this matter lies in this District.
3. The Defendant admits the allegations contained in Paragraph 3 of the Complaint.
4. The Defendant admits the allegations contained in Paragraph 4 of the Complaint
5. The Defendant admits the allegations contained in Paragraph 5 of the Complaint.
6. The Defendant neither admits nor denies the allegations contained in Paragraph 6 of the Complaint and calls for proof of same.
7. The Defendant neither admits nor denies the allegations contained in Paragraph 7 of the Complaint and calls for proof of same.
8. The Defendant admits that he is the owner of The Wildwood Restaurant. The Defendant neither admits nor denies the remaining allegations of Paragraph 8 of the Complaint.
9. The Defendant denies the allegations contained in Paragraph 9 of the Complaint.
10. The Defendant denies the allegations contained in Paragraph 10 of the Complaint.
11. The Defendant neither admits nor denies the allegations contained in Paragraph 11 of the Complaint and calls for proof of same.
12. The Defendant denies the allegations contained in Paragraph 12 of the Complaint.
13. The Defendant admits the allegations contained in Paragraph 13 of the Complaint.

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14. The Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. The Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. The Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. The Defendant neither admits nor denies the allegations contained in Paragraph 18 of the Complaint and calls for proof of same.

19. The Defendant admits the allegations contained in Paragraph 19 of the Complaint

FIRST AFFIRMATIVE RESPONSE

The Plaintiffs has failed to state a claim for which relief may be granted.

SECOND AFFIRMATIVE RESPONSE

The Plaintiffs have failed to comply with the relevant notice provisions contained in *42 U.S.C. §12181 et seq.*

THIRD AFFIRMATIVE RESPONSE

The Plaintiffs lack proper standing.

By his Attorney,

William H. Mayer, Esquire
Hargraves, Karb, Wilcox & Galvani
550 Cochituate Road
P.O. Box 966
Framingham, MA 01701
508-620-0140
BBO #325840

Date: March 20, 2001

CERTIFICATE OF SERVICE

I, William H. Mayer, attorney for the Defendant, hereby certify that I have this date served a copy of the within Answer to Complaint upon the Plaintiffs, by mailing said copy postage prepaid to their attorney, Mark Orlove, Esquire at 8 Park Plaza - #215, Boston, MA 02116-3902.

Signed under the penalties of perjury this 16 day of March, 2001.

William H. Mayer, Esquire

F:\MAYER.WM\Seym-ger\ANSWER.WPD-March 21, 2001

UNITED STATES DISTRICT COUNT
FOR THE DISTRICT OF MASSACHUSETTS

CASE No. 00-12492 MLW

NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC. d/b/a/ NEXTEL COMMUNICATIONS)

Plaintiff,

THE TOWN OF EASTON, ZONING BOARD OF APPEALS and Paul G. Pino, Chairman, Walter Mirrione, Clerk, Stephen A. Freitas, Stephen J. McAlarney, Brian T. O'Neil, Jr. and Stephen Pinzari, in their capacities as Members of the Zoning Board of Appeals of the Town of Easton

Defendants.

ANSWER

1. Defendants admit the allegations contained in sentence 1of paragraph 1 and deny the allegations contained in sentence 2 of paragraph 1.

2. Defendants admit the allegations contained in paragraph 2.

3. Defendants are without sufficient knowledge or knowledge to admit or deny the allegations in paragraph 3 and call upon Plaintiff to prove the same.

4. Defendants admit the allegations contained in paragraph 4.

5. Defendants admit the allegations contained in paragraph 5.

6. Defendants admit the allegations contained in paragraph 6.

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7. Paragraph 7 states a conclusion of law and, therefore, no response is required.

8. Defendants admit the allegations of paragraph 8.

9. Defendants admit the allegations of paragraph 9.

10. Defendants admit the allegations of paragraph 10.

11. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 11 and call upon Plaintiff to prove the same.

12. Defendants admit the allegations in sentence 1 of paragraph 12. Defendants are without sufficient knowledge to admit or deny the allegations in sentence 2 of paragraph 12. Defendants admit the allegations in sentence 3 of paragraph 12.

13. Defendants deny the allegations contained in paragraph 13.

14. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 14 and call upon Plaintiff to prove the same.

15. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 15 and call upon Plaintiff to prove the same.

16. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 16 and call upon Plaintiff to prove the same.

17. Defendants admit the allegations contained in paragraph 17.

18. Defendants deny the allegations contained in paragraph 18.

19. Defendants admit the allegations contained in sentence 1of paragraph 19. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in the last sentence of paragraph 19.

20. Defendants admit the allegations contained in paragraph 20.

21. Defendants admit the allegations contained in sentence 1 of paragraph 21. Defendants deny the allegations contained in sentence 2 of paragraph 21. Defendants admit the allegations contained in the last sentence of paragraph 21.

22. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 22 and call upon Plaintiff to prove the same.

23. Defendants deny the allegations contained in paragraph 23 and in further answering state that the location of the proposed facility in an historically sensitive area subject to the jurisdiction of the Massachusetts Historical Society and the Easton Historical Commission.

24. Defendants deny the allegations contained in paragraph 24.

25. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 25 and call upon Plaintiff to prove the same.

26. Defendants repeat and realleges their answers contained in paragraphs 1 through 25 as if fully set forth herein.

27. Defendants deny the allegations contained in paragraph 27.

28. Defendants deny the allegations contained in paragraph 28.

29. Defendants repeat and realleges their answers contained in paragraphs 1 through 28 as if fully set forth herein.

30. Defendants admit the allegations contained in paragraph 30.

31. The defendants deny the allegations contained in paragraph 31.

32. Defendants deny the allegations contained in paragraph 32.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because Defendants' decisions were based on substantial evidence contained in a written record and did not prohibit or have the effect of prohibiting service to the area.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because the Defendants' decisions ere within the Board's authority and not arbitrary or capricious.

THIRD AFFIRMATIAVE DEFENSE

Plaintiff's Complaint should be dismissed for failure to comply with the statute of limitations and other procedural requirements as set forth in Mass. Gen. Laws c. 40A.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because the Telecommunications Act of 1996 is unconstitutional in that it violates the 10th Amendment of the U.S. Constitution.

WHEREFORE, the Defendants request that this Court enter judgment for the Defendants on all counts and award Defendants their costs.

TOWN OF EASTON AND THE
ZONING BOARD OF APPEALS
OF EASTON
By their attorneys,

Joan E. Langsam (BBO# 246888)
Gary S. Brackett (BB0# 052940)
BRACKETT & LUCAS
10 Converse Place 2nd Floor
Winchester, MA. 01890
(781) 721-2425

CERTIFICATE OF SERVICE

I, Joan E. Langsam, hereby certify on the 26th day of March, 2001, that I have served a true and accurate copy of the within Answer by mail via first class, postage prepaid, addressed to:

Steven E. Grill, Esquire
Devine, Millimet & Branch, P.A.
111 Amherst Street, P.O. Box 719
Manchester, N.H. 03105-0719

Joan E. Langsam, Esquire

UNITED STATES DISTRICT COUNT
FOR THE DISTRICT OF MASSACHUSETTS

CASE No. 00-12492 MLW

NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC. d/b/a/ NEXTEL COMMUNICATIONS)

Plaintiff,

THE TOWN OF EASTON, ZONING BOARD OF APPEALS and Paul G. Pino, Chairman, Walter Mirrione, Clerk, Stephen A. Freitas, Stephen J. McAlarney, Brian T. O'Neil, Jr. and Stephen Pinzari, in their capacities as Members of the Zoning Board of Appeals of the Town of Easton

Defendants.

ANSWER

1. Defendants admit the allegations contained in sentence 1of paragraph 1 and deny the allegations contained in sentence 2 of paragraph 1.

2. Defendants admit the allegations contained in paragraph 2.

3. Defendants are without sufficient knowledge or knowledge to admit or deny the allegations in paragraph 3 and call upon Plaintiff to prove the same.

4. Defendants admit the allegations contained in paragraph 4.

5. Defendants admit the allegations contained in paragraph 5.

6. Defendants admit the allegations contained in paragraph 6.

12

7. Paragraph 7 states a conclusion of law and, therefore, no response is required.

8. Defendants admit the allegations of paragraph 8.

9. Defendants admit the allegations of paragraph 9.

10. Defendants admit the allegations of paragraph 10.

11. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 11 and call upon Plaintiff to prove the same.

12. Defendants admit the allegations in sentence 1 of paragraph 12. Defendants are without sufficient knowledge to admit or deny the allegations in sentence 2 of paragraph 12. Defendants admit the allegations in sentence 3 of paragraph 12.

13. Defendants deny the allegations contained in paragraph 13.

14. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 14 and call upon Plaintiff to prove the same.

15. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 15 and call upon Plaintiff to prove the same.

16. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 16 and call upon Plaintiff to prove the same.

17. Defendants admit the allegations contained in paragraph 17.

18. Defendants deny the allegations contained in paragraph 18.

19. Defendants admit the allegations contained in sentence 1of paragraph 19. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in the last sentence of paragraph 19.

20. Defendants admit the allegations contained in paragraph 20.

21. Defendants admit the allegations contained in sentence 1 of paragraph 21. Defendants deny the allegations contained in sentence 2 of paragraph 21. Defendants admit the allegations contained in the last sentence of paragraph 21.

22. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 22 and call upon Plaintiff to prove the same.

23. Defendants deny the allegations contained in paragraph 23 and in further answering state that the location of the proposed facility in an historically sensitive area subject to the jurisdiction of the Massachusetts Historical Society and the Easton Historical Commission.

24. Defendants deny the allegations contained in paragraph 24.

25. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 25 and call upon Plaintiff to prove the same.

26. Defendants repeat and realleges their answers contained in paragraphs 1 through 25 as if fully set forth herein.

27. Defendants deny the allegations contained in paragraph 27.

28. Defendants deny the allegations contained in paragraph 28.

29. Defendants repeat and realleges their answers contained in paragraphs 1 through 28 as if fully set forth herein.

30. Defendants admit the allegations contained in paragraph 30.

31. The defendants deny the allegations contained in paragraph 31.

32. Defendants deny the allegations contained in paragraph 32.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because Defendants' decisions were based on substantial evidence contained in a written record and did not prohibit or have the effect of prohibiting service to the area.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because the Defendants' decisions ere within the Board's authority and not arbitrary or capricious.

THIRD AFFIRMATIAVE DEFENSE

Plaintiff's Complaint should be dismissed for failure to comply with the statute of limitations and other procedural requirements as set forth in Mass. Gen. Laws c. 40A.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed because the Telecommunications Act of 1996 is unconstitutional in that it violates the 10th Amendment of the U.S. Constitution.

WHEREFORE, the Defendants request that this Court enter judgment for the Defendants on all counts and award Defendants their costs.

TOWN OF EASTON AND THE
ZONING BOARD OF APPEALS
OF EASTON
By their attorneys,

Joan E. Langsam (BBO# 246888)
Gary S. Brackett (BB0# 052940)
BRACKETT & LUCAS
10 Converse Place 2nd Floor
Winchester, MA. 01890
(781) 721-2425

CERTIFICATE OF SERVICE

I, Joan E. Langsam, hereby certify on the 26th day of March, 2001, that I have served a true and accurate copy of the within Answer by mail via first class, postage prepaid, addressed to:

Steven E. Grill, Esquire
Devine, Millimet & Branch, P.A.
111 Amherst Street, P.O. Box 719
Manchester, N.H. 03105-0719

Joan E. Langsam, Esquire

UNITED STATES DISTRICT COUNT
FOR THE DISTRICT OF MASSACHUSETTS

CASE No. 00-12492 MLW

NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC. d/b/a/ NEXTEL COMMUNICATIONS)

Plaintiff,

THE TOWN OF EASTON, ZONING BOARD OF APPEALS and Paul G. Pino, Chairman, Walter Mirrione, Clerk, Stephen A. Freitas, Stephen J. McAlarney, Brian T. O'Neil, Jr. and Stephen Pinzari, in their capacities as Members of the Zoning Board of Appeals of the Town of Easton

Defendants.

ANSWER

1. Defendants admit the allegations contained in sentence 1of paragraph 1 and deny the allegations contained in sentence 2 of paragraph 1.

2. Defendants admit the allegations contained in paragraph 2.

3. Defendants are without sufficient knowledge or knowledge to admit or deny the allegations in paragraph 3 and call upon Plaintiff to prove the same.

4. Defendants admit the allegations contained in paragraph 4.

5. Defendants admit the allegations contained in paragraph 5.

6. Defendants admit the allegations contained in paragraph 6.

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7. Paragraph 7 states a conclusion of law and, therefore, no response is required.

8. Defendants admit the allegations of paragraph 8.

9. Defendants admit the allegations of paragraph 9.

10. Defendants admit the allegations of paragraph 10.

11. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 11 and call upon Plaintiff to prove the same.

12. Defendants admit the allegations in sentence 1 of paragraph 12. Defendants are without sufficient knowledge to admit or deny the allegations in sentence 2 of paragraph 12. Defendants admit the allegations in sentence 3 of paragraph 12.

13. Defendants deny the allegations contained in paragraph 13.

14. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 14 and call upon Plaintiff to prove the same.

15. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 15 and call upon Plaintiff to prove the same.

16. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 16 and call upon Plaintiff to prove the same.

17. Defendants admit the allegations contained in paragraph 17.

18. Defendants deny the allegations contained in paragraph 18.

19. Defendants admit the allegations contained in sentence 1of paragraph 19. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in the last sentence of paragraph 19.

20. Defendants admit the allegations contained in paragraph 20.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF THE COMPLAINT OF ALEX C CORP., AS OWNER OF THE TUG ALEX C, AND BAY STATE TOWING COMPANY, INC., AS OPERATOR OF THE TUG ALEX C, FOR EXONERATION FROM AND LIMITATION OF LIABILITY	IN ADMIRALTY CIVIL ACTION NO: 12500-DPW 00-

ANSWER OF THE PLAINTIFFS ALEX C CORP. AND BAY STATE TOWING COMPANY, INC. TO COUNTERCLAIM OF SEABOATS, INC.

FIRST DEFENSE

The Counterclaim of the plaintiff-in-counterclaim fails to state claims against the defendants-in-counterclaim upon which relief can be granted.

SECOND DEFENSE

The defendants in counterclaim respond to the allegations contained in the plaintiff-in-counterclaim's Counterclaim, paragraph by paragraph, as follows:

1. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 1 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial.

2. The defendants-in-counterclaim deny that at all times relevant hereto Bay State was in control of the Tug ALEX C, as well as other tugs assisting or intending to assist the M/T POSAVINA, and admit the remaining allegations contained in paragraph 2 of the plaintiff-in-counterclaim's Counterclaim.

3. The defendants-in-counterclaim deny that at all times relevant hereto, Alex C Corp. controlled the Tug ALEX C, and admit the remaining allegations contained in paragraph 3 of the plaintiff-in-counterclaim's Counterclaim.

4. The defendants-in-counterclaim deny the allegations contained in paragraph 4 of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

5. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 5 of the plaintiff-in-counterclaim's Counterclaim, as said allegations do not pertain to them.

6. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 6 of the plaintiff-in-counterclaim's Counterclaim, as said allegations do not pertain to them.

7. The defendants-in-counterclaim neither admit nor deny that at all times relevant, the M/T POSAVINA was in a defective and unseaworthy condition, because they have no personal knowledge of same, and admit the remaining allegations contained in paragraph 7 of the plaintiff-in-counterclaim's Counterclaim.

8. The defendants-in-counterclaim admit the allegations contained in paragraph 8 of the plaintiff-in-counterclaim's Counterclaim.

9. The defendants-in-counterclaim admit that the Tug ALEX C and M/T POSAVINA collided, puncturing the M/T POSAVINA'S hull and resulting in the discharge of fuel oil into the Chelsea Creek, Boston Harbor, and deny the remaining allegations contained in paragraph 9 of the plaintiff-in-counterclaim's Counterclaim.

10. The defendants-in-counterclaim deny the allegations contained in paragraph 10 of the plaintiff-in-counterclaim's Counterclaim to the extent that said allegations pertain to them, and neither admit nor deny the allegations to the extent that said allegations pertain to the M/T POSAVINA, because they have no personal knowledge of same.

11. The defendants-in-counterclaim deny the allegations contained in paragraph 11 of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

12. The defendants-in-counterclaim admit that as a result of the aforesaid oil spill, the United States Coast Guard closed the Chelsea Creek, and neither admit nor deny the remaining allegations contained in paragraph 12 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial

13. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 13 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial.

14. The defendants-in-counterclaim deny the allegations contained in paragraph 14 of the plaintiff-in-counterclaim's Counterclaim to the extent that said allegations pertain to them, and neither admit nor deny the allegations to the extent that said allegations pertain to Posavina Shipping Company and Sociedad Naviera Ultragas, Ltd., because they have no personal knowledge of same.

COUNT I

15. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1 – 13 of this Answer and incorporate them herein by reference.

16. The defendants-in-counterclaim deny the allegations contained in paragraph 16 of Count I of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

17. The defendants-in-counterclaim deny the allegations contained in paragraph 17 of Count I of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The defendants-in-counterclaim deny that the plaintiff-in-counterclaim is entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT II

18. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1 – 17 of this Answer and incorporate herein by reference.

19. The defendants-in-counterclaim deny the allegations contained in paragraph 19 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

20. The defendants-in-counterclaim deny the allegations contained in paragraph 20 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

21. The defendants-in-counterclaim deny the allegations contained in paragraph 21 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

22. The defendants-in-counterclaim deny the allegations contained in paragraph 22 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

23. The defendants-in-counterclaim deny the allegations contained in paragraph 23 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT III

24. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1 –23 of this Answer and incorporate them herein by reference.

25. The defendants-in-counterclaim deny the allegations contained in paragraph 25 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

26. The defendants-in-counterclaim deny the allegations contained in paragraph 26 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

27. The defendants-in-counterclaim deny the allegations contained in paragraph 27 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

28. The defendants-in-counterclaim deny the allegations contained in paragraph 28 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT IV

29. The defendants-in-counterclaim reallege their answers as set forth in Paragraph 1-28 of this Answer and incorporate them herein by reference.

30. The defendants-in-counterclaim deny the allegations contained in paragraph 30 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

31. The defendants-in-counterclaim deny the allegations contained in paragraph 31 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

32. The defendants-in-counterclaim deny the allegations contained in paragraph 32 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

33. The defendants-in-counterclaim deny the allegations contained in paragraph 33 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT V

34. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1-33 of this Answer and incorporate them herein by reference.

35. The defendants-in-counterclaim deny the allegations contained in paragraph 35 of Count V of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

36. The defendants-in-counterclaim deny the allegations contained in paragraph 36 of Count V of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VI

37. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1-36 of this Answer and incorporate them herein by reference.

38. The defendants-in-counterclaim deny the allegations contained in paragraph 38 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

39. The defendants-in-counterclaim deny the allegations contained in paragraph 39 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

40. The defendants-in-counterclaim deny the allegations contained in paragraph 40 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VII

41. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1-40 of this Answer and incorporate them herein by reference.

42. The defendants-in-counterclaim deny the allegations contained in paragraph 41 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

43. The defendants-in-counterclaim deny the allegations contained in paragraph 43 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon plaintiff-in-counterclaim to prove same at trial.

44. The defendants-in-counterclaim deny the allegations contained in paragraph 44 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VIII

45. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1-44 of this Answer and incorporate them herein by reference.

46. The defendants-in-counterclaim deny the allegations contained in paragraph 46 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

47. The defendants-in-counterclaim deny the allegations contained in paragraph 47 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

48. The defendants-in-counterclaim deny the allegations contained in paragraph 48 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNTS IX – XV (CROSS-CLAIM)

The defendants-in-counterclaim neither admit nor deny the allegations contained in Counts IX –XV of the plaintiff-in-counterclaim's Cross–Claim, as said allegations do not pertain to them.

THIRD DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if the plaintiff-in-counterclaim suffered injuries or damage, as alleged, such injuries or damages were caused by someone or something for whose conduct the defendants-in-counterclaim were not and are not legally responsible.

FOURTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if the plaintiff-in-counterclaim suffered injuries or damage, as alleged, the damages, if any, recovered by the plaintiff-in-counterclaim from the defendants-in-counterclaim, should be reduced to the extent that any such damages are attributable to the failure of the plaintiff-in-counterclaim, or that of its agents, servant or employees, to mitigate its damages.

FIFTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if they are found to be liable to the plaintiff-in-counterclaim for any of its alleged damages, the amount of such liability is limited pursuant to the provisions of the Limitation of Liability Act, 46 USCA, §§181, et seq.

SIXTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if they are found to be liable to the plaintiff-in-counterclaim for any of its alleged damages, the amount of such liability is limited pursuant to the provisions of the Federal Water Pollution Control Act, 33 USCA,§§1251, et seq., and the Oil Pollution Act of 1990, 23 USCA, §§2701, et seq.

SEVENTH DEFENSE

The defendants-in-counterclaim reserve the right to assert additional affirmative defenses should such defenses be warranted based upon facts disclosed through discovery.

By Their Attorneys,

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13 Wood Street
Camden, ME 04843
(207) 236-7786

Dated: March 23, 2001

35028

CERTIFICATE OF SERVICE

I hereby certify that the attached document has been served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

Richard H. Pettingell, Esquire

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF THE COMPLAINT OF ALEX C CORP., AS OWNER OF THE TUG ALEX C, AND BAY STATE TOWING COMPANY, INC., AS OPERATOR OF THE TUG ALEX C, FOR EXONERATION FROM AND LIMITATION OF LIABILITY	IN ADMIRALTY CIVIL ACTION NO: 12500-DPW 00-

ANSWER OF THE PLAINTIFFS ALEX C CORP. AND BAY STATE TOWING COMPANY, INC. TO COUNTERCLAIM OF SEABOATS, INC.

FIRST DEFENSE

The Counterclaim of the plaintiff-in-counterclaim fails to state claims against the defendants-in-counterclaim upon which relief can be granted.

SECOND DEFENSE

The defendants in counterclaim respond to the allegations contained in the plaintiff-in-counterclaim's Counterclaim, paragraph by paragraph, as follows:

1. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 1 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial.

2. The defendants-in-counterclaim deny that at all times relevant hereto Bay State was in control of the Tug ALEX C, as well as other tugs assisting or intending to assist the M/T POSAVINA, and admit the remaining allegations contained in paragraph 2 of the plaintiff-in-counterclaim's Counterclaim.

3. The defendants-in-counterclaim deny that at all times relevant hereto, Alex C Corp. controlled the Tug ALEX C, and admit the remaining allegations contained in paragraph 3 of the plaintiff-in-counterclaim's Counterclaim.

4. The defendants-in-counterclaim deny the allegations contained in paragraph 4 of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

5. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 5 of the plaintiff-in-counterclaim's Counterclaim, as said allegations do not pertain to them.

6. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 6 of the plaintiff-in-counterclaim's Counterclaim, as said allegations do not pertain to them.

7. The defendants-in-counterclaim neither admit nor deny that at all times relevant, the M/T POSAVINA was in a defective and unseaworthy condition, because they have no personal knowledge of same, and admit the remaining allegations contained in paragraph 7 of the plaintiff-in-counterclaim's Counterclaim.

8. The defendants-in-counterclaim admit the allegations contained in paragraph 8 of the plaintiff-in-counterclaim's Counterclaim.

9. The defendants-in-counterclaim admit that the Tug ALEX C and M/T POSAVINA collided, puncturing the M/T POSAVINA'S hull and resulting in the discharge of fuel oil into the Chelsea Creek, Boston Harbor, and deny the remaining allegations contained in paragraph 9 of the plaintiff-in-counterclaim's Counterclaim.

10. The defendants-in-counterclaim deny the allegations contained in paragraph 10 of the plaintiff-in-counterclaim's Counterclaim to the extent that said allegations pertain to them, and neither admit nor deny the allegations to the extent that said allegations pertain to the M/T POSAVINA, because they have no personal knowledge of same.

11. The defendants-in-counterclaim deny the allegations contained in paragraph 11 of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

12. The defendants-in-counterclaim admit that as a result of the aforesaid oil spill, the United States Coast Guard closed the Chelsea Creek, and neither admit nor deny the remaining allegations contained in paragraph 12 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial

13. The defendants-in-counterclaim neither admit nor deny the allegations contained in paragraph 13 of the plaintiff-in-counterclaim's Counterclaim, because they have no personal knowledge of same, and call upon the plaintiff-in-counterclaim to prove same at trial.

14. The defendants-in-counterclaim deny the allegations contained in paragraph 14 of the plaintiff-in-counterclaim's Counterclaim to the extent that said allegations pertain to them, and neither admit nor deny the allegations to the extent that said allegations pertain to Posavina Shipping Company and Sociedad Naviera Ultragas, Ltd., because they have no personal knowledge of same.

COUNT I

15. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1 – 13 of this Answer and incorporate them herein by reference.

16. The defendants-in-counterclaim deny the allegations contained in paragraph 16 of Count I of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

17. The defendants-in-counterclaim deny the allegations contained in paragraph 17 of Count I of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The defendants-in-counterclaim deny that the plaintiff-in-counterclaim is entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT II

18. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1 – 17 of this Answer and incorporate herein by reference.

19. The defendants-in-counterclaim deny the allegations contained in paragraph 19 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

20. The defendants-in-counterclaim deny the allegations contained in paragraph 20 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

21. The defendants-in-counterclaim deny the allegations contained in paragraph 21 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

22. The defendants-in-counterclaim deny the allegations contained in paragraph 22 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

23. The defendants-in-counterclaim deny the allegations contained in paragraph 23 of Count II of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT III

24. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1 –23 of this Answer and incorporate them herein by reference.

25. The defendants-in-counterclaim deny the allegations contained in paragraph 25 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

26. The defendants-in-counterclaim deny the allegations contained in paragraph 26 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

27. The defendants-in-counterclaim deny the allegations contained in paragraph 27 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

28. The defendants-in-counterclaim deny the allegations contained in paragraph 28 of Count III of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT IV

29. The defendants-in-counterclaim reallege their answers as set forth in Paragraph 1-28 of this Answer and incorporate them herein by reference.

30. The defendants-in-counterclaim deny the allegations contained in paragraph 30 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

31. The defendants-in-counterclaim deny the allegations contained in paragraph 31 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

32. The defendants-in-counterclaim deny the allegations contained in paragraph 32 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

33. The defendants-in-counterclaim deny the allegations contained in paragraph 33 of Count IV of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT V

34. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1-33 of this Answer and incorporate them herein by reference.

35. The defendants-in-counterclaim deny the allegations contained in paragraph 35 of Count V of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

36. The defendants-in-counterclaim deny the allegations contained in paragraph 36 of Count V of the plaintiff-in-counterclaim's Counterclaim, and call upon the piaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VI

37. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1-36 of this Answer and incorporate them herein by reference.

38. The defendants-in-counterclaim deny the allegations contained in paragraph 38 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

39. The defendants-in-counterclaim deny the allegations contained in paragraph 39 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

40. The defendants-in-counterclaim deny the allegations contained in paragraph 40 of Count VI of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VII

41. The defendants-in-counterclaim reallege their answers as set forth in paragraph 1-40 of this Answer and incorporate them herein by reference.

42. The defendants-in-counterclaim deny the allegations contained in paragraph 41 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

43. The defendants-in-counterclaim deny the allegations contained in paragraph 43 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon plaintiff-in-counterclaim to prove same at trial.

44. The defendants-in-counterclaim deny the allegations contained in paragraph 44 of Count VII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNT VIII

45. The defendants-in-counterclaim reallege their answers as set forth in paragraphs 1-44 of this Answer and incorporate them herein by reference.

46. The defendants-in-counterclaim deny the allegations contained in paragraph 46 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

47. The defendants-in-counterclaim deny the allegations contained in paragraph 47 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

48. The defendants-in-counterclaim deny the allegations contained in paragraph 48 of Count VIII of the plaintiff-in-counterclaim's Counterclaim, and call upon the plaintiff-in-counterclaim to prove same at trial.

The plaintiff-in-counterclaim is not entitled to recovery, in any amount, from the defendants-in-counterclaim.

COUNTS IX – XV (CROSS-CLAIM)

The defendants-in-counterclaim neither admit nor deny the allegations contained in Counts IX –XV of the plaintiff-in-counterclaim's Cross–Claim, as said allegations do not pertain to them.

THIRD DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if the plaintiff-in-counterclaim suffered injuries or damage, as alleged, such injuries or damages were caused by someone or something for whose conduct the defendants-in-counterclaim were not and are not legally responsible.

FOURTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if the plaintiff-in-counterclaim suffered injuries or damage, as alleged, the damages, if any, recovered by the plaintiff-in-counterclaim from the defendants-in-counterclaim, should be reduced to the extent that any such damages are attributable to the failure of the plaintiff-in-counterclaim, or that of its agents, servant or employees, to mitigate its damages.

FIFTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if they are found to be liable to the plaintiff-in-counterclaim for any of its alleged damages, the amount of such liability is limited pursuant to the provisions of the Limitation of Liability Act, 46 USCA, §§181, et seq.

SIXTH DEFENSE

By way of affirmative defense, the defendants-in-counterclaim say that if they are found to be liable to the plaintiff-in-counterclaim for any of its alleged damages, the amount of such liability is limited pursuant to the provisions of the Federal Water Pollution Control Act, 33 USCA,§§1251, et seq., and the Oil Pollution Act of 1990, 23 USCA, §§2701, et seq.

SEVENTH DEFENSE

The defendants-in-counterclaim reserve the right to assert additional affirmative defenses should such defenses be warranted based upon facts disclosed through discovery.

By Their Attorneys,

DAVIS, WHITE, PETTINGELL & SULLIVAN, LLC

Richard H. Pettingell – BBO # 397320
50 Staniford Street
Boston, MA 02114
(617) 720-4060

O'LEARY & SBARRA

William B. O'Leary /RWP

William B. O'Leary – BBO # 378575
63 Shore Road, suite 25
Winchester, MA 01890

WELTE & WELTE, P.A.

William H. Welte /RWP

William H. Welte – BBO # 522670
13 Wood Street
Camden, ME 04843
(207) 236-7786

Dated: March 23, 2001

35028

CERTIFICATE OF SERVICE

I hereby certify that the attached document has been served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

Richard H. Pettingell, Esquire

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case

United States District Court

District of Massachusetts

UNITED STATES OF AMERICA
v.
VICTOR SANTANA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: **1:01CR10062-001**
OWEN S. WALKER, ESQ.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) **1 OF AN INFORMATION**

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1542	PASSPORT FRAUD	03/01/1999	1

The defendant is sentenced as provided in pages 2 through **8** of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: **153-76-0184**
Defendant's Date of Birth: **01/14/1969**
Defendant's USM No.: **23521-038**
Defendant's Residence Address:
44 HILLSIDE RD.
#2
LAWRENCE **MA**

Defendant's Mailing Address:
44 HILLSIDE RD.
#2
LAWRENCE **MA**

03/14/2001
Date of Imposition of Judgment

Signature of Judicial Officer

GEORGE A. O'TOOLE
UNITED STATES DISTRICT JUDGE
Name & Title of Judicial Officer

March 23, 2001
Date

DOCKETED

14

DEFENDANT: VICTOR SANTANA

CASE NUMBER: 1:01CR10062-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: **VICTOR SANTANA**

CASE NUMBER: **1:01CR10062-001**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **1 year(s)** .

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below) . The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: VICTOR SANTANA

CASE NUMBER: 1:01CR10062-001

SPECIAL CONDITIONS OF SUPERVISION

1. THE DEFENDANT SHALL NOT POSSESS OR PURCHASE A FIREARM OR OTHER DANGEROUS WEAPON;

2. THE DEFENDANT, IF DEPORTED, SHALL NOT RETURN TO THE UNITED STATES WITHOUT PRIOR PERMISSION OF THE UNITED STATES ATTORNEY GENERAL;

3. THE DEFENDANT SHALL PAY THE $100.00 SPECIAL ASSESSMENT AS AN ADDITIONAL CONDITION OF SUPERVISED RELEASE.

DEFENDANT: **VICTOR SANTANA**

CASE NUMBER: **1:01CR10062-001**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [X] in full immediately; or

B [ ] $ _____ immediately, balance due (in accordance with C, D, or E); or

C [ ] not later than _____; or

D [ ] in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E [ ] in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are to be made as directed by the court, the probation officer, or the United States attorney.

DEFENDANT: **VICTOR SANTANA**

CASE NUMBER: **1:01CR10062-001**

STATEMENT OF REASONS

☐ The court adopts the factual findings and guideline application in the presentence report.

OR

☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

See Additional Factual Findings and Guideline Application Exceptions - Page 8

Guideline Range Determined by the Court:

Total Offense Level: **6**

Criminal History Category: **I**

Imprisonment Range: **0 TO 6 MONTHS**

Supervised Release Range: **1 TO 3 YEARS**

Fine Range: $ **500.00** to $ **5,000.00**

☐ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ _____

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the forseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

DEFENDANT: **VICTOR SANTANA**

CASE NUMBER: **1:01CR10062-001**

ADDITIONAL FINDINGS AND GUIDELINE APPLICATIONS EXCEPTIONS

PURSUANT TO THE COURT'S GRANTING OF DEFENDANT'S UNOPPOSED MOTION FOR SENTENCING AT THE TIME OF PLEA WITHOUT A PRESENTENCE REPORT, THE COURT BASES IT'S SENTENCE ON THE FOLLOWING CALCULATIONS AS MADE APPLICABLE IN U.S.S.G SECTION 2L2.2:

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case

United States District Court

District of Massachusetts

UNITED STATES OF AMERICA
V.
MARIO ENCARNATION

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: **1:00CR10121-001**
IVAN E. MERCADO,ESQ.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) **1 OF A SUPERSEDING INDICTMENT**

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 U.S.C. § 1326	UNLAWFUL RE-ENTRY OF A DEPORTED ALIEN	03/20/2000	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: **019-76-5547**
Defendant's Date of Birth: **05/27/1964**
Defendant's USM No.: **23050-038**
Defendant's Residence Address:
PLYMOUTH COUNTY CORRECTIONAL FACILITY
26 LONG POND ROAD
PLYMOUTH MA 02360

Defendant's Mailing Address:
PLYMOUTH COUNTY CORRECTIONAL FACILITY
26 LONG POND ROAD
PLYMOUTH MA 02360

02/14/2001
Date of Imposition of Judgment

Signature of Judicial Officer

GEORGE A. O'TOOLE
UNITED STATES DISTRICT JUDGE
Name & Title of Judicial Officer

March 23, 2001
Date

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DEFENDANT: **MARIO ENCARNATION**

CASE NUMBER: **1:00CR10121-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **57 month(s)**.

☒ The court makes the following recommendations to the Bureau of Prisons:

THE COURT MAKES A JUDICIAL RECOMMENDATION THAT ATTENTION BE PAYED TO THE DEFENDANT'S MEDICAL CONDITION AND THAT THE DEFENDANT BE HOUSED AT A FACILITY LOCATED CLOSE TO HIS FAMILY IN NEW JERSEY.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: **MARIO ENCARNATION**

CASE NUMBER: **1:00CR10121-001**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 year(s)** .

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below) . The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **MARIO ENCARNATION**

CASE NUMBER: **1:00CR10121-001**

SPECIAL CONDITIONS OF SUPERVISION

1. THE DEFENDANT IS NOT TO PURCHASE OR POSSESS A FIREARM OR OTHER DANGEROUS WEAPON;

2. THE DEFENDANT, IF DEPORTED, SHALL NOT RETURN TO THE UNITED STATES WITHOUT PRIOR PERMISSION FROM THE UNITED STATES ATTORNEY GENERAL.

DEFENDANT: MARIO ENCARNATION

CASE NUMBER: 1:00CR10121-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 100.00	$	$

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____ .

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case will be entered after such a determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Totals:	$ _____	$ _____	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: **MARIO ENCARNATION**

CASE NUMBER: **1:00CR10121-001**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [X] in full immediately; or

B [ ] $ _____ immediately, balance due (in accordance with C, D, or E); or

C [ ] not later than _____; or

D [ ] in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E [ ] in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are to be made as directed by the court, the probation officer, or the United States attorney.

DEFENDANT: **MARIO ENCARNATION**

CASE NUMBER: **1:00CR10121-001**

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: **21**

Criminal History Category: **IV**

Imprisonment Range: **57 TO 71 MONTHS**

Supervised Release Range: **2 TO 3 YEARS**

Fine Range: $ **7,500.00** to $ **75,000.00**

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ _____

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the forseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10677-GAO

CAROLYN E. O'CONNOR
Plaintiff

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC.
and JOHN DOES (Numbers One through Ten),
Defendants

ORDER
March 22, 2001

O'TOOLE, D.J.

The defendant, Northshore International Insurance Services, Inc. (Northshore), has moved to dismiss the plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, as well as pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. For the reasons below, the motion is GRANTED and the plaintiff's case is DISMISSED.

According to the amended complaint, the plaintiff, Carolyn E. O'Connor, accepted employment with Northshore in the Spring of 1998. Approximately one year later, her employment was terminated. O'Connor contends that the termination was the result of unlawful employment discrimination by Northshore.

This is the second time this Court has addressed a motion to dismiss the complaint in this action. On June 22, 2000, the Court granted Northshore's motion to dismiss for want of subject matter jurisdiction, but because O'Connor is proceeding *pro se*, the Court allowed her an opportunity to restate her claims in sufficient detail to demonstrate that they fell within the subject matter

jurisdiction of the federal courts. Her amended complaint met this burden in part. By alleging violations of federal law under 42 U.S.C. § 2000e-2(a)(1) and by pleading adequate compliance with the administrative procedures proscribed by Title VII of the Civil Rights Act of 1964, she has sufficiently shown that her claim of religious discrimination is properly before the Court.[1]

However, her claims of age and sex discrimination, appearing for the first time in the amended complaint, must be dismissed for failure to satisfy the necessary prerequisite of first filing an administrative charge. See 29 U.S.C. §§ 623(a)(1), 626(d); 42 U.S.C. § 2000e-5(f)(1); Lattimore v. Polaroid Corp., 99 F.3d 456, 464 (1st Cir. 1996). The bounds of this civil action are set by the violations alleged in the prior administrative action. Lattimore, 99 F.3d at 464. O'Connor failed to raise her claims of age and sex discrimination in her claim filed with the Equal Employment Opportunities Commission ("EEOC"), and therefore, these claims cannot be presented for the first time here.[2] See id.

To say that the Court has subject matter jurisdiction for O'Connor's claim of employment discrimination is not to say that the amended complaint adequately states a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Under Rule 12(b)(6), a motion to dismiss is properly granted if "it appears to a certainty that the plaintiff would be unable to recover under any set of

---

[1] The claims are all presented in terms generally used to plead state law causes of action, i.e., "negligence' (Count I), "slander" (Count IV), etc. However, the substance of at least part of her claims appears to be employment discrimination on the basis of her religion. The language is liberally construed in the plaintiff's favor.

[2] The claim of age discrimination falls outside of the scope of Title VII's protection, but the Age Discrimination in Employment Act ("ADEA") similarly requires that certain administrative procedures be timely followed as a condition precedent to the filing of a civil action under the act. The filing of a charge with the EEOC within the statutory period is among the required conditions. See 29 U.S.C. § 626(d).

facts." See Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996). The facts alleged in the amended complaint in support of any federal claim are notably few, but the Court considers the well-pleaded facts and "extend[s] plaintiff every reasonable inference." Pihl v. Massachusetts Dep't of Educ., 9 F.3d 184. 187 (1st Cir. 1993). Even under this standard, O'Connor falls short of stating a claim for religious discrimination under Title VII. A prima facie case of religious discrimination consists of three components: "(1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was disciplined for failure to comply with the conflicting employment requirement." EEOC v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 30 F. Supp.2d 217, 220-21 (D.P.R. 1998) (quoting Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984)). If shown to be true, the facts alleged in the complaint are nonetheless insufficient to establish the necessary elements of religious discrimination. As a result, the claim of employment discrimination under Title VII is DISMISSED with prejudice. The state law claims are DISMISSED without prejudice.

The parties shall bear their own costs with respect to this action.

It is SO ORDERED.

March 22, 2001
DATE

DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DORNELL WIGFALL,
Plaintiff,

v.

CIVIL ACTION
NO. 00-12274-DPW

RONALD DUVAL, ET AL.,
Defendants.

PROCEDURAL ORDER AND ORDER RE: PENDING MOTIONS

WOODLOCK, District Judge

With respect to the pending motions, it is hereby ORDERED:

1) Motion #25 (By Medic Roy, HSU, et al to waive Local Rule 7.1 (A) (2) is DENIED;

2) Motion #27 (By plaintiff Wigfall for an Order of the Dept of Corrections to forward all legal documents) is DENIED without prejudice to renew after Defendants have filed an Answer;

3) Motion #28 (By plaintiff Wigfall to extend time to oppose defendants motion to dismiss for lack of service) is DENIED as moot in view of this Order and the denial of defendants' motion.

4) Defendants' Motion to Dismiss for Lack of Service is DENIED without prejudice to renew after the filing of a substantive response to the Complaint.

It is further ORDERED:

1) The Defendants are directed to file a **substantive** response to the allegations contained in Plaintiffs' Complaint, by no later than **APRIL 30, 2001**. The defendants may file an Answer by **APRIL 30, 2001**, however, this is in addition to, and not in lieu of, a motion to dismiss. Any Motions to Dismiss (on substantive grounds) shall be filed and served by no later than **APRIL 30, 2001. No extensions of this deadline shall be permitted**.

2) The Plaintiffs shall file any opposition to the Defendants' Motion to Dismiss by **MAY 30, 2001.**

3) Any reply by the Defendants shall be filed by **JUNE 10, 2001.**

BY THE COURT,
Rebecca Greenberg
Deputy Clerk

DATED: March 20, 2001

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

ATLAS TACK CORPORATION,

Plaintiff,

v.

THE TOWN OF FAIRHAVEN, AND THE HATHAWAY BRALEY WHARF CO., INC.,

Defendants.

Civil Action No.

COMPLAINT

01-10501WGY

Plaintiff Atlas Tack Corporation ("Atlas Tack" or "Plaintiff"), through its undersigned counsel, files the following Complaint against Defendants the Town of Fairhaven (the "Town") and the Hathaway Braley Wharf Co., Inc. ("Hathaway Braley") (collectively, the "Defendants").

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to Section 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA").

2. Plaintiff seeks to recover from the Defendants certain necessary costs of response that Plaintiff has incurred consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, et seq., and response costs for which Plaintiff may be liable to the United States or to the Commonwealth of Massachusetts under 42 U.S.C. §9607, caused by the release or threatened release of hazardous substances at portions of the Atlas Tack Superfund Site (the "Site").

3. Plaintiff also seeks declaratory judgment on the liability of the Defendants pursuant to 28 U.S.C. §§ 2201, 2202 and Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring the Plaintiff's right to recover past and future response costs relating to the Site.

4. Plaintiff also seeks a temporary restraining order and an order of preliminary injunction enjoining Hathaway Braley pursuant to Rule 65 of the Federal Rules of Civil Procedure from selling, transferring, encumbering, or otherwise hypothecating ownership of the corporate shares and restraining and enjoining Hathaway Braley from making any distributions to shareholders.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and under 28 U.S.C. § 1331. In addition, the Declaratory Judgments Act, 28 U.S.C. § 2201, and Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), authorize this Court to grant Plaintiff declaratory relief.

6. Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the Defendants reside, and because the releases or threatened releases alleged herein occurred, within the Commonwealth of Massachusetts.

PARTIES

7. Plaintiff Atlas Tack is a corporation organized and incorporated in 1967 under the laws of the Commonwealth of Massachusetts. Atlas Tack is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

8. Defendant the Town of Fairhaven was incorporated as a town in 1812 in the Commonwealth of Massachusetts. The Town is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Defendant Hathaway Braley Wharf Co., Inc. is a corporation organized and incorporated on August 2, 1940 in the Commonwealth of Massachusetts. Hathaway Braley is a "person" as that term is defined under Section 101(21) of CERCLA, 42, U.S.C. § 9601(21). Hathaway Braley is a Reach and Apply Defendant.

BACKGROUND

THE SITE

10. The Site is an approximately 24-acre area of land located on Pleasant Street, Town of Fairhaven, Bristol County, Commonwealth of Massachusetts.

11. The Site is comprised of the Atlas Tack property (the "Atlas Tack property"), a disposal area at the end of Church Street located on property owned by Hathaway Braley (the "Hathaway Braley property"), a portion of property owned by the Town of Fairhaven (the "Town property"), and a portion of Boys Creek and its tidal marsh (the "Marsh Area"). A hurricane dike runs through a portion of the Marsh Area to the southeast. Boys Creek serves as a drain for storm water from the Town of Fairhaven.

12. The Atlas Tack portion of the Site comprises approximately 13.6 acres of upland area historically used for commercial and industrial activities and 7.2 acres of tidal wetlands.

13. The Hathaway Braley portion of the Site comprises approximately 3.2 acres of upland and tidal wetlands.

14. In 1987, groundwater monitoring conducted at the Site resulted in the detection of contaminants in the groundwater, including benzene, toluene, chromium, and cyanide.

15. In January 1987, the Site was added to the Massachusetts Department of Environmental Protection ("MDEP") list of hazardous waste sites.

16. In June 1988, the Site was proposed for inclusion on the National Priorities List ("NPL"), which was promulgated by the United States Environmental Protection Agency ("EPA") pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and which is codified at 40 C.F.R. Part 300.

17. In February 1990, the Site was placed on the NPL.

18. In May of 1991, the EPA, the lead remedial agency at the Site, began the Remedial Investigation/Feasibility Study ("RI/FS") of the Site.

19. As a result of the RI/FS process, EPA selected a remedy for the Site (the "Selected Remedy"). The Selected Remedy is described in EPA's March 2000 Record of Decision ("ROD").

20. The Selected Remedy adopted by EPA in its ROD includes the excavation, treatment, and disposal at off-site hazardous waste facilities, as appropriate, of 54,000 cubic yards of contaminated soils and sediments. The Selected Remedy also proposes on-site treatment of certain contaminated materials where practicable. The Selected Remedy proposes to address groundwater contamination by removing the source, through natural attenuation enhanced in certain areas by phytoremediation; by installing a long-term monitoring program ("Long Term Monitoring Program"); and by implementing institutional controls that would limit the types of uses permitted on the Site in the future.

21. The identified contaminants stated by EPA to be of concern at the Site include the following hazardous substances: polychlorinated biphenyls ("PCBs"), pesticides, polyaromatic hydrocarbons ("PAHs"), metals, cyanide, and volatile organic compounds ("VOCs") (together, the "Contaminants of Concern").

22. The Selected Remedy proposes that a Long Term Monitoring Program be undertaken for 30 years after the completion of the source control remedy. The Long Term Monitoring Program includes sampling and analysis of soils, sediments, surface water and vegetation for the Contaminants of Concern. The trees will be monitored for metals.

23. EPA estimates the cost of the Proposed Remedy will be $18.6 million.

ATLAS TACK

24. Atlas Tack and its predecessors manufactured wire tacks, steel nails, rivets, bolts and similar items on the Atlas Tack portion of the Site from 1901 until it ceased all manufacturing operations on the Site in 1985.

25. Atlas Tack has been notified by EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, that Atlas Tack is a responsible party under Section 107 of CERCLA, 42 USC § 9607. EPA has demanded that Atlas Tack undertake the remedial action specified in the ROD.

26. Atlas Tack has incurred "response costs" as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), in the amount of more than $3.5 million.

27. Atlas Tack anticipates it will continue to incur response costs in connection with the Site.

HATHAWAY BRALEY

28. Hathaway Braley owns the Hathaway Braley property off Church Street at the Site, located in Fairhaven, Massachusetts. Hathaway Braley also owns other property located at 12-14 Main Street in Fairhaven, Massachusetts (the "Main Street property").

29. Upon information and belief, the Main Street property was used for the manufacture of ice sold to members of the fishing industry and for the manufacture of winches for fishing vessels. The Main Street property is not a part of the Site.

30. Upon information and belief, the Hathaway Braley property is approximately 3.2 acres and was used for the storage and disposal of wastes containing hazardous substances. This area is also known as the "Church Street Dump," the "Church Street Disposal Area," the "Commercial-Industrial Debris Area," and/or the "CID Area" (the "Church Street Dump").

31. The Church Street Dump is located approximately 500 feet southeast of the main Atlas Tack building.

32. Upon information and belief, the Church Street Dump contains a variety of general industrial waste, debris, sludge, and/or trash, each of which contains hazardous substances.

33. According to Hathaway Braley's 104(e) Information Request response dated April 15, 1998 (the "Hathaway Braley 104(e) Response"), Hathaway Braley permitted fishing vessel owners to store fishing gear, including dredges, booms and trawl doors, on the Hathaway Braley property.

34. According to the Hathaway Braley 104(e) Response, during the period in which Hathaway Braley owned and operated the property, members of the public disposed of waste on the Hathaway Braley property.

35. The Church Street Dump is low in elevation and is frequently inundated with surface water.

36. The Church Street Dump is contaminated with, among other things, PCBs, PAHs, copper, nickel, and antimony in concentrations significantly above background levels. PCBs,

PAHs, and metals are all Contaminants of Concern at the Site and are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

37. The Church Street Dump comprises a portion of the "Solid Waste and Debris Area" (the "SWD Area") described in the EPA ROD. The SWD Area includes all fill and disposal areas on the Site outside of the Commercial Area and the Church Street Dump (called the "CID area," or "Commercial Industrial Debris area" in the ROD). The SWD Area contains some of the highest concentrations of semi-volatile organic compounds, metals and cyanide at the Site.

38. According to EPA's ROD, contamination in the SWD Area is migrating, via groundwater and surface water runoff to Boys Creak and Marsh Areas, and eventually offsite into Buzzards Bay.

39. The SWD Area, including the Church Street Dump, is part of the Selected Remedy.

40. On July 31, 1998, EPA issued a notice of potential responsibility to Hathaway Braley.

41. Upon information and belief, Hathaway Braley has recently conveyed its most valuable portion of land to the Steamship Authority for over $2.815 million in cash. The parcel of land Hathaway Braley sold constituted its most valuable asset.

THE TOWN OF FAIRHAVEN

42. Upon information and belief, the Town owns a portion of the Site consisting of approximately one-half acre in the northeasterly portion between the hurricane dike and the Atlas Tack property.

43. Upon information and belief, until approximately 1941, the Town owned a portion of the premises that now make up the Atlas Tack property.

44. Upon information and belief, on or about the 1920s onward, the Town has periodically sprayed, and/or arranged for spraying of, pesticides and other hazardous substances on the Site.

45. Upon information and belief, the Town formerly operated a dump on the property adjacent to and to the north of the Atlas Tack property.

46. Upon information and belief, the Town maintained a Department of Public Works facility adjacent to and immediately north of the Atlas Tack property on which vehicles and other materials and equipment were stored, maintained, and/or serviced.

47. Upon information and belief, the Town has periodically ordered the closing of the sluiceway of the hurricane dike that crosses the Atlas Tack property, causing contaminated waters from, among other things, the Town's streets and disposal sites to divert onto the Atlas Tack property.

48. Upon information and belief, Boys Creek serves as a storm water drain for the Town.

49. Upon information and belief, the Town itself disposed, and/or permitted others to dispose, of refuse and/or waste material on the Atlas Tack property.

50. Upon information and belief, the Town permitted and/or acquiesced in the use of the Church Street Dump by members of the public for the disposal of waste materials.

51. Upon information and belief, and according to Hathaway Braley's 104(e) Response, the Town dumped a pile of dirt roughly 50 feet long and 5 feet high partially on the Hathaway Braley property.

FIRST CLAIM FOR RELIEF
CONTRIBUTION: CERCLA SECTION 113(f)
OWNER AND/OR OPERATOR LIABILITY

52. Plaintiff incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

53. Pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), any person who falls within one of the four categories of liable parties defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), may seek contribution from any other person who falls within one of the four categories of liable parties defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

54. Plaintiff and Defendants are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

55. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

56. There has been a "release" or threat of a "release" of "hazardous substances" from the Site within the meaning of Sections 101(14) and 101(22), 42 U.S.C. §§ 9601(14) and (22).

57. Pursuant to Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2), any person who currently owns or operates a facility from which there is or has been a release or a threat of a release of a hazardous substance, and any person who formerly owned or operated a facility at the time of disposal of a hazardous substance, is liable for response costs under CERCLA. In the parlance of CERCLA, those persons are "owners and/or operators."

58. Upon information and belief, Defendant Hathaway Braley is the current owner of the Hathaway Braley property portion of the Site or owned and/or operated the Hathaway Braley

portion of the Site at the time hazardous substances were disposed thereon, 42 U.S.C. § 9607(a)(1), and such substances are of the type found at the Site.

59. Hathaway Braley is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

60. Upon information and belief, Defendant the Town owned and/or operated a facility on the Site at the time hazardous substances were disposed thereon, 42 U.S.C. § 9607(a)(1) and (a)(2), and such substances are of the type found at the Site.

61. The Town is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

62. Because Defendants are liable for costs incurred at the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Plaintiff has a right of contribution against Defendants pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

SECOND CLAIM FOR RELIEF
CONTRIBUTION: CERCLA SECTION 113(f)
GENERATOR AND/OR ARRANGER LIABILITY

63. Plaintiff incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

64. Plaintiff specifically repeats and realleges the allegations contained in paragraphs 53 through 57 above.

65. Pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), any person who by contract, agreement or otherwise arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity at any facility owned or operated by another party or entity containing hazardous substances is liable for response costs under CERCLA. In the

parlance of CERCLA, those persons whose hazardous substances are disposed of at a facility are known as "generators" and those persons who arrange for the disposal of hazardous substances are known as "arrangers."

66. Upon information and belief, Defendant the Town generated and/or arranged for the disposal of materials, 42 U.S.C. § 9607(a)(3), containing hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the Site, and such substances are of the type found at the Site.

67. The Town is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

68. Because the Town is liable for costs incurred at the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Plaintiffs have a right of contribution against the Town pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

THIRD CLAIM FOR RELIEF:
DECLARATORY JUDGMENT UNDER
CERCLA § 113(g)(2) and 28 U.S.C. § 2201(a)

69. Plaintiff incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

70. There is an actual controversy between Plaintiff and Defendants regarding their respective rights and duties concerning the investigation and remediation of hazardous substances at the Site.

71. Plaintiff seeks a declaratory judgement pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), and 28 U.S.C. § 2201(a), as to the rights and duties of the parties declaring that Defendants are liable to Plaintiff for contribution for their share of all past, present, and future costs of response incurred by Plaintiff with respect to the

Site, including, but not limited to, costs of contamination assessment, containment, removal, remediation, EPA administrative or oversight, attorneys' fees and costs and/or interest.

FOURTH CLAIM FOR RELIEF:
TEMPORARY RESTAINING ORDER
AND PRELIMINARY INJUNCTION UNDER
RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE

72. Plaintiff incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

73. Plaintiff specifically repeats and realleges that upon information and belief, Hathaway Braley has recently conveyed its most valuable portion of land to the Steamship Authority for over $2.815 million in cash. The parcel of land Hathaway Braley sold constituted its most valuable asset.

74. Plaintiff seeks a temporary restraining order and an order of preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure to prevent immediate and irreparable injury, loss or damage from resulting.

FIFTH CLAIM FOR RELIEF:
REACH AND APPLY

75. Plaintiff incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

76. Reach and Apply Defendant Hathaway Braley is liable to Atlas Tack for its share of all past, present, and future response costs incurred by Plaintiff with respect to the Site, including, but not limited to, costs of contamination assessment, containment, removal, remediation, EPA administrative or oversight, attorneys' fees and costs and/or interest.

77. Plaintiff seeks to reach and apply the corporate shares of stock of Hathaway Braley and to liquidate same in satisfaction of any judgment rendered herein.

WHEREFORE, Plaintiff requests judgment in its favor and against the Defendants as follows:

1) Ordering the Defendants to pay Plaintiff all necessary costs of response incurred by the Plaintiff for which Defendants are responsible, consistent with the NCP, including, but not limited to, costs of contamination assessment, containment, removal, remediation, EPA administrative or oversight, attorneys' fees and costs and/or interest;

2) Entering a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against the Defendants and in favor of Plaintiff declaring, adjudging, and decreeing that the Defendants are liable to the Plaintiff for response costs or damages at the Site, including, but not limited to, costs of contamination assessment, containment, removal, remediation, EPA administrative or oversight, attorneys' fees and costs and/or interest, such judgment to be binding on any subsequent action or actions to recover further response costs or damages;

3) Allocating among the Plaintiff and the Defendants and any other persons found to be liable for all response costs incurred at or with respect to the Site, pursuant to 42 U.S.C. § 113(f)(1);

4) Awarding Plaintiff interest and costs of suit;

5) Awarding Plaintiff such other and further relief as the Court may deem just and proper;

6) Issuing a temporary restraining order and, after notice, a preliminary and permanent injunction, restraining Reach and Apply Defendant Hathaway Braley from selling, transferring, encumbering, or otherwise hypothecating ownership of the corporate shares; and

7) Issuing a temporary restraining order and, after notice, a preliminary and permanent injunction, restraining and enjoining Hathaway Braley from making any distributions to shareholders.

8) Ordering that the corporate shares of stock of Hathaway Braley be reached and applied and liquidated pursuant to M.G.L. Chapter 214, Section 3 in satisfaction of any judgment rendered herein.

Respectfully submitted,

Dated: March ___, 2001

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ATTORNEYS FOR PLAINTIFF ATLAS TACK CORPORATION

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-10314-GAO

JOANNE GARVEY; DEVORAH BARONOFSKY; and PATRICIA TYRA,
Plaintiffs

vs.

MASSACHUSETTS NURSES ASSOCIATION,
Defendant

MEMORANDUM AND ORDER
March 23, 2001

O'TOOLE, D.J.

The Board of Directors of the defendant Massachusetts Nursing Association ("MNA" or "Association") has called a special meeting of the membership of the Association for the purpose of considering a proposed amendment to MNA's By-Laws that would end the organization's formal affiliation with the American Nurses Association ("ANA"). The MNA's By-Laws currently provide that the MNA shall be a constituent member of the ANA. The special meeting is to be held at 1:00 p.m. on Saturday, March 24, 2001, at Mechanics' Hall in Worcester.

The plaintiffs complain that, for disparate reasons, they are unable to attend the special meeting, and as a consequence they are disabled from casting a vote on the proposed By-Law

amendment.[1] They contend that, by limiting the opportunity to vote on the proposal to those members who personally attend the Worcester meeting and by refusing to permit an alternate or supplemental method of voting – such as mail ballot – that would enable absent members' participation in the vote, the MNA denies them rights and privileges equal to those extended to other members, in violation of 29 U.S.C. § 411, which provides, in pertinent part:

> (a)(1) Equal rights.
>
> Every member of a labor organization shall have equal rights and privileges within such organization . . . to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> . . . .
>
> (b) Invalidity of constitution and bylaws.
>
> Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.[2]

---

[1] The action was originally brought only by plaintiff Joanne Garvey. Earlier this week an amended complaint was filed in which the plaintiffs Devorah Baronofsky and Patricia Tyra joined as plaintiffs. The defendants concede that Garvey had the right to amend without motion under Fed. R. Civ. P. 15(a), no responsive pleading having been filed, but argue that joinder of new plaintiffs requires a motion under Fed. R. Civ. P. 21. Because the claims of the new plaintiffs are so closely related to the one asserted by Garvey, I think the permission of Rule 15(a) suffices, but if leave is needed, as called for by Rule 21, I grant it. Even given the short time between the filing of the amended complaint and the hearing on the motions, the claims of the new plaintiffs were so similar to Garvey's that the defendants were not substantially prejudiced by the amendment. In the circumstances, it was appropriate to consider Baronofsky's and Tyra's claims as well.

[2] The defendants do not dispute that the MNA is a "labor organization" to which the statute applies.

The By-Laws of the MNA contain the following provision regarding amendments:

> These Bylaws may be amended by a two-thirds vote at any regular or special business meeting providing that the proposed amendment has been reviewed by the Board of Directors, that it has either been published in the official bulletin, or has been distributed to the officers and members at least 30 days prior to the business meeting.

MNA By-Laws, Art. XXII, sec. 1 (Pinkham Aff. Ex. A).

The gist of the plaintiffs' argument is that, although the amendment provision of the By-Laws ostensibly permits any member an equal right to participate in a meeting and to vote on a proposed amendment, the scheduling of this particular meeting and vote in actuality discriminates between those members who can freely attend the meeting and those, such as the plaintiffs, who for serious reasons are unable to attend. The plaintiff Garvey asserts that she, like many other nurses throughout Massachusetts, is required to be at work on Saturday, March 24, and cannot attend the meeting. She asserts that scheduling a meeting and vote during a time when an appreciable number of members of the MNA are required to be at work effectively disenfranchises them, in violation of the statute. (Am. Comp. ¶¶ 18, 19.) The plaintiff Baronofsky, a resident of Brookline, says that she is an observant Orthodox Jew who cannot attend the Saturday meeting without violating religious strictures against travel, work or other secular pursuits on the Sabbath. (Id. ¶ 20.) The plaintiff Tyra asserts that she is a resident of Martha's Vineyard, and her attendance at the meeting in Worcester would impose unequal burdens of travel and expense not imposed on other members of the MNA. (Id. ¶ 21.)

The plaintiffs have prayed for a preliminary injunction restraining the MNA from conducting a vote on the proposed By-Law amendment until the merits of their claims can be adjudicated. In addition to opposing the requested injunction, the defendants have moved to dismiss the complaint

for failure to state a claim upon which relief can be granted. A hearing was held Thursday, March 22. In light of the need for a prompt resolution of the issues presented, I provide a brief explanation of my orders in this memorandum. If the needs of the case make it appropriate, a more extended supplemental memorandum may follow.

The MNA has approximately 20,000 members, with about 18,000 belonging to its Labor Relations Program, which is concerned with employee collective bargaining issues. Historically, only a relatively small fraction of the membership has attended, or voted at, meetings of the Association. The By-Laws define the MNA's "Voting Body" as "the Board of Directors, members, and a designated representative of the organizational affiliates who have been registered as in attendance at the meeting." (Art. XVI, sec. 4.) "A majority of the Voting Body, including five members of the Board of Directors and the MNA President or a Vice President, shall constitute a quorum." (Id. sec. 5.) The Voting Body is authorized to "take positions, determine policy, and set direction on substantive issues of a broad nature." (Id. sec. 6.)

There is nothing in these provisions that purports to treat some members unequally. All members have an equal right to attend meetings and vote on the matters presented there. Nonetheless, by-law provisions that do not discriminate between members on their face might be applied to deny some members rights and privileges granted to others. See McCafferty v. Local 254, Serv. Employees Int'l Union, 186 F.3d 52, 59 (1st Cir. 1999) (application of rule may have discriminatory effect); Molina v. Union de Trabajadores de Muelles, 762 F.2d 166, 169 (1st Cir. 1985) (uneven application of neutral rule can give rise to statutory claim).

The question here is whether MNA's requirement that members attend meetings in person in order to be eligible to cast a vote on such matters as may be duly presented to the meeting

discriminates against some members in a way forbidden by § 411(a)(1). In the particular circumstances presented here, I conclude that it does.

Certainly, it is not unusual for organizations to determine fundamental issues of concern at a general membership meeting and to restrict the right to participate and vote to those members who are actually present at the meeting. There might be a wide variety of reasons why a member would not or could not attend a particular meeting, and in many cases there would be no reason for faulting the organization for any member's nonattendance.

In this particular case, however, given the "24/7" nature of a significant segment of nursing employment, such as employment at hospitals, it is to be expected that a substantial number of members will be unable to attend a general meeting *whenever it is scheduled* because the meeting will occur during normal work hours. Thus, the MNA must know that some proportion of its membership will be disabled from voting on important questions presented at *any* such meeting. In such circumstances, the personal attendance requirement inevitably and predictably excludes members whose work schedules conflict with the meeting time. While some such members may be able to change their work shifts to attend a meeting, their substitutes would themselves be unable to attend. It seems unlikely that substitutes would in all cases be nurses not interested in attending the meeting.

Some cases have concluded that scheduling meetings for times when some otherwise eligible members would be unable to attend because of work commitments does amount to a denial of equal voting rights to those members. See Wirtz v. National Maritime Union, 284 F. Supp. 47 (S.D.N.Y. 1968); Goldberg v. Marine Cooks and Stewards Union, 204 F. Supp. 844 (N.D.Cal. 1962). To be sure, the factual circumstances of maritime workers at sea seem rather more dramatic than the case of nurses working a Saturday shift, but the principle still is applicable. The union is aware when it

schedules the meeting and the vote that some members will not be able to participate. When the scheduled meeting occurs on a day, such as the Sabbath, that presents an additional obstacle to attendance to some members for religious reasons, the scope of exclusion widens. In both cases, the exclusion is foreseeable, and applying the principle that a party normally intends the reasonably probable and foreseeable consequences of its actions, it may also be held to be intentional.

Although it is true, as the defendants point out, that the object of the legislation of which § 411 is part was to combat union corruption, allegations of corruption, or allegations that the asserted discrimination was aimed specifically at opponents of those in control of the union, such as the Board of Directors, are not necessary to state a claim under § 411(a)(1). The fact that such allegations are often present does not make them mandatory. There is nothing in the statute itself that imposes that requirement, nor has any case specifically done so. The statute speaks simply of "equal rights and privileges." It provides a guarantee of open democratic processes as much as a guarantee against entrenched union management.

It is also true, as the defendants argue, that there can be sound reasons to favor committing a decision to amend the By-Laws to an assembly where the resolution can be debated and, perhaps, itself amended. However, those reasons, sound as they may be, would not justify an explicit limitation on which members could attend the meeting at which the debate would take place. Similarly, they cannot justify the functional equivalent of an express limitation, which appears to be the case here.

It also cannot be ignored that the method suggested by the plaintiffs – mail ballot – is not a suspect or inherently unreliable one. It is one that the MNA uses for other business, including the election of officers. Though it would permit only an "up or down" vote on the amendment

resolution, that does not appear to be a significant drawback in this case. The amendment at issue is pretty much a "yes or no" proposition: should affiliation with the ANA be discontinued?

If there is one thing the cases seem to agree on, it is that the issues presented by a suit under § 411(a)(1) must be resolved on a case-by-case basis, with the peculiar factual circumstances of each case pointing the way to the proper result. Having considered the broad principles of the statute in the factual circumstances of the present controversy, I conclude that the plaintiffs have established a reasonable likelihood of success on the merits of their claim that the MNA By-Law that requires an vote on a proposed amendment to the By-Laws to be taken only by those in personal attendance at a meeting conflicts with the guarantee of equal participation and voting contained in § 411(a)(1) and is therefore invalid under § 411(b).

By showing a reasonable likelihood that their participation and voting rights are infringed, the plaintiffs have also shown the degree of irreparable harm to justify a preliminary injunction. Though there will be some inconvenience and expense incurred by the MNA as a result of the injunction, the balance tips in favor of the plaintiffs. The public interest – the last factor to be evaluated in deciding whether to issue an injunction – is not notably implicated, except to the extent that the statutory policy of equal participation be vindicated.

For these reasons, the plaintiffs' request for a preliminary injunction is GRANTED. The defendant MNA is preliminarily enjoined from conducting a binding vote on the proposed amendment to its By-Laws at the March 24 meeting or any other meeting, without provision for an alternate or supplemental opportunity to vote on the question for members who are disabled by reason of work schedule or religious observance from attending such meeting.

In light of the interests to be vindicated by the injunction, no bond shall be required. See Crowley v. Local No. 82, Furniture and Piano Moving, 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984).

The defendants' motion to dismiss for failure to state a claim is DENIED.

It is SO ORDERED.

March 23, 2001
DATE

DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FREEDOM WIRELESS, INC.,

Plaintiff,

v.

BOSTON COMMUNICATIONS GROUP, INC.; AT&T WIRELESS SERVICES, INC.; AIRTOUCH COMMUNICATIONS, INC., a/k/a AIRTOUCH CELLULAR; ALLTEL CORPORATION; BELL ATLANTIC MOBILE, INC., a/k/a BELL ATLANTIC NYNEX MOBILE, a/k/a BANM; BELLSOUTH CELLULAR CORP.; BELLSOUTH MOBILITY, INC.; CMT PARTNERS, a/k/a and d/b/a CELLULAR ONE OF SAN FRANCISCO; PRIMECO PERSONAL COMMUNICATIONS; ROGERS WIRELESS, INC., a/k/a ROGERS AT&T WIRELESS; SOUTHWESTERN BELL MOBILE SYSTEMS, INC.; WESTERN WIRELESS CORPORATION, a/k/a and d/b/a CELLULAR ONE; CELLCO PARTNERSHIP, a/k/a and d/b/a VERIZON WIRELESS; CINGULAR WIRELESS; and DOES 1-20,

Defendants.

No. 00-CV-12234-EFH

DEFENDANT CMT PARTNERS, a/k/a and d/b/a CELLULAR ONE OF SAN FRANCISCO'S ANSWER TO PLAINTIFF FREEDOM WIRELESS, INC.'S FIRST AMENDED COMPLAINT

[JURY TRIAL DEMANDED]

Defendant CMT Partners, a/k/a and d/b/a Cellular One of San Francisco ("CMT") submits this Answer in response to the First Amended Complaint for

Patent Infringement (the "Amended Complaint") of Plaintiff Freedom Wireless, Inc. ("Freedom") as follows:

ANSWER

1. CMT admits that the Amended Complaint purports to set forth a claim arising under the patent laws of the United States, and that subject matter jurisdiction is proper for purposes of this action under 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331. Except as expressly admitted, CMT denies each and every allegation contained in paragraph 1 of the Amended Complaint.

2. CMT admits that venue is proper in this judicial district for purposes of this action under 28 U.S.C. §§ 1391 and 1400(b). Except as expressly admitted, CMT denies each and every allegation contained in paragraph 2 of the Amended Complaint.

3. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Amended Complaint, and on that basis denies them.

4. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Amended Complaint, and on that basis denies them.

5. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Amended Complaint, and on that basis denies them.

6. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Amended Complaint, and on that basis denies them.

7. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Amended Complaint, and on that basis denies them.

8. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint, and on that basis denies them.

9. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint, and on that basis denies them.

10. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Complaint, and on that basis denies them.

11. CMT denies the allegations of paragraph 11 of the Amended Complaint.

12. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Amended Complaint, and on that basis denies them.

13. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint, and on that basis denies them.

14. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Amended Complaint, and on that basis denies them.

15. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Amended Complaint, and on that basis denies them.

16. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Amended Complaint, and on that basis denies them.

17. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Amended Complaint, and on that basis denies them.

18. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Amended Complaint, and on that basis denies them.

FIRST CLAIM FOR RELIEF

(Patent Infringement – 35 U.S.C. § 271(a)-(c))

(Against Boston Communications, AT&T Wireless, AirTouch, Alltel, Bell Atlantic, BellSouth Cellular, BellSouth Mobility, CMT Partners, Cellco, Cingular, PrimeCo, Rogers, Southwestern Bell and Western Wireless)

19. CMT incorporates by reference its responses to paragraphs 1-18 of the Amended Complaint.

20. CMT admits that on February 24, 1998, the United States Patent and

Trademark Office issued United States Patent No. 5,722,067 ("the '067 patent"), that the '067 patent is entitled "Security Cellular Telecommunications System," that the '067 patent states that it was assigned to Freedom, that Freedom purports to be the owner of the '067 patent, and that Freedom purports to have attached a copy of the '067 patent to the Amended Complaint. CMT denies the remaining allegations of the paragraph 20 of the Amended Complaint.

21. CMT denies the allegations of paragraph 21 of the Amended Complaint.

22. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Amended Complaint, and on that basis denies them.

23. To the extent that the allegations in paragraph 23 are against CMT, CMT admits that it has not taken a license from Freedom. CMT denies each and every other allegation contained in paragraph 23 of the Amended Complaint.

24. CMT denies the allegations of paragraph 24 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 24 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

25. CMT denies the allegations of paragraph 25 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 25 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

26. CMT denies the allegations of paragraph 26 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 26 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

27. CMT denies the allegations of paragraph 27 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 27 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that

basis denies them.

28. CMT denies the allegations of paragraph 28 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 28 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

SECOND CLAIM FOR RELIEF

(Patent Infringement – 35 U.S.C. § 271(a)-(c))

(Against Boston Communications, AT&T Wireless, AirTouch, Alltel, BellSouth Cellular, BellSouth Mobility, CMT Partners, Cellco, Cingular, Rogers, Southwestern Bell and Western Wireless)

29. CMT incorporates by reference its responses to paragraphs 1-28 of the Amended Complaint.

30. CMT admits that on December 5, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,157,823 ("the '832 patent"), that the '823 patent is entitled "Security Cellular Telecommunications System," that the '823 patent states that it was assigned to Freedom, that Freedom purports to be the owner of the '823 patent, and that Freedom purports to have attached a copy of the '823 patent to the Amended Complaint. CMT denies the remaining allegations of the paragraph 30 of the Amended Complaint.

31. CMT denies the allegations of paragraph 31 of the Amended Complaint.

32. CMT lacks information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Amended Complaint, and on that basis denies them.

33. To the extent that the allegations in paragraph 33 are against CMT, CMT admits that it has not taken a license from Freedom. CMT denies each and every other allegation contained in paragraph 23 of the Amended Complaint.

34. CMT denies the allegations of paragraph 34 of the Amended Complaint

insofar as such allegations concern CMT. Insofar as the allegations of paragraph 34 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

35. CMT denies the allegations of paragraph 35 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 35 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

36. CMT denies the allegations of paragraph 36 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 36 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

37. CMT denies the allegations of paragraph 37 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 37 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

38. CMT denies the allegations of paragraph 38 of the Amended Complaint insofar as such allegations concern CMT. Insofar as the allegations of paragraph 38 concern other defendants, CMT lacks information sufficient to form a belief as to their truth and on that basis denies them.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: FAILURE TO STATE A CLAIM

39. The Amended Complaint, and each cause of action contained therein, fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE: NO WILLFUL INFRINGEMENT

40. CMT has not and does not willfully or otherwise infringe, contribute to the

infringement of, or actively induce others to infringe any claim of the '067 patent or the '823 patent.

THIRD AFFIRMATIVE DEFENSE: PATENT INVALIDITY

41. The claims of the '067 patent and the '823 patent are invalid for failure to meet one or more of the requirements for patentability, including without limitation those requirements set forth in 35 U.S.C. §§ 101, 102, 103, and 112.

FOURTH AFFIRMATIVE DEFENSE: PROSECUTION HISTORY ESTOPPEL ('067 PATENT)

42. Freedom is estopped from asserting that any accused CMT product or service infringes the '067 patent by reason of actions taken and statements made by the applicants to the Patent and Trademark Office during the prosecution of the application which led to the '067 patent.

FIFTH AFFIRMATIVE DEFENSE: PROSECUTION HISTORY ESTOPPEL ('823 PATENT)

43. Freedom is estopped from asserting that any accused CMT product or service infringes the '823 patent by reason of actions taken and statements made by the applicants to the Patent and Trademark Office during the prosecution of the application which led to the '823 patent.

SIXTH AFFIRMATIVE DEFENSE: INEQUITABLE CONDUCT

44. The '067 patent and the '823 patent are unenforceable because Freedom engaged in inequitable conduct in connection with the prosecution of the application that led to the '067 patent, of which the '823 patent is a continuation, and in connection with the application that led to the '823 patent.

SEVENTH AFFIRMATIVE DEFENSE: LACHES

45. Freedom is barred from obtaining the relief sought in the Amended Complaint by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE: EQUITABLE ESTOPPEL

46. Freedom is barred from obtaining the relief sought in the Amended

Complaint by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS

47. Freedom is barred in whole or in part from obtaining the relief sought in the Amended Complaint by the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, CMT prays for relief as follows:

A. That the plaintiff take nothing by its action, and that the Amended Complaint be dismissed with prejudice;

B. That the Court find that this is an exceptional case and award to CMT its attorneys' fees, costs, and expenses in this action; and

C. That this Court grant to CMT such other relief as this Court may deem just and equitable.

JURY DEMAND

CMT hereby demands a trial by jury on all issues so triable.

CMT PARTNERS, a/k/a and d/b/a CELLULAR ONE OF SAN FRANCISCO
By Its Attorneys,

J. David Hadden, Esq., CSB 176148
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(650) 849-4400

Lawrence G. Green, Esq., BBO #209060
PERKINS, SMITH & COHEN, LLP
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Boston, MA 02108
(617) 854-4000

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand on plaintiff's counsel and by fax on defendants' counsel.

Date: March 26, 2001

Lawrence G. Green

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

MASSACHUSETTS CARPENTERS CENTRAL COLLECTION AGENCY, Plaintiff	)	
v.	)	CIVIL ACTION NO.: 00-10983-EFH
E. B. WARE DRYWALL CO., Defendant.	)	

JUDGMENT

March 22, 2001

HARRINGTON, S.D.J.

Upon plaintiff's motion for summary judgment, which this Court granted as unopposed and which demonstrated that defendant owes plaintiff the principal amount of $27,027.30, liquidated damages in the amount of $5,405.46, prejudgment interest in the amount of $4,198.13, and costs in the amount of $183.40, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff recover from Defendant E. B. Ware Drywall Co. the sum of $36,841.29 with interest.

Edward F. Harrington

EDWARD F. HARRINGTON
United States Senior District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
NO. 00-10593 EFH

JAMES BUIEL
Plaintiff

v.

PLAINTIFF'S AMENDED COMPLAINT

CITY OF BOSTON,
WARREN HOPPIE, AND
WALGREEN EASTERN CO., INC.
Defendants

GENERAL ALLEGATIONS

A. The plaintiff, James Buiel, is a resident of the Commonwealth and at all relevant times resided in Dorchester, Suffolk County.

B. The defendant, Walgreen Eastern Co. Inc. is a duly organized business entity with a principal place of business in Illinois.

C. The defendant, Walgreen Eastern Co. Inc. owns and operates a pharmacy and retail store at 825 Morton Street in Boston, Massachusetts, Suffolk County.

D. The Defendant Warren Hoppie is a resident of the City of Boston, Suffolk County.

E. Jurisdiction in this matter is premised upon 28 U.S.C. §§ 1331 and 1367.

F. The Plaintiff has complied with all conditions precedent prior to filing this claim including the presentment requirement of Massachusetts G.L. c. 258.

COUNT I
Claim of the plaintiff against the defendant Walgreen Eastern Co. Inc. for False Imprisonment

1. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F from the General Allegations section of this Complaint.

2. On December 30, 1996, the plaintiff was a customer in the defendant's store and had made various purchases therein.

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3. Plaintiff exited the store and he walked to his motor vehicle and attempted to leave but he was detained by Defendant Hoppie, an off-duty Boston Police officer acting as agent of the Defendant Walgreen Eastern Co. Inc. upon the false charge made by the Defendant Walgreen Eastern, Co., Inc., that the plaintiff had stolen property belonging to the defendant, Walgreen Eastern Co., Inc.

4. Although it was ascertained that the plaintiff had not stolen any goods and had, in fact, paid for all the goods on his person, the defendant Walgreen Eastern Co. Inc. acting by and through its agents, including Defendant Hoppie caused the plaintiff to be detained and eventually caused him to be arrested by the Boston Police and charged with disorderly conduct, assault and battery on a police officer and resisting arrest.

5. As a result of and during the course of the unlawful imprisonment of the plaintiff, the plaintiff suffered injuries by reason of the aforesaid unlawful acts of the defendant Walgreen Eastern Co. Inc. and its agents.

6. By reason of the aforesaid injuries, the plaintiff was put to great emotional distress, was unable to perform his usual duties, and was otherwise damaged.

Wherefore the plaintiff demands judgment against the defendant Walgreen Eastern Co. Inc. on Count I of the complaint for all elements of damages and costs compensable under Massachusetts law.

COUNT II
Claim of the plaintiff against the defendant Warren Hoppie for False Imprisonment.

7. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-6 from the General Allegations section of this Complaint.

8. The individual defendant, Warren Hoppie, falsely imprisoned the plaintiff for a long period of time, upon the charge that the plaintiff had stolen property belonging to the defendant Walgreen Eastern Co. Inc.

Wherefore the plaintiff demands judgment against the defendant Warren Hoppie for all elements of damages and costs compensable under Massachusetts law.

COUNT III
Claim of the plaintiff against the defendant Warren Hoppie

for Malicious Prosecution

9. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-8 of this Complaint.

10. On or about December 30, 1996, the defendant Warren Hoppie made a complaint to the Police Department of the City of Boston accusing the plaintiff of having committed (1) disorderly conduct, (2) resisting arrest and (3) assault and battery on a police officer.

11. Thereafter, the defendant Hoppie filed a criminal complaint against the plaintiff in the Dorchester District Court.

12. At the trial held in that court, the plaintiff was found to be not guilty of all charges, and the case was therefore determined finally in the plaintiff's favor.

13. The prosecution was commenced and instituted by the defendant Warren Hoppie without basis, and was done maliciously and with intent to harm the plaintiff.

14. As a result of the malicious prosecution by the defendant Warren Hoppie, the plaintiff was injured, suffered in his business and reputation, and was otherwise damaged.

Wherefore the plaintiff demands judgment against the defendant Warren Hoppie, on Count III for all elements of damages and costs compensable under Massachusetts law.

COUNT IV
Claim of the plaintiff against the defendant, Walgreen Eastern Co. Inc. for Malicious Prosecution

15. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-14 of this Complaint.

16. At all times relevant to the events alleged in this Complaint the Defendant Hoppie was employed by the Defendant Walgreen Eastern Co. Inc. and was acting withing the scope of that employment and was acting in furtherance of the goals and objectives of that defendant and/or upon

information supplied by Defendant Walgreen Eastern Co., Inc.

Wherefore the plaintiff demands judgment against the defendant Walgreen Eastern Co. Inc., on Count IV for all elements of damages and costs compensable under Massachusetts law.

COUNT V
Claim of the plaintiff against the defendant Warren Hoppie for Assault and Battery

17. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-16 of this Complaint.

18. On December 30, 1996, the defendant Warren Hoppie assaulted the plaintiff and struck him in the head and other parts of his body.

19. As a result thereof, the plaintiff was injured, suffered great pain and anguish of body and mind, and was put to expense.

Wherefore the plaintiff demands judgment against the defendant Warren Hoppie on Count V for all elements of damages and costs compensable under Massachusetts law.

COUNT VI
Claim of the plaintiff against the defendant Walgreen Eastern Co. Inc. for Assault and Battery premised upon on Respondeat Superior

20. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-19 of this Complaint.

21. At all times relevant to the events alleged in this Complaint the Defendant Hoppie was employed by the defendant Walgreen Eastern Co. Inc. and was acting withing the scope of that employment and was acting in furtherance of the goals and objectives of that defendant.

Wherefore the plaintiff demands judgment against the defendant Walgreen Eastern Co. Inc. on Count VI for all elements of damages and costs compensable under Massachusetts law.

COUNT VII

Claim of the plaintiff against the defendant Walgreen Eastern Co. Inc. predicated upon negligence.

22. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-21 of this Complaint.

23. Upon information and belief, on the above referenced date, after the Plaintiff had originally left the premises of defendant Walgreen Eastern Co. Inc., a theft prevention device was caused to sound.

24. Upon information and belief, the intended purpose of the theft prevention device is to cause an alarm to sound when a customer alights from the premises without first paying for merchandise.

25. At the time the plaintiff had alighted from the store, the plaintiff had paid for and properly purchased all merchandise of the defendant in his possession.

26. On or about the above referenced date, the defendant owed the plaintiff and all others lawfully on the premises a duty to use reasonable care and diligence to maintain its premises in a condition reasonably safe for its intended uses and free from all defects and conditions which would render it dangerous and unsafe, or present an unreasonable risk of harm to persons lawfully on the premises.

27. On or about the above-referenced date the defendant breached its duty to the Plaintiff by , inter alia, failing to operate, monitor, supervise and/or maintain its theft prevention device(s) and/or train, supervise, monitor or select personnel in a reasonably prudent manner.

28. As a direct and proximate result thereof, the plaintiff was physically detained and assaulted, arrested and charged with criminal violations and suffered great pain and anguish of body and mind, and was put to expense.

Wherefore the plaintiff demands judgment against the defendant Walgreen Eastern Co. Inc. on Count VII for all elements of damages and costs compensable under Massachusetts law.

COUNT VIII

Claim of the plaintiff against the defendant Warren Hoppie predicated upon negligence.

29. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff

repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-28 of this Complaint.

30. On or about the above referenced date, defendant Hoppie, owed the plaintiff and all others lawfully on the premises a duty to use reasonable care and diligence to perform his duties in a reasonably safe manner in order to avoid an unreasonable risk of harm to persons lawfully on the premises.

31. On or about the above-referenced date the defendant breached his duty to the Plaintiff by, inter alia, failing to operate, monitor and/or use the theft prevention device and/or keep alert in a reasonably prudent manner.

32. As a direct and proximate result thereof, the plaintiff was physically detained and assaulted, arrested and charged with criminal violations and suffered great pain and anguish of body and mind, and was put to expense.

Wherefore the plaintiff demands judgment against the defendant Warren Hoppie on Count VIII for all elements of damages and costs compensable under Massachusetts law.

COUNT IX
Claim of the plaintiff against the defendant Walgreen Eastern Co. Inc. for Negligence premised upon on Respondeat Superior

33. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-32 of this Complaint.

34. At all times relevant to the events alleged in this Complaint the Defendant Hoppie was employed by the defendant Walgreen Eastern Co. Inc. and was acting withing the scope of that employment and was acting in furtherance of the goals and objectives of that defendant.

Wherefore the plaintiff demands judgment against the defendant Walgreen Eastern Co. Inc. on Count IX for all elements of damages and costs compensable under Massachusetts law.

COUNT X
Claim of the plaintiff against the defendant Warren Hoppie premised upon violation of G.L. c. 12 §11I

35. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-34 of this

Complaint.

36. Defendant Hoppie interfered with plaintiff's exercise and enjoyment of rights secured by the Constitution and laws of the United States and the Constitution and laws of the Commonwealth including, but not limited to, the right to be free from unreasonable search and seizure, the right to be free from intimidation, humiliation and damage to reputation, the right to be free from the use of excessive, unreasonable force and the right to be free from malicious prosecution.

Wherefore the Plaintiff demands judgment against the Defendant Warren Hoppie on Count X for all elements of damages and costs compensable under Massachusetts law including attorney's fees and costs.

COUNT XI

Claim of the plaintiff against the defendant Hoppie premised upon violation of 42 U.S.C. § 1983.

37. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-36 of this Complaint.

38. At all times relevant hereto the defendant Hoppie acted under color of state law.

39. Defendant Hoppie deprived plaintiff of rights, privileges and immunities secured by the Constitution and laws of the United States including, but not limited to, the right to be free from unreasonable search and seizure, the right to be free from intimidation, humiliation and damage to reputation, the right to be free from the use of excessive, unreasonable force and the right to be free from malicious prosecution.

Wherefore the Plaintiff demands judgment against the Defendant Warren Hoppie on Count XI for all elements of damages and costs compensable under Massachusetts law including attorney's fees and costs.

COUNT XII

Claim of the plaintiff against the defendant Walgreen Eastern Co. Inc. for violation of G.L. c. 12 §11I

40. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-39 of this Complaint.

41. Defendant Walgreen Eastern Co. Inc., by and through the actions of its agents, interfered with plaintiff's exercise and enjoyment of rights secured by the Constitution and laws of the United States and the Constitution and laws of the Commonwealth including, but not limited to, the right to be free from unreasonable search and seizure, the right to be free from intimidation, humiliation and damage to reputation, the right to be free from the use of excessive, unreasonable force and the right to be free from malicious prosecution.

Wherefore the Plaintiff demands judgment against the Defendant Walgreen Eastern Co. Inc. on Count XII for all elements of damages and costs compensable under the law including attorney's fees and costs.

COUNT XIII
Claim of the Plaintiff Against the Defendant City of Boston Premised Upon Negligence.

42. Pursuant to Mass. R. Civ. P. 10(c), 371 Mass. 909 (1977), the plaintiff repeats, realleges and incorporates fully herein ¶¶ A-F and ¶¶ 1-41 of this Complaint.

43. On or about the above referenced date, the City of Boston, acting through its agent, Officer Hoppie, owed the plaintiff and all others lawfully on the premises a duty to use reasonable care and diligence to perform his duties in a reasonably safe manner in order to avoid an unreasonable risk of harm to persons lawfully on the premises.

44. On or about the above-referenced date the defendant breached its duty to the Plaintiff by failing to operate, monitor or use, inter alia, the theft prevention device in a reasonably prudent manner for its intended use.

45. As a direct and proximate result thereof, the plaintiff was arrested and charged with criminal violations and suffered great pain and anguish of body and mind, and was put to expense.

Wherefore the plaintiff demands judgment against the defendant on Count XIII for all elements of damages and costs compensable under Massachusetts law.

The Plaintiff,
By his Lawyers,

Frank C. Corso, Esq.
BBO No. 545552
Peter J. Perroni, Esq.
BBO No. 634716
Law Office of Frank C. Corso
15 Court Square, Suite 240
Boston, MA 02108
(617) 227-0011

Dated 3/16/01

I, Peter J. Perroni, hereby certify that I served a copy of the within document(s) on all counsel of record by first class mail, postage prepaid, this 16, day of March, 2001.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELENOR NANIA,
Plaintiff
v.

ARTERY CLEANERS CORP.,
Defendant

Civil Action No. 00 CV 12298-RGS

ANSWER AND DEMAND FOR TRIAL BY JURY

Jurisdiction

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in Paragraph 2 of the Complaint as it relates to Count II only. Defendant denies the allegations contained in Paragraph 2 of the Complaint as it relates to Count III.

Parties

3. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the complaint, except to deny the allegation that the name of the Defendant is Artery Cleaners Corp.. Defendant's name is Artery Cleaners and Launderers Corp..

Facts

5. Defendant admits the allegations contained in Paragraph 5 of the Complaint as it relates to the Plaintiff's period of employment. Defendant denies so much of Paragraph 5 as it relates to the Plaintiff's alleged position with the company.

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

12. Defendant denies the allegations contained in Paragraph 12 of the Complaint.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

Count I

15. Defendant restates and realleges Paragraphs 1 through 14 and incorporates them herein by reference.

16. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and calls on Plaintiff to prove same.

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

Count II

22. Defendant restates and realleges Paragraphs 1 through 21 and incorporates them herein by reference.

23. The Defendant is without sufficient information or knowledge to form a belief as

to the truth of the allegations contained in Paragraph 23 of Plaintiff's complaint and calls on Plaintiff to prove same.

Count III

24. Defendant restates and realleges Paragraphs 1 through 23 and incorporates them herein by reference.

25. Defendant denies the allegations contained in Paragraph 25 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant states that the Plaintiff has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant states that the action is barred by the applicable statutes of limitations.

THIRD DEFENSE

Service of process is insufficient.

FOURTH DEFENSE

Venue is improper.

FIFTH DEFENSE

To the extent that discovery may so show, plaintiff's claims are barred by estoppel, waiver and/or laches.

SIXTH DEFENSE

Lack of jurisdiction over the subject matter of Count III of the Complaint.

SEVENTH DEFENSE

Defendant states that if the Plaintiff suffered injuries or damage, such injuries or damage were caused by someone for whose conduct the Defendant was not and is not legally responsible.

EIGHTH DEFENSE

Defendant states that the Defendant did not have actual or constructive notice of any alleged wrongful conduct by any co-employees.

NINTH DEFENSE

Defendant states that it exercised reasonable care to prevent and correct promptly any harassing behavior and the Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Defendant or to avoid harm otherwise.

TENTH DEFENSE

Any alleged harassment was not of a sexual nature, it was not unwelcome, it did not have the purpose or effect of creating a hostile or humiliating or offensive work environment, it was not severe and/or pervasive, it was not because of sex, and it did not interfere with the plaintiff's ability to perform her job.

ELEVENTH DEFENSE

Plaintiff has failed to mitigate her damages.

JURY DEMAND

The defendant demands a trial by jury on all issues so triable.

Respectfully Submitted,
Artery Cleaners Corp.,
By its attorney,

Robert M. Goldstein
BBO #630584
10 McGrath Highway
Quincy, MA 02169
Telephone: (617) 745-4612
Facsimile: (617) 773-2612

Dated: March 22, 2001

CERTIFICATE OF SERVICE

I, Robert M. Goldstein, hereby state that a true copy of the foregoing document has been served upon Matthew Cobb, Esq., 101 Tremont Street, Boston, MA 02108, via first-class mail, on March 22, 2001.

Robert M. Goldstein

7. Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

12. Defendant denies the allegations contained in Paragraph 12 of the Complaint.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

Count I

15. Defendant restates and realleges Paragraphs 1 through 14 and incorporates them herein by reference.

16. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and calls on Plaintiff to prove same.

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

Count II

22. Defendant restates and realleges Paragraphs 1 through 21 and incorporates them herein by reference.

23. The Defendant is without sufficient information or knowledge to form a belief as

to the truth of the allegations contained in Paragraph 23 of Plaintiff's complaint and calls on Plaintiff to prove same.

Count III

24. Defendant restates and realleges Paragraphs 1 through 23 and incorporates them herein by reference.

25. Defendant denies the allegations contained in Paragraph 25 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant states that the Plaintiff has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant states that the action is barred by the applicable statutes of limitations.

THIRD DEFENSE

Service of process is insufficient.

FOURTH DEFENSE

Venue is improper.

FIFTH DEFENSE

To the extent that discovery may so show, plaintiff's claims are barred by estoppel, waiver and/or laches.

SIXTH DEFENSE

Lack of jurisdiction over the subject matter of Count III of the Complaint.

SEVENTH DEFENSE

Defendant states that if the Plaintiff suffered injuries or damage, such injuries or damage were caused by someone for whose conduct the Defendant was not and is not legally responsible.

EIGHTH DEFENSE

Defendant states that the Defendant did not have actual or constructive notice of any alleged wrongful conduct by any co-employees.

NINTH DEFENSE

Defendant states that it exercised reasonable care to prevent and correct promptly any harassing behavior and the Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Defendant or to avoid harm otherwise.

TENTH DEFENSE

Any alleged harassment was not of a sexual nature, it was not unwelcome, it did not have the purpose or effect of creating a hostile or humiliating or offensive work environment, it was not severe and/or pervasive, it was not because of sex, and it did not interfere with the plaintiff's ability to perform her job.

ELEVENTH DEFENSE

Plaintiff has failed to mitigate her damages.

JURY DEMAND

The defendant demands a trial by jury on all issues so triable.

Respectfully Submitted,
Artery Cleaners Corp.,
By its attorney,

Robert M. Goldstein
BBO #630584
10 McGrath Highway
Quincy, MA 02169
Telephone: (617) 745-4612
Facsimile: (617) 773-2612

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