UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STELOR PRODUCTIONS, L.L.C., a Delaware corporation, f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

v.

STEVEN A. SILVERS, a Florida resident,

Defendant,
_____/

CASE NO. 05-80393-CIV-HURLEY
Magistrate Hopkins

NOTICE OF FILING MAY 23, 2005 HEARING TRANSCRIPT

Defendant, Steven Silvers, hereby gives notice of filing the attached hearing transcript of the hearing before the Honorable Magistrate Judge James Hopkins held on Monday, May 23, 2005 at 11:00 a.m.

Respectfully submitted,

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3339/101/254139.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 8th day of June, 2005, to: Kevin C. Kaplan, Esq., Daniel F. Blonsky, Esq. and David Zack, Esq., Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A., Counsel for Plaintiff, Office in the Grove, Penthouse A, 2699 South Bayshore Drive, Miami, FL 33133.

By: Kenneth R. Hartmann

Kenneth R. Hartmann

3339/101/254139.1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO: 05-80393-CIV-HURLEY/HOPKINS

COPY

STELOR PRODUCTIONS,

Plaintiff,

vs.

STEVEN SILVERS,

Defendant.
_____/

FEDERAL COURTHOUSE
FORT PIERCE, FLORIDA
MAY 23, 2005

The above-styled case came on for hearing before the Honorable Judge James Hopkins, Presiding Judge at the Fort Pierce Federal Courthouse, Fort Pierce, Florida the 23rd, day of May, 2005.

Thereupon, the following proceedings were had:

THE COURT: Calling Stelor Productions versus Steven Silvers. Counselors, please announce your appearances.

MR. KAPLAN: Good morning, Judge. Kevin Kaplan for the plaintiff, Stelor Productions, with me is Steven Esrig, who is the CEO of Stelor.

MR. HARTMANN: Your Honor, on behalf of Steven Silvers, Ken Hartman of Kojak, Broden, and Crawford in Miami. With me is Adam Rabin, co-counsel in the case. Mr. Silvers could not be here today, he is here in spirit.

THE COURT: And when you say Mr. Silvers can't be here today, what is his status?

MR. HARTMANN: He was traveling earlier, over the weekend. He got back late last night, and he had a doctor's appointment today. He is scheduled for major surgery, for a medical condition he has, coming up, so, he's in and out with the doctors right now.

THE COURT: And are you willing to proceed in his absence?

MR. HARTMANN: Yes, of course. We thought about getting a continuance, and then we said let's just go ahead and do it.

THE COURT: Very well.

MR. HARTMANN: Thank you, Your Honor.

THE COURT: I apologize for the delay this morning. The marshal's van broke down on the way to court this morning. This substantially delayed everything on the docket, but here we are. Are we ready to proceed today?

MR. KAPLAN: We are, Your Honor.

MR. HARTMANN: We're ready, Judge.

MR. RABIN: Yes, Your Honor.

THE COURT: Very well. Since it's, as I understand, the plaintiff's burden, you may proceed.

MR. KAPLAN: Thank you, Judge. May I please the court, thank you for scheduling us in on relatively short notice. We appreciate it. First up, Your Honor, I wanted to make sure you had the binder of material that I had delivered this morning. There have been some recent filings. The defendant's opposition was just served on us Friday afternoon.

THE COURT: I have this binder. Is that what you're referring to?

MR. KAPLAN: That is.

THE COURT: A binder with attachments?

MR. KAPLAN: That's correct, Judge. The binder includes a reply memo that we prepared over the weekend and filed this morning. It's behind tab four.

As well as a supplemental declaration from Mr. Esrig behind tab five. We also have copies of the cases, for convenience sake, that were cited in our initial motion behind tab three and in the reply, which I'll be referring to a little bit. Judge, this is the second suit between these parties. You may recall the first suit was pending in the fall and the early part of this year, before this court as well. There were a few hearings you presided over. That lawsuit was resolved. The parties entered into a written settlement agreement. The settlement agreement provided some framework for continuing on in the relationship, but, critically, it reaffirmed the license agreement that had been in effect between these same parties before. That settlement agreement's been under seal. It's also in the binder behind tab two. We're here today because the defendant, Mr. Silvers, has unilaterally, and without any notice whatsoever, declared a termination of the license agreement, and he's also gone ahead and engaged in self-help. We were advised of the termination, again, without any notice, by letter dated April 27th, from Mr. Hartmann's colleague, partner Gail McQuilkin. We immediately filed this lawsuit. It was filed May 4th. Subsequent to the

date of filing of the suit, or starting at or about that time, Mr. Silver has taken a series of actions, that, essentially, seem to destroy the business of Stelor. Without any opportunity for the court, or anybody, to decide whether the termination of the license agreement was valid. As Your Honor may recall from the prior suit, the business that we're fighting over revolves around a set of intellectual property. It's a set of characters designed for children called the Googles from Goo. It was created by the defendant, Silvers, licensed to the plaintiff. We're suing for the license agreement. Stelor, under the agreement, is the exclusive licensee of all aspects of that property. And the key to the property, and the key to what Stelor has been doing since 2002, is the web site of Googles.com. Stelor is about in a month from now, June 21st at a major trade show in New York City --

THE REPORTER: What was that date again?

MR. KAPLAN: June 21st. Stelor's about to unveil the launch of the major development it's been working on since 2002, and in which it's invested more than four million dollars, substantial time, and effort. The launch, Judge, the development is really two-fold. First, it's a proprietary new technology, that

Stelor's developed itself, it wouldn't be Mr. Silver's property in any event, that makes this website and all of it's content safe for kids. There's nothing like that out there. It protects kids from pornography, and predators, and all of the things that parents are concerned about exposing their children to on the internet. In addition, with the benefit of this new feature, the site's also, the launch is gonna involve a roll out of substantial new content for the site. Stelor's developed about one hundred and sixty-five characters, story lines, and related features. It's gonna be a sophisticated, interactive website that's safe for kids. The problem, Judge, the reason that we're here today, on a preliminary injunction motion, is because Mr. Silvers, who maintained the domain name and the active passwords for that website, has shut it down. He redirected the website. Stelor has no further access to it. When the user opens it up, all you see is page of unrelated advertising that's attached to Mr. Esrig's declaration on tab A. And without that website, Judge, Stelor cannot proceed with it's launch. Not only is the website down, but the proprietary feature that makes this website kid safe, that's been seized by Mr. Silvers, too. It was maintained along with the website in a secure place,

at least Stelor thought it was secure, but that's now been seized by Mr. Silvers as well. What we're asking the court to do is to enter an injunction, put the parties back in the place they were at the time this lawsuit was filed, essentially, restore the status quo, give Stelor access to their website back, and allow them to proceed with what they need to do with respect to this upcoming launch, without interference from Mr. Silvers. We're prepared to have the court address the underlying merits of the case on an expedited basis. In fact, we're anticipating filing a very early summary judgment motion because we think that's how clear cut the issues are. We're not able to file that until this week under the twenty day requirement. I'd like to address the critical elements of preliminary injunctive relief for purposes of this case, and, really, I think it turns on two things. Stelor's substantial likelihood of success on the merits of the case. Indeed, even at the heightened standard for injunctive relief applies as the defendants have suggested, they claim we're asking the court to mandate that Mr. Silvers take some action. We're really not, we're just trying to restore the status quo that Mr. Silvers, because of his lightening speed actions after the filing of the

suit was able to change, but we satisfy that heightened standard as well. This record makes a clear showing of Stelor's entitlement to relief, and then, I'm also gonna focus on the irreparable harm issue, which, as a matter of fact, the defendants don't contest. They've got a legal argument, which I'll address, based on a set of cases from the southern district that were rejected by eleventh circuit decision, and a Florida DCA opinion that was expressly overruled by not one, but two Florida supreme court decisions as recently as March of 2005, but let me start with the substantial likelihood of success on the merits, Judge. As a matter of law, the termination is invalid. The termination, the license agreement, itself, which is in my binder behind tab 1A, it was attached to a complaint. It's got an express provision dealing with termination. It's article 9, paragraph 9 of the agreement, and I'd just like to read it quickly. Right to terminate on notice, in bold. This agreement may be terminated by either party upon sixty days written notice to the other party. In the event of a breach of a material provision of this agreement, provided that during the sixty day period, the breaching party fails to cure such default. Nothing could be clearer. There's no

ambiguity or uncertainty whatsoever, with respect to that provision. It requires sixty days written notice of termination with an opportunity to cure. And the reason for that is obvious. There's a lot of complexity and detail to this. It's a complicated relationship, and the parties need an opportunity, if one believes there's been a breach or a default, to try and resolve the issue themselves, and if not possible, to come into the court and ask for relief in that interim period before the agreement's terminated. And we're dealing with a termination here based on a failure to pay five thousand dollars, compared to a multi-million dollar intellectual property. A four million dollar, four year investment that Stelor's made, that's why that provision is so important. There's no dispute, the first letter that came since the prior lawsuit was dismissed, and since the written settlement agreement was entered into on January 28th, 2005. The first letter was the April 27th letter advising of the default, and terminating the agreement effective immediately. In fact, a lot of the alleged defaults are only a matter of weeks old. They haven't even occurred within a sixty day period. Now, the settlement agreement critically withdrew a prior notice of termination that had been served, to the

extent, the defendant tries to travel under that prior notice, where he did comply with that notice provision in the agreement. They can't do that. They sent a letter back in November 2004. They then declared a termination about sixty days following that November notice letter, but, of course, the settlement agreement was entered into afterwards, and the lawsuit was dismissed with prejudice. The settlement agreement itself, behind tab 2, states expressly in paragraph 3, it's on page two of that agreement, that Silvers withdraws his notice of termination of the license agreement, and reaffirms his obligations under the license agreement. So, termination, prior termination, the notice letter, no longer effective, and all of Mr. Silver's obligations under the agreement are expressly reaffirmed including the obligation to provide sixty days advance notice, which, as I described, is critical to provide an opportunity to resolve and work out these issues before Stelor's multi-million dollar project, which is about to launch, crumbles to the ground as a result of a unilateral termination by Mr. Silvers. And if I could, Judge, I just want to emphasize that these provisions, notice provisions, are strictly enforced by the Florida courts. We cited in our reply, a case

called Florida Recycling, which is behind tab 23 of the binder, I know Your Honor is gonna get through our papers at some point, I understand you'll need to take this under advisement, but that case holds that these provisions are strictly enforced and must be applied by the courts, not satisfied here, and there's no basis for getting around that requirement. I'd like to just quickly, very quickly, address the claim to faults, and there's been some change. By the time we got the opposition papers, their list of alleged defaults, has rolled on beyond what was in the original termination letter, and again, that's not right. They gotta provide notice of the defaults, and they can't continue to create a rolling list of defaults into the future as we litigate the issue. The first thing they contend is that Stelor, previously a corporation, converted to a limited liability company, and that they didn't consent to that, so it's somehow invalid and vesicates the license agreement. Judge, in the settlement agreement, in paragraph 9, a provision entitled LLC acknowledgement, it states that the parties acknowledge that Stelor Inc., a Delaware C Corporation, is in the process of converting to a Delaware LLC. It provides that any options granted to

Silvers will be converted to unity interests in the LLC. This is just an example, Your Honor, of the defendant's clear disregard for the express terms of this agreement, and they shouldn't be allowed to do that. The LLC conversion was just completed in March, mid March. Stelor's working on the papers, they haven't been provided to anybody, and as soon as they're ready, they were intended, and expected, to be provided to Mr. Silvers. They also claim that you refuse to respond to their request for a date to conduct an audit of Stelor. They're allowed to do that, they've got to provide thirty days notice under the license agreement, and they had asked, but Mr. Silver's counsel, Gail McQuilkin, told us in early April that she was gonna defer the request for an audit. The reason, Your Honor, was we were working jointly to prepare a lawsuit against Google Inc. that came after the Googles.com website, in which we were gonna bring together, although it's Stelor's right to do that alone under the agreement. I'm gonna come to what they've done. They filed that lawsuit their selves, on May 4th, it's pending before Judge Reisenham (phonetic), and we want to address that in our injunction as well, but in the meantime, Ms. McQuilkin said don't worry about the audit, we'll get

to it later. On April 26th, Your Honor, one week before we got the notice of termination, she advised us again, by e-mail, that she wanted to conduct the audit, and a copy of the e-mail is attached to Mr. Esrig's declaration behind tab 5 of the binder, behind exhibit H. In that e-mail, to me, she says the auditor is preparing a letter that will outline the documents and records he needs available to do the audit, and she asks for dates in the next two weeks, not even a two week period that expired before the default letter. Critically, of course, we needed that letter to know what the auditor wanted, what we needed to make available, and it never came. They also complain about an allegedly missed April royalty payment, and as we, as exhibit G to Mr. Esrig's declaration, an e-mail from Gail McQuilkin confirms in item five, they got a check for April, but it was made out to Steven Silvers individually as opposed to a company he wanted it to be made out to, so they asked us to recut it, which we did, and tendered it to them at the end of April, and they refused to accept it. Similarly, they complain there's no insurance for Stelor, product liability insurance, that's in Mr. Silvers's affidavit. The certificates are attached to Mr. Esrig's affidavit that show that insurance has

been in force continually, and is still in force now, at the time of the purported termination. Product samples. They claim we didn't provide product samples. Ms. McQuilkin, after the settlement agreement, came to Stelor's offices in Maryland in February and reviewed those samples herself, took some, but not all, back with her, and, again, I advised them by e-mail dated April 26th, before the termination, that they could come to my office, I had the samples available for them to look at again, and that's behind tab I, exhibit I, in Mr. Esrig's declaration. Royalty information was provided timely, it's got to be done on a quarterly basis. The first quarter for 2005 just ended. We provided it within thirty days as we're required to do, and they object to that as well. To the extent they want to rely on letter agreement, Judge, that was entered into at the same time as a license agreement, it alleged breaches of that. That's expired by it's own terms, it's attached as exhibit B to our complaint. It had a thirty month term, which expired in November of 2004 by my calculation. I think it's clear from this argument, and from this record, and, again, Mr. Silvers isn't here to contest it, and his affidavit, his declaration doesn't effectively contest these

points. They didn't comply with the express notice requirement, and we're gonna prevail on all of the alleged breaches. As a matter of law, based on the notice issue, Stelor is likely to prevail on the merits of the case. Unfortunately, if we litigate this over the course of the next succeeding months, Stelor's also gonna suffer irreparable harm. If it can't proceed with the launch, and it cannot proceed with the launch unless an injunction is entered and we get the website back, Stelor will lose it's business. It's been working for four years on this launch. The launch is the culmination of all of Stelor's efforts. It does not have the financial and other resources to stay alive if the launch doesn't proceed. A little demonstrative exhibit if I can approach, I'm not sure Your Honor can see from there. That's what the booth will look like at the upcoming trade show. A hundred thousand dollars have been spent on the development of this. It's a twenty foot by twenty-six foot booth. It's extremely effective and important. It's got the website all over it. Judge, the reason that the website is so critical --

THE COURT: Can I take a look at it?

MR. KAPLAN: Sure. The reason the website is so critical is because the site itself ahs been up for

about seven years, and it enjoys a steady and substantial volume of traffic. There are tens of thousands of kids on that website everyday, Judge, and in fact, Stelor's got six hundred thousand registered users from that site already. They need to have that foundation in order to make this launch successful.

THE COURT: How many registered users?

MR. KAPLAN: Six hundred thousand, and, again, that's all confirmed by Mr. Esrig's declaration. You can't just start from scratch with a new website that nobody knows about. That's a recipe for disaster of this launch. They need to have that website, along with the property, the proprietary technology that makes the website safe that is tied to it. Now, as I said before, none of this showing of irreparable harm is disputed by defendant Silvers as a matter of fact. There's nothing in Mr. Silvers's declaration that says that's not right, you're not gonna suffer this harm. There's nothing in their papers that contests it on the facts, they make a legal argument. In fact, Mr. Silvers, himself, recognized in a letter that's attached a s exhibit C to Mr. Esrig's declaration, that if he were to engage in this kind of self help and shut the website down before a court determination, he would cause irreparable harm to

Stelor. He says, he cites his authority that includes shutting down the Googles.com website, and then he assures Stelor, in the following paragraph, that with the exception of a material breach by Stelor, and ruled as such by a court of confidant jurisdiction, as required in our existing agreement, at such time, and only at such time, shall I then determine what would be in the best interest of my intellectual property, and he emphasizes, at the bottom of that paragraph, this shall once and for all alleviate any fear or concern by you or the board that I would do something intentionally to harm my domain. He knows what he is doing, Judge. He is intentionally and irreparably trying to harm Stelor, to put them out of business. Now, their argument is okay, maybe the termination's invalid, maybe it's not, we think it is valid, but Stelor's only recourse is to litigate this issue in front of the court over the succeeding months and maybe get damages at the ned of the day, but in the meantime, Stelor's got to stand by and watch it's business burn to the ground. Judge, that's not the law in this circuit, and it's not the law in Florida. They relied primarily on a line of cases involving Burger King franchises. They cite a case called Burger King v. Hall. It's a district court decision

from Judge Kiho (phonetic) in the early nineties. But, critically, there's a case out of the eleventh circuit called McDonald's v. Robertson, that's behind tab 32 in our binder, cited in our initial motion and in our reply that specifically rejects the district court's decision in Burger King, to the extent, that decision says the validity of the termination is irrelevant to th issue for injunction, and there's no irreparable harm. The McDonald's court makes clear that that question is relevant and it required that a showing, relating to the validity or not of that termination, be made before the court and decided in connection with an injunction motion, and that court also made clear that the loss of a business in the mean time, and not even a total loss of the business, but just of ceratin customers and good will and damage to reputation, as long as it couldn't be quantified or measured, was irreparable harm requiring an injunction. That court expressly disagreed with the Burger King cases on which they relied, and those Burger King cases are entirely distinguishable on their facts. In those situations either the franchise agreement had expressly expired by it's own terms, and a franchise, in effect, tried to hold over, and that's not the situation here, or the franchisee clearly had

failed to make royalty payments, and not just one or two missed payments, but failed to make payments for a year. In one of the cases three years, and the other case, and that's a vastly different situation than here, where we've showed our high likelihood of success on merits. There's a case out of the second circuit, as well, called Tom Doherty v. Sevan (phonetic), behind tab 41 in our binder, 1995 case, that couldn't be more on point, Judge. In fact, it's a more extreme injunction than we're seeking. That case about the Power Rangers, I never really watched that, but my kids do a little bit. A publisher had an option, from a creator of children's characters, to publish children's books. Both of the entities at the time the option was entered into were relatively unknown so it made sense ot everybody, and then the creator came up with this Power Rangers character that was a tremendous success. He tried to license it to other people, not to the publisher, for vast sums of money, and the second circuit, on a preliminary injunction motion, Your Honor, required the license to be provided to the publisher and held that the creator could not license the property to anybody else, on a preliminary injunction motion. They cite that case with approval in their papers, Judge. Clearly, what

we're seeking here is much less extreme than the relief the court authorized in the Tom Doherty case. An eighth circuit case, Ferry v. Morse (phonetic), also cited in our, Ferry Morse also cited in our papers, issues an injunction requiring a supplier to provide corn seed to a distributer, and that case critically says that order essentially is required to maintain the status quo because the distributer relationship had been ongoing even though it requires seed to be provided. That's all we're seeking here. We want to maintain the status quo of this relationship, and move forward. Now, they also cite a Florida case, Florida Power Corp. v. Belair (phonetic), cited by the second DCA 2002, it's tab 22 in my binder. They are, the lower court issued an injunction holding a franchise agreement, Florida Power Corporation was providing electricity in certain cities. The agreement expired by it's terms, and the lower court enjoined the continuation of that agreement while the parties tried to work things out in the interim. The injunction was overturned by the appellate court. That's the case they cite, and in March of 2005, the Florida Supreme Court reinstated the injunction, and held that it was appropriate. In fact, it's not one, but two Florida Supreme Court

decisions, the '05 case involving that decision, and also in 2004 decision related to a different city. The '04 decision says we disapprove Belair to the extent that it provides the courts cannot extend the terms of expired franchise agreements that cover an interim period during which a holdover utility and the local government resolved the status of their relationship going before, going forward. As explained above, the conduct and interaction of the parties and balance of equities involved may render such action necessary and proper. To exclude such a remedy within the reach of the courts would upset the balance of the relationship. That's exactly the situation here, although, less extreme because the license agreement has not expired by it's own terms. It's been invalidly terminated by Mr. Silvers.

THE COURT: What's your view of what the controlling law is on this issue? Is it federal law or state law on this issue?

MR. KAPLAN: I think that's a valid point. I think it's federal law, Judge. I think it's the McDonald v. Robertson case. We didn't find any case law that really squarely addressed that issue, we would have cited it to you, but even if you look at the Florida cases, that Supreme Court decision in

Belair, I think directly supports the issue of injunctive relief here. they don't even address that, but there's no doubt that it supports the issue of some injunctive relief here. There's no --

THE COURT: Why do you think that the federal law in McDonald is the controlling law? Even if there is no difference between Florida law and federal law, why do you think that federal law controls this issue?

MR. KAPLAN: I think it's a procedural issue. The standards to be applied in connection with issuing injunctive relief. My analysis is it's a procedural issue, and we've also got an eleventh circuit case, McDonald v. Robertson, right on point, that I think this works. If not obligated to follow, at least is very persuasive authority. Certainly some of the legal issues, like the validity of the termination, are a matter of Florida law, and I cited the one Florida case, there's a couple others cited in our reply that clearly mandate that notice provision, express notice provision. The balance of harms, there's no harm whatsoever to Mr. Silvers for moving forward. Let's be clear, he hasn't had, he hasn't done anything with this intellectual property, at least since 2002, when the license agreement was entered into. Requiring him to keep his hands off for

a few additional months while this issue is litigated by the court, have to have it expedited, imposes no harm to him whatsoever. On the contrary, he stands to profit. If the launch is successful, and Stelor firmly believes it will be, then Mr. Silvers has got an interest in royalties. He'll handsomely profit from that. Beyond that, just a few days ago I got an e-mail from Ms. McQuilkin advising how happy Mr. Silvers was with the project and the impending launch, it's tabbed exhibit B to Mr. Esrig's declaration, and I've adapted it because, as I say, there were a bunch of communications relating to this Google lawsuit that we were gonna bring. She says I agree this has gotten silly, the issue is going back and forth about the license agreement, and I'm sure the board, Stelor's board, would rather focus it's discussions on the upcoming Launch and trade show, and then she continues, with respect to her client, he really is very happy with the project and excited about the launch and upcoming show. He knows the success of the project is a result of the work and investment made by everyone over there. He's got no issue with the project or it's moving froward, and there's not one word mentioned in the termination letter about the content for the launch, the other unfounded issues

that I ticked off a moment ago. Now, lastly, Judge, I need to address the Google action. On May 4th, the same day we filed our lawsuit, Mr. Silvers and the same lawyers filed an action against Google Inc. The big search engine company that's got a website. Now, this is, again, specifically covered in all of the agreements. The license agreement gives Stelor the exclusive right to protect the intellectual property and take all action, and the settlement agreement, critically, in paragraph eighteen, provides that any action with respect to Google Inc. is gonna be done jointly, and not only that, it says if either party does anything unilaterally, with respect to Google Inc, that warrants immediate injunctive relief. The parties hereby agree, there's no adequate remedy of law in the event that either party negotiates or settles the dispute with Google Inc. without the other party. The breach of that will create irreparable harm and injunctive relief will be necessary to maintain the rights of the non-reaching party. Judge, not only have they been in communication with Google Inc., they filed a lawsuit that's all right to bring, and the cases make clear, there's a case called American Express, out of the eleventh circuit, Machrovich (phonetic), that's behind tab 45, that

makes clear that the parties express agreement authorizing injunctive relief if an event occurs, ahs to be strictly enforced by the court. The court does that in this case, the Machrovich case. So, we're requesting injunctive relief with respect to the Google Inc lawsuit as well, and we want Your Honor to order Mr. Silvers to dismiss that lawsuit without prejudice so we can resolve this dispute, and we can have the opportunity to proceed with that lawsuit as is our right to do. Again, the showing of irreparable harm, expressly recognized by the agreement, and our extreme likelihood of success on the merits supports the injunction we request both to restore the website and the proprietary content, the technology we've developed to make the site for kids safe, and to require, to bar any further interference with the license agreement and the impending launch, to require the dismissal without prejudice of the Google Inc. action. Unless Your Honor has any questions, that's my argument. I would note that Mr. Esrig is here today, he's available to testify. I think our case is clearly supported by the declarations. Your Honor indicated that can you can rely on those in the order and also McDonald v. Robertson case makes that clear. I would like to conclude by showing Your Honor, if you

permit me, a thirty second trailer that provides a description of the feature that Stelor is about to unveil. If Your Honor would permit me, it's on that laptop. Any objections?

THE COURT: No objections. I just ask that, let me ask the other side, also, if they have any objections to the showing of the demonstrative exhibit to the court, and does either side have any objections to being placed in evidence.

MR. HARTMANN: No objection to that, Your Honor. We're gonna use demonstrative exhibits as well, and I don't have any problem with placing what they've shown so far into evidence. I can't speak for Mr. Kaplan as to whether or not he has any problem with my stuff, but I assume you're willing to put it evidence.

MR. KAPLAN: I'd be happy to address any problem with their stuff as it comes, and we move that into evidence, the only issue is that we just need to make arrangements to get a copy submitted to the court, if that's okay.

THE COURT: I can admit it, and you can make me in custody of it.

MR. KAPLAN: Great. There's also a plan, a floor plan of the booth, that I might as well show to Your Honor as well. I'll hand it to your bailiff. What do

you want to mark them as?

THE COURT: I'll mark them as exhibits one and two for purposes of our injunction motion, as the floor plan being exhibit two.

MR. KAPLAN: I've mentioned, as well, that the real estate for this show is very valuable. Stelor is next to Dream Works, Disney, and Nickelodeon. Judge, we're talking some of the hottest kid's properties here so it's going to be substantial exposure, substantial opportunity, in connection with this launch, that just isn't gonna be able to be recreated in the future. Judge, could Mr. Esrig approach with the laptop?

THE COURT: Yes. Does the other side want to --

MR. HARTMANN: Yes.

THE COURT: --view this at the same time? Put it up here. Do you want to make that as an exhibit?

MR. KAPLAN: Yes, please, Judge. Exhibit three.

THE COURT: Any objections?

MR. HARTMANN: No objections, Your Honor.

THE COURT: You can also keep custody of that.

MR. KAPLAN: Thank you, Judge.

MR. HARTMANN: Can I proceed?

THE COURT: Yes. Do you want to tender Mr. Esrig for cross-examination?

MR. KAPLAN: I'm happy to do whatever the court pleases. He's here, I had advised Mr. Hartmann that Mr. Esrig would be here. Mr. Hartmann had advised me that he intended to call no one, but I'd be happy to have Mr. Esrig be cross-examined if Mr. Hartmann's going to decide to do that notwithstanding his prior representation that he wouldn't.

MR. HARTMANN: If I wanted to call him, your Honor, I would have called him. I don't think it's necessary to cross-examine Mr. Esrig. I think that the record that we have is what we're traveling on.

THE COURT: Very well.

MR. HARTMANN: We're content to do that. I want to go back just a little bit and give you a little bit of historical overview because I think the court needs to understand. We laid it out a little bit in our brief and Mr. Silvers's declaration, but it all started with this book, Googles from Goo,which Mr. Silvers wrote when he was incarcerated in an effort to keep connected with his family members. It kind of blossomed in there, so when his conviction was overturned and he found himself out, he pursued this, and his family pursued this, and they published a book. They started selling books, and they started to develop a line of products and so on. This is one of

the stuffed animals. This is one of the Googles. It's a family of characters. It started out with four of them. I actually have a picture of Mr. Silver surrounded by the Googles, and I left it in Miami, probably just as well because he doesn't have as much hair as he has in the picture, and I don't want to mislead the court. I think the one thing we all agree on in this room, we had a rocky relationship, we've been here, this is our second time. Everybody agrees that this is what they call sticky. Kids love this stuff, and if there were a trial of this case down the road, the jury's gonna see a video tape of a live show with the Googles up there, and I don't know if the court, like me, got pulled into the Barney phenomenon, and had to go catch a Barney concert and hang out with the kids and watch that stuff, but there's an attraction there that's so indefinable, and the kids sort of storm the stage at the end of this concert just to touch the Googles, it's almost like Beatle mania among the younger crowd. So I'd like to put these into evidence so the court can see them or look at them, if you don't mind.

THE COURT: Defense exhibit one and two.

MR. KAPLAN: The only objection that I have is, let me get it on the record, that is not a Stelor

figure. It was something that was created --

MR. HARTMANN: Let me clarify. Exhibit one would be, defense, the book. Exhibit two would be the stuffed figure which is not a Stelor Productions licensed product. This was done by a prior licensee. In fact, Mr. Silvers had a prior licensee, and it was in July or June of 2002 that the license agreement with Stelor took effect. Now, I just want to talk a little bit, Your Honor, about what a license relationship is because4 some of the cases that are cited are dealing with buying and selling widgets, and, you know, there are contract issues in those cases, and we cited those, but the reason we cited the Burger King cases is that the licensor/licensee relationship is not just your basic commercial relationship. What you have in this case, Stelor was our exclusive licensee. Our guy gave him his Googles IP, his intellectual property, his trademarks, his copyrights, all this. He said you guys are the guys. You go and develop it, and you make me money. It's almost like I'm renting this to you, as long as you live with your license agreement, as long as you comply with that, then you have the exclusive rights to use and exploit this. I own it. You don't own anything, and that's what the license agreement says,

but it's not really a completely even relationship because the licensor can give the license or he can take it away, and that's what you see in all the franchises. So Burger King affirms a franchisee, there's a license that's involved, intricately involved in that. The owner of that Burger King restaurant down the street has a license to use those Burger King trademarks, and when the franchise was terminated, the license was terminated as well, and that's what's being litigated in the Burger King case, but the licensee's use depends upon them complying with the terms of the license agreement. That's an absolutely essential factor. It's not like a normal type of agreement where you have the normal type of breach issues. If the licensee does not comply with the license agreement, then it's expressly contemplated in the agreement that the license can be terminated. And I have a little note before you with a lot smaller subjects but it would help me, and I think help the court because I'm gonna run through some of these materials, as well. They're all things that are attached to the affidavits or pleas. I have provided a copy already to Mr. Kaplan.

THE COURT: Did you say this is already in the court file?

MR. HARTMANN: Yes. Those are copies of things that are already in the court file with respect to exhibits to declarations or attachments to our pleadings. Now, as you can see there, paragraph nine, it has the express format for here's what would be the basis for a termination, and then paragraph ten it has certain post termination rights, it's really almost like a prenuptial agreement, it's like a marriage. In a way, this relationship is like a marriage, and it's an agreement that says here's the basis for one of us getting a divorce, that's paragraph nine. Then paragraph ten is, if one us gets a divorce, because of paragraph nine, paragraph ten applies and the governs what happens post termination. That is important information, Your Honor, because that gives Stelor a six month period to sell off their existing inventory of licensed product, and they can use the Googles IP. We would have been in here on an injunction stopping them, like Burger King does when they terminate people, right away, asking the court on our behalf to enter a preliminary injunction, but we didn't do that because they do have limited rights to use the IP in this post termination period. That's there as a safeguard because the parties contemplate going into this that termination is a specific possibility. Now

what you see in the cases that were cited by Mr. Kaplan, you don't find that those are based on terminated contracts, generally speaking. The cases I see had to be supportive of our position. In a lot of those cases, in the Saven case, for example, that the agreement existed, there was an agreement for the right to publish this book. Nobody terminated that agreement. So, it's different. The rule of law that we're citing is specifically based on when you have a terminated agreement, can the terminee compel specific performance and undo the termination. That's really what they're trying to do, Judge. It's not a status quo, it's a mandatory injunction. They want to undo what's already happened, go back, and they want to define the status quo as April 27th, it's not. It's May 23rd. I mean, what we really have, Your Honor, is this was a license relationship, but on April 27th this is what happened. It was terminated. The parties got a divorce, and what they're asking you to do by this injunction, is Scotch tape us back together, and the courts say that doesn't work. What works is to take this claim, when they're traveling on a wrongful termination claim, you don't tape them back together. You go ahead, you have a trial, and you determine if there was in fact a wrongful termination,

and then you assess damages against the party who wrongfully terminated, if that's the case. That's where the Burger King cases are particularly instructive because we could have been Burger King suing them fro a preliminary injunction because they are using our marks. If you, the website that they claim was shut down, go back to chambers, Your Honor, and punch in StelorProductions.com, you'll go right to the website. It's the same website that was running through our domain name. It's just you get there a different way now. Their website's functional. Everything that they were doing before, they're doing. What they lost was one of the doors to that domain, to their website, and that's the Googles.com domain name, which our client registered. Now, what's interesting about that, they're complaining to the court that that is locked down and shut down, etcetera, etcetera. What happened was Stelor sent a copy of this lawsuit to the registrar for that domain name, and that's what locked it down. We've been trying to get it unlocked. We can't. We'll probably be back there next week asking the court to enter an order against someone called Go Daddy to unlock this thing because right now, no one's using it. It sitting there. They refuse to undo it. The issue --

THE COURT: Can you run that last point by me again?

MR. HARTMANN: Well, it is confusing, i didn't understand some of the things that Mr. Kaplan said. When you have a domain name, you register it with the registrar. In this case, the registrar is called Go Daddy. When you register the domain name, when you register it you have an owner, who basically has control over it, and then you can have an administrative contact that the owner can designate and say that person can go in there and point it to whatever direction they want. That's really what the key is here. Prior to termination, when you went to Googles.com, it pointed to the Stelor website. After the termination, Mr. Silvers pointed it away from the Stelor website. They filed a lawsuit. They provided the lawsuit to Go Daddy. So Go Daddy knows. Go Daddy shut down the domain name. Now, when you go there, you get an advertisement for Go Daddy. That's not what we want. That's not what they want. They're the ones who caused this administrative lock down as it's called, and we're trying to get Go Daddy to release it to anybody, but right now, no one can use it because of the administrative rules that the registrar, itself, has. But, Judge, I listened to a lot of talk

about Mr. Silvers breached this and Mr. Silvers breached that, and honestly this case is not about whether Mr. Silvers breached anything. This is about whether or not he validly terminated the license agreement. I think Mr. Kaplan said that, and I think that because that's what this case is about, under the case law, their remedy is damages and not injunctive relief, and I see that throughout the cases, even the ones that they cite. In other words, when you're trying to require specific performance of a terminated agreement, that's different than trying to require specific performance of an existing agreement. In the FLA case, it looked like th court was full. We're trying to work this out, we haven't agreed to a renewal yet, but we're working on it. There were extraordinary circumstances for the court to go ahead and enter an injunction while they did that. We're not trying to work anything out here, Judge. This is a divorce, and I'm gonna go through the reasons why that divorce occurred, and, you know, Mr. Silvers was justified It may appear that we're being arrogant because we're saying hey, we can cut you off and you can't do anything to stop us. You just have to sue us for damages. We can hit you. You can't hit back. You just have to sue for damages. This is not

something that was done arrogantly. It was done with careful consideration. Mr. silvers invested three years with Stelor. This is his dream, this project. He's put enormous energy into it. In fact, the first lawsuit was based on the fact that he had too much energy and was bothering them too much. Mr. Esrig testified that he called a hundred times a day and was driving him crazy. The real issue is whether the court, by means of an injunction, can un-terminate the agreement, and stick us back together and coerce us to coexist. I mean, this is like a marriage and they're asking the court to tell the husband to go home and have conjugal relations with your wife. You can't do that. you can't coerce people to do that kin do thing. So, that's why the courts say, no, if you did it wrong, if you didn't go by the rules, you have a claim for damages. Now, there's some threshold issues I'm not gonna spend a lot of time on. They addressed them in the binder we saw there. I still think the pleadings are defective in terms of subject matter jurisdiction and that there are standing issues, we're gonna file a motion to dismiss in that regard. So, I'd like to use my time today on more substantive issues. Now, Mr. Kaplan conceded that they probably have to meet a higher standard, and that standard is

that it's a clear and convincing probability that they're likely to prevail. Judge, they're not gonna be able to meet that standard. The list of breaches of this agreement goes on and on and on. What I've done, what I'm gonna do now, in the next few minutes, I'm gonna go over the breaches that were subject to the notice of termination, were breach of either the license or the letter agreement, and then were reconfirmed, supposed to be cured in the settlement agreement, and weren't. Their brief does have other breaches for which notice wasn't given, and which weren't directly in the settlement agreement. Frankly, we did that to show the court, but this is just a pattern of a licensee that despite having what you'd think would be high motivation to live up to it's obligations under the license agreement, and all the other agreements, either can't or won't. We're mystified as to why they would jerk our guy around for five thousand bucks. It's crazy, isn't it? If they really have this going. If it's not all smoke and mirrors, which we don't know. The list of breaches here, Judge, goes on and on and on. Let me start with the options. That's in the letter agreement. When the license agreement was entered into in June of 2002, that's tab A, the parties entered into a letter

agreement we call it, it's like a consulting agreement, and in that, they agreed to compensate Mr. Silvers by, among other things, giving him options in the corporation's stock. In fact, the agreement says, they shall provide an option agreement, not a promise that you'll get options someday, that's what the contract says, they are supposed to provide him with a written, enforceable agreement that says you have these options. All right? Now, they've reached that, they never did it. June 2002, that was in the notice, they were told you're in default, get this together. They didn't. So we terminated them. I'm gonna come back to all the notices you sent back. In the settlement agreement, they, again, said yes, we will get this done. We will get you th option agreement, and to this day, we don't have it. The settlement agreement was entered into in January. We terminated them on April 27th. Judge, how much longer do we have to go and wait before we give up and say this is enough. We need a divorce. Compensation goes to the heart of any kind of agreement here. That's number one, that was, you can get into a fight as to well, they had a good excuse for it, and in fact, Mr Kaplan's cure letter, which I think is tab 7 in the notebook, there's still more excuses, well we moved to

the LLC and that was only so and so. Just recently, we went to the Secretary of State in Delaware, that LLC ahs been there since June '02. So, you know, enough is enough. They promised back in June '02 they better figure out how to comply with that agreement or they run the risk of termination. Now, what's particularly incredible about the letter agreement is, tab B, in paragraph 1C it says, if they don't pay me, pursuant to the agreement above, the options, if they don't compensate me with that, I can terminate the license agreement. That's what the letter agreement says, and there are no notice of --

MR. KAPLAN: You can do that, just, anytime.

MR. HARTMANN: There's no protections there. Now, license agreement has protections. It has a six month safety net to recoup their investment by using the IP, but there's no such provision in the letter agreement. So, we've had three years of excuses form Stelor, since June '02, it's now almost June '05. We don't have an option agreement. What's my client supposed to do, Judge? How patient is he supposed to be? At what point can he draw the line? We gave them notice back in November. They're in breach. They didn't even have to on that particular issue. The other key, I think most important, is the audit. The

audit is probably the most material provision in any license agreement because you're relying on the licensee to go out and develop your stuff, sell it, and pay you a royalty on it. That's supposed to be a money tree for you. They're supposed to pick off your percentage of the trees and send it over and you put them in the bank. But if you're in the blind, how do you know that what they're doing's confident, and how do you know that they're being fair and paying you what they should pay you? So you have an audit. We requested an audit again back in November, several months ago. First they said no, you're not entitled to an audit, then maybe you are, then we got questions about well, what's the scope of the audit. And we said gee, take a look at the license agreement. It specifically defines the scope of the audit, and that's the problem. Stelor doesn't look at the license agreement, they don't give it any respect. The e-mails that we attached reflect that we asked for a date for that audit, five, six times, Judge. We'd get responses, well how about this. Never, ever did we get a date, and even the cure letter that we got, tab 7, Mr. Kaplan's law firm says by the way, we're waiting for you to send us a letter before we give you a date for the audit, well, come on. We've been

waiting for months and months and months. We need to have a date. We can't go do this unless you give us a date. In fact, I think Mr. Kaplan's firm's letter says, specifically, tab 7 there, as soon as you give us a list of what documents you want to look at then we'll cooperate. It's, like, another condition. It's an if. Judge, they're obligated to do this. They don't get to impose conditions on us. We're tired of getting conditions. Out client has had enough of these people. He's waited a long time. He's given them a lot of rope, they keep hanging themselves. Another critical breach, and you know, Your Honor, I think that these things all are things that are going to go to trial. I think that the proper thing to do here is deny the injunction and have a trial and let the jury sort out who's right or wrong in this, and by the way, we'll offer right now, let's expedite the trial. Let's have a trial in six months, two or three months of discovery, have one month of experts if necessary and let's go to trial, let's do it. My client's more than happy to do that. To put the context of the audit into perspective you need to know about the merchandising that we've discovered, and that particularly relates to I-Tunes (phonetic) and Cafe Press (phonetic). There's also the website,

which is a form of merchandising because those six hundred thousand registered users, they have commercial value, and we don't know whether that's been monetized, and those ten thousand kids on the domain name everyday, those are people who come to that website. That's extremely valuable. My client can convert that in a short period of time to six figure income with very little sweat. Just having that traffic, your website is extremely valuable in today's internet industry. So, I don't know what they've done to monetize that. Probably nothing, and that's a problem, that they've done nothing to monetize that, but that's another story. In terms of the contents, my client learned that they were selling these times on Cafe Press, and you can go to CafePress.com and you can get your Googles hat, you can get your Googles coffee mug, and I'll put this into evidence after, you know, doing some housekeeping, Your Honor, but you can see that on the Googles coffee mug, that's got all the Googles characters. Those are Steve Silver's characters. Those are his original rendering of those characters. It's got the website on there. Here's a nice baseball shirt, same thing. Here is a mouse pad, one of my favorites, the mouse pad. This is Mr. Silvers's

rendering of a spaceship. now, what is particularly interesting, and if you look at the declaration we filed with Kevin LeBossier (phonetic) on the exhibits to that, the website specifically says, I meant to bring you a notebook, but this is exhibit B to the LeBossier declaration. Two interesting things about that. On the second page there, it specifically says form Stelor Productions. Now, Mr. Esrig filed a declaration saying it's unauthorized, it's counterfeit, something like that, but when you look at that it sure appears that Stelor Productions provided them with the artwork to put on this merchandise. They didn't create some kind of corporate espionage to get it. It's been out there since 2004. We spent about eighty-five bucks on this merchandise, the money has to go somewhere. Never has it showed up on a royalty statement and we can't get an audit to figure it out because they won't give us a date. I think even more compelling, Your Honor, is the I-Tunes merchandising, and that's in the Kevin Lebossier declaration along with the web pages, and what you have is you have about thirty songs. I mentioned before that the Googles started out with this live show. It was thirty songs. I think fifteen are in English, fifteen in Spanish, there's a Cd in each

language. You can go to I-Tunes, you can search, you find these songs, and you can download them, and you pay, or you can buy the Cd, and you pay, and if you look in our notebook, we have nine, we have the I-Tunes stuff. You'll see that the success of those songs has been substantial. They're in the top seller list in the UK and the Netherlands. We have information that it's a top five song in Spain, and we also provide in the notebook a receipt that was provided to Mr. Silver, showing that somebody purchased, somebody downloaded those songs from I-Tunes in August of '04. We never knew about that. We never got paid a royalty on that. We never got a sale reported to us, and that takes me to the issue of the royalty statements, and this is another key material provision that is in the license agreement, which is also in the settlement agreement, which they were provided with notice on. The royalty statement's very specific, Judge. Take you to a paragraph of the agreement, tab A, paragraph three lays out the requirement for a royalty statement. It says you've got to give us the details on how many units there are, where they are, what the product numbers are, and even if there's no sales, you have to report all this stuff because you have tell us what countries the

activity is going on. Now, if you go to our tab ten in the notebook, you're going ot see what Stelor calls a royalty statement, Judge. It's a joke. Mr. Esrig, I think in July of 2004, signed all the royalty statements for 2002 and 2003. Then in November of 2003, he signed the royalty statements for the last quarter of 2003, even though it wasn't even over yet. These are nonconforming royalty statements. They are in breach of the agreement. They don't provide the type of information that they have to. I don't know whether they're lazy, or they don't care, or they can't do it, or they can't do it, I don't know, but Mr. Silvers has had enough. Since June 2002 they haven't given one conforming royalty statement, and the agreement specifically says in paragraph three, tab 1, even if there's not a sale, you've got to tell us. If Mr. Esrig is out there giving this stuff away he's got to tell us about it, and he hasn't done it. Now, what's interesting about the cure letter as we call it, that was sent from Mr. Kaplan's firm on April 29th, they enclose a royalty statement for the first quarter of '05. Again, it's not conforming, does not address the information that they're required to in the agreement. It does not list the countries, and it's not certified as it's required to be under the

agreement. We also have the problem of you won't find a royalty statement at all there for the last two quarters of 2004. Now, if we're gonna hear from Mr. Kaplan in rebuttal, or something from Mr. Esrig that we weren't selling this stuff, we were just giving it away. Judge, we want a divorce. They can't just go out there and give our stuff away, that's not the deal. In fact, under the agreement, they have a specific obligation to exploit and utilize that value of the IP with commercial reasonable standards. Giving stuff away is not commercial and reasonable. Now, we talked about the samples. Yes, we go two of the CDSA. That's about it. We haven't got any other samples of any other merchandise, and we haven't had samples like you just saw. That is basically a sample of the Googles IP that you just saw, the trailer. That's a method by which the Googles IP is being used to promote and sell licensed product. We're entitled to see that. We're entitled to be provided with the samples. In the letter we got, the cure letter, after the termination, it was still if you withdraw the termination notice then we'll let you come over and see the samples. Another condition. Conditions, conditions. Judge, they're not allowed to impose conditions on us. They have an absolute obligation to

do this stuff. They haven't done it. They haven't done it since June '02. Frankly, they should have been terminated long ago. I want to talk about the notice issue because they're making a big deal of that, and the interplay between the three agreements. Keep in mind, we have a license agreement and a letter agreement in June 2002. We were hear in the first lawsuit because the parties disputed about who was doing what, and there were lawsuits, and we filed a counter claim, and then we had to settle. It's in the notebook here, Judge, we've gone by the book in terminating them. Under the license agreement, while, before the suit was filed, I think, certainly while it was pending, we gave them a notice of termination, it's tab 4, it's not hidden purpose. We gave them a notice of breach, and this is what paragraph nine of the license agreement says, you really have to look at that, Your Honor. It says that if we believe they're breaching, we have to give them notice and they have sixty days to cure. In tab 4 that's what we did, and it was November '04. They did not cure. So then we went to step two, and we gave them a notice of termination. That's the next step. When we reached the settlement agreement, Mr. Silvers withdrew the notice of termination, without prejudice, of course,

but he never withdrew the notice of breach. That was still there. It was still active. They were still on notice that they needed to cure, and, frankly, what the settlement agreement's about, Judge, it's kind of giving them extra time to cure this stuff because if you look in the settlement agreement, you'll see in the whereas clause, and certain provisions there, it specifically talks about as long as the license agreement is in effect it contemplates that there would be a termination if Stelor does not comply with the settlement, and it talks about if Stelor complies with every provision of the settlement agreement, then, the breaches shall be cured. Well, nobody was saying they were cured because notice of breach was still alive. It was still out there. It was specifically not withdrawn by Mr. Silver so we would not have to reinvent the wheel on the sixty day notice. Now, it's a also very important to note that what they're asking you to do is reinvent the wheel. They're asking you to put in a provision, in the settlement agreement, that has a sixty day notice of cure provision. It ain't there, Judge. The parties didn't discuss it, it wasn't agreed to. There are some time tables for them to do things, and everything else will be a reasonable time. A reasonable time

went by, they didn't get these things done. It was time to terminate those. The idea, really here, was Stelor had another chance to cure their breaches under the two agreements, the license agreement and the letter agreement, and that's all codified, if you will, in the settlement agreement, and as long as they comply with those provisions in the settlement agreement, that would be deemed a cure, but they didn't comply. So, they never cured. We don't have to go and start another sixty day notice, Judge. We didn't agree to that. It's not in any of the documents that you've seen in front of you. They just want to add this, they want you to add that provision to the settlement agreement, obviously, because it helps them. Now, the one other area that's in the settlement agreement that's new, that wasn't in the license agreement or the letter agreement. It's a new breach, if you will, and that is Stelor's obligation to pay advance royalties to Mr. Silvers. The deal there was they were gonna pay six thousand dollars a month for advance royalties, to be credited against future royalties that he would be paid by Stelor. As reflected in the declaration, they were late all the time, and Mr. Kaplan's right, they did send a check to the wrong party on one occasion.

THE COURT: Let me interrupt you for a moment, Mr. Hartmann, so I can understand this. As I understand it, it's your contention that the settlement agreement, paragraph three, wherein Silvers withdraws his notice of termination of the license agreement, and reaffirms his obligations under the license agreement, but that does not pertain to November 12th, 2004 that you're characterizing his notice of breach.

MR. HARTMANN: That's correct. That's what the license agreement characterizes it and that's what the letter says. If you look at it, it says notice of breach.

MR. KAPLAN: Your Honor?

THE COURT: It says in the letter, according to your tab 4, that Mr. Silvers will exercise his right to terminate unless Stelor cures the following breaches within sixty days, and, to your contention, that's not a notice of terminating him?

MR. HARTMANN: No, no. You've got to go to paragraph nine. It's a two step process. Step one is tab 4. You're in breach, you have sixty days to cure.

THE COURT: What's the paragraph in the license agreement?

MR. HARTMANN: Paragraph nine. They're Roman

Numerals, Judge.

THE COURT: Right, so--Where's the January 12th?

MR. HARTMANN: That's tab 5 in our notebook. That's after they failed to cure, within sixty days, we sent the termination notice. Certainly, the license was operative between tab 5, tab 4 and tab 5 letters, because they had the right to cure within the sixty days. If they did everything was honky-dory. It's, the --

THE COURT: So, is it your position, let me see if I understand your position. It's your position that settlement agreement return the situation to the position it was on on January 12th, which is, sixty days had elapsed from the notice of breach, but no notice of termination letter had been issued. So, that in the wake of this settlement agreement, the only thing that was necessary to terminate at that point was, on no notice, to issue the termination letter?

MR. HARTMANN: No. What was necessary was for Stelor to breach the settlement agreement.

THE COURT: But your pretension is that the breach letter had already been sent on November 12th?

MR. HARTMANN: The notice of breach that was required before, yes. Cure period, it had already

expired.

THE COURT: So, the settlement agreement, in effect, meant that there was no cure period, the cure period had already lapsed, and so the parties returned to the situation that existed on January 12th? That is, notice of breach had been delivered, sixty days had lapsed, and therefore, there is no remaining time on which to allow the plaintiff to cure any defects because the sixty day period had already passed.

MR. HARTMANN: No, Your Honor. The settlement agreement, let's start out with the whereas clause, and you'll see exactly what I'm talking about. In the whereas clause, it's on the first page, tab 3 of the settlement agreement, says quote, "Whereas, Silvers, on January 13th, sent a notice of termination of the license." That's the same term that's used in paragraph three, a notice of termination in January. That's what he would do.

THE COURT: I fully understand.

MR. HARTMANN: You don't understand?

THE COURT: I fully understand.

MR. HARTMANN: Okay. Now, if you go down, it says whereas the parties intent. At the full performance by each party under this obligation that's under this agreement.

THE COURT: Where are you reading?

MR. HARTMANN: The whereas clause, second from the bottom, on page one, tab3 of the settlement. This was the deal, as long as they were performing under the settlement, that would constitute a cure, and when they fully performed under the settlement agreement, it would be cured. So it's the breaches of the settlement agreement that allowed us the right to terminate them. And I think that the governor, to the extent that you're concerned that there's no governor. We can kind of unilaterally pull the trigger on him. There is a provision here, I'll find it in a second, where the parties were limited in the sense that they had to work in good faith. There's a complaints department. We also set up channels so that the parties can talk directly because that was a bone of contention, but, I mean, as reference here somewhere, the idea is that the parties had, 'cause if in Florida, you don't have that obligation anyway, and that is the obligation of good faith--So, the parties accepted, but they had to operate in good faith, and you know, they did, for a time. Very last page, page ten. I mean, the position, Your Honor, is that my client can't sit around forever waiting, waiting, waiting. We've been waiting since June '02, and we

waited since the settlement agreement. We had a notice for the audit, things like that, out there since November. We've had a notice of breach out there since November and we're still dealing with the same problem. At what point is the court gonna say no, Mr. Silvers, you're gonna have to say four weeks, two days, and six hours more you have to wait, and where do you draw the line here? We were reasonable here. We gave it a lot of thought. You know, we just decided, the client decided, let's get a divorce. Let's go on, let's do it ourselves, see what we can do ourselves. Enough is enough. As for some of the irreparable harm issues raised, the reason we didn't address that in the brief is that in the Burger King cases, and the like cases, remedy to have is damages, and whenever you have a remedy of damages, you don't have irreparable harm. I just want to address some of the things. First of all, go back to your chambers, type in StelorProductions.com. You'll see their website. That's the same website they've always had. The sam website you would get if we had our domain name open, and you went to Googles.com, you went immediately to their website.

THE COURT: I don't think I'm permitted to do that. I can only review evidence that's in the

record.

MR. HARTMANN: Okay. I just didn't understand what they were saying when they said they were shut down. They're perfectly capable of doing business. This technology they have is perfectly capable of being utilized some other way than using our Googles IP. If they have six hundred thousand registered users, they're perfectly capable of using that information to generate some kind of business, it's just not gonna be with our little guys, our little characters. We don't want them to have them anymore. We're entitled to get them back and see what we can do with them ourselves. They do have their safety net, under the agreement, paragraph ten, where they're allowed fro six months to use that intellectual property to the extent that they are the certain requirements they have, which they haven't met, yet, but the to the extent that they're continuing to modify their project, that's why we didn't sue them, and ask the court to shut down from going to the trade show. We're trying to figure out, you know, what they can do within the parameters of these post termination protections that they have. That's specifically there to help them avoid irreparable harm. On the irreparable harm issue, you know, if we sue Google,

that's irreparable harm, Judge. You've got to look at the settlement agreements specifically on that because Mr. Kaplan just misquoted that. What the agreement specifically says, paragraph eighteen, tab three of my notebook, "The parties hereby agree that there is adequate remedy of law in the event that either party negotiates or settles the disputes with Google Inc. without the other party." The disputes, the disputes, when you look at the settlement agreement, have to do with PTO proceedings, patent trademark office proceedings, that Stelor filed against Google, Google filed against my client, there was a bunch of mess up there, everybody was suing everybody, and I think all those cases have gone away. In fact, we have a problem with that because the opposition, apparently, was dismissed, you know, Stelor was supposed to be handling that, and the opposition was dismissed. We didn't put them on notice of that so I'm not traveling on that today, and I'm a little bit unsure about how it was dismissed, and the circumstances there. I don't want to hang our head on that, but this, Your Honor, talks about attempt to negotiate with Google Inc. My client's not negotiating with Google, my client's suing. We're trying to protect our turf. What happened is Google Inc. filed a trademark

registry seeking to go into using their marks for class sixteen, which includes children's books, just like that one up there, and we say that's our turf. You cannot take your Google Inc. trademark and tread on our turf, and we're filing, filed a lawsuit to protect our turf. That was paragraph eighteen that Mr. Kaplan told you supported you granting an injunction in this case. It's absolutely inapplicable to this Google Inc. lawsuit. This refers to the disputes, which are referenced to throughout the agreement as the PTO proceedings, and it refers to the negotiation for settling of those disputes which is not what a lawsuit's about. We have filed a lawsuit. We're not negotiating. We're not settling. If that point in time ever comes, whether or not Stelor has an interest in that will be an issue to be resolved, but for purposes of the injunction, nobody's agreed to have an injunctive relief based on filing a lawsuit against Google Inc. and to ask this court to keep us from filing a lawsuit sounds extraordinary. Judge, I know you've been very generous with your time and have already missed lunch. I think the case could be resolved based on the legal parameters of the Burger King case and the State of Florida cases. I think the difference between the cases they're citing and saying

those reversed them and that disproved the cases. I looked at them in the notebook they handed me this morning. Form what I could see in those cases, it was not like our case. those cases did not involve a terminated agreement. In fact, the McDonald's case, McDonald's was the plaintiff and McDonald's got an injunction against the defendant using the McDonald's trademarks. So, I don't understand how that reverses the Burger King case. Now, Mr. Silver hasn't seen a dollar in three years. He's bent over backwards. He hasn't seen samples. He hasn't had-- He hasn't had a fair royalty statement that supports the settlement, he didn't get his option agreement. He hasn't gotten all the stuff he bargained for back in 2002. Here we are 2005, it's time, Judge, you know, they're divorced, and don't think the court can order them to get back into bed together. It's not going to happen. I don't think that's why the case law is the way ot is. It recognizes the futility of doing all that. Now, you know, we can go back and forth into total quagmire, as to who's right and who's wrong on this contract. I think because what they're trying to do is go back and recreate the status quo of a few weeks ago. That's a mandatory injunction. They're trying to make us do something that we wouldn't otherwise do.

They're not trying to prevent us from doing something. We already did it. They're trying to make us do something. They have a heightened standard, and with all this he said, she said, breach of contract, oh, we promise to give you the option agreement, oh, we would have given you the audit if you had given us a list. They have an excuse for everything. For you to enter a preliminary injunction based on that kind of equivocal, and I do believe it's equivocal, I think that we were thinking about moving for a continuance to take discovery on this issue so we could firm it up, but we decided to go ahead with it. I think there is some urgency here, but was Mr. Silvers right when he terminated them? Are they going to prove today, based on this record, that by clear and convincing probability of likelihood of success, and I just don't see that. There's two sides to the story, and at the worst situation it's a close call, but, frankly, we think we have the far better side of that, and we're confident about going to trial. We think it is an issue for trial, and we would ask that the court expedite that trial, and let's get it done. Thank you, and any questions if you want to go ahead and ask. I know I don't have to invite you.

THE COURT: On to reply.

MR. KAPLAN: Thank you, Your Honor. I think the divorce analogy that Mr. Hartmann kept using is very apt, but a spouse ripping up a paper doesn't make a couple divorce. My understanding is that you have to have a court order before any divorce is effective, and that's exactly what they're trying to avoid here, any court determination about the validity of their termination before they can seize the property and put Stelor out of business they've engaged in self help, they've taken unilateral action as if their declaration of a default of a termination means that the agreement is terminated, it's not. The argument begs the question, Your Honor has to asses the validity of the termination, and I think Your Honor is characterization of their position on the notice issue was exactly on point. If you accept their characterization, parties were in breach at the time the settlement agreement was entered into, and they could terminate at any time, if we made one slip-up, if we forgot to send a check, if a check got lost in the mail, any of the numerous uncertainties or confusions that could have occurred over what Mr. Hartmann admits is a complicated agreement, quagmire, as he put it, where two parties have a history of a pretentious relationship, that can't be the case.

Even if they're gonna take that position, and even if Your Honor could ignore the express provisions of the settlement agreement, which would draw the notice of termination and go one step further. It would draw the notice, and Mr. Silvers reaffirms his obligations under the license agreement, having reaffirmed his obligations under the license agreement, he can't take the position that there was still a breach, that he still was released from performing certain obligations, including the critical obligation of notice, and if they're gonna make that then certainly there's a waiver under these facts of a prior notice of termination, and I cited those cases in footnote four of my reply. It's like a mortgage where the lender issues a default notice, and then there's a resolution and a reinstatement, those case are all clear that the lender can't bend willy-nilly, foreclose based on a prior default. They gotta issue a new default, re accelerate, and that's clearly what is required here, too. There's nothing in that settlement agreement that contemplates, this is Mr. Hartmann's phrase, that there would still be a termination under the prior letters if the breaches were not cured. I think he's taking a highly technical position about what the notice of

termination is under the license agreement. Referring back to the license agreement, the notice of termination is sixty days written notice to the party that the termination will occur. The notice of termination is the November letter. That is what was withdrawn under the settlement, and not only that, remember the lawsuit, the prior lawsuit modified the express language of the settlement agreement and refers to the January 13th notice of termination and does not, is silent on the November 12th notice of breach letter. He points to the general whereas clause in the beginning of the agreement. Those whereas clauses also make clear that the parties wish to resolve all of the foregoing disputes, and remember this was accompanied by a mutual dismissal with prejudice of the lawsuit raising all of these claims. They counter-claimed the prior lawsuit, so there's a dismissal with prejudice that's got res judicata effect over them trying to raise all of these prior breaches as well. Then there's --

THE COURT: Where's that dismissal with prejudice one?

MR. KAPLAN: It's attached to Mr. Esrig's declaration. I apologize, I misspoke, it's a dismissal without prejudice. It is without prejudice.

MR. HARTMANN: Settlement agreement, paragraph twenty.

MR. KAPLAN: And the dismissals are attached behind exhibit D, but clearly, Judge, if they were gonna leave this open, they would have kept the lawsuit alive for the court to continue to monitor and enforce the settlement which wasn't done. And again, the express provision in paragraph three of the settlement makes clear that Silvers withdraws his notice of termination with the license agreement. It doesn't refer to a specific date, November 12th or the January 3rd letter, that's in the general provision of the whereas clause. It refers to the notice of termination of the license agreement.

THE COURT: Where are you getting this?

MR. KAPLAN: I'm getting to paragraph three of the settlement agreement, which is behind tab two in my binder, you're looking at his binder. He withdrew. The whereas clause of the settlement agreement only speaks to the January 13th notice of termination, and where the paragraph three of that sottlement agreement he's silent on a date. You would think that the reference again, to the notice of termination would pertain to January 13th, previously referred to notice of termination. It's characterized the same way. Two

points, Judge, any uncertainty about that is clearly addressed by the next phrase of paragraph three, Mr. Silvers reaffirms his obligations under the license agreement, not subject to compliance with this agreement, there's no paradox there. He unilaterally, he entirely, and without reservation, reaffirms his obligations under the license agreement.

THE COURT: That's, at best, ambiguous as to whether or not he need to provide another sixty day notice of breach.

MR. KAPLAN: I don't admit that, Judge, and the reason I don't admit it is because when you refer back to the license agreement and article nine, which is the termination provision. That provision makes clear what a notice of termination is, it includes the sixty day period. So, by definition under the license agreement, if the notice of termination is withdrawn, the notice can only be retriggered by providing that sixty day notice in writing with an opportunity to cure, and that's exhibit A to our complaint, page four of the license agreement, article nine.

THE COURT: It appears that we are dancing on the head of the term notice, and it appears me that the license agreement when it speaks to the term notice, talks about what you are now characterizing as notice

of breach. It seems unfortunate that the settlement agreement talks about notice of settlement, excuse me, notice of termination, and the express context of what you are now saying is not notice of breach, that is January 13th letter. Let me restate that for everyone so we can be very clear on what I'm saying. I'm saying that it's unfortunate that the settlement agreement talks about January 13th letter being notice of termination. What you're now saying, and what the license agreement in paragraph nine seems to reflect, is that the January 13th letter is not the notice of termination called for in the license agreement, rather, it is a, the January 13th letter seems to be more a termination letter with the notice of termination being November 12th letter.

MR. KAPLAN: Judge, I think there's one thing that also supports our position, too. the January 13th letter expressly references the November 12th 2004 letter, and I think it's clear that it's a, you have to accept their position, it's a two part project.

THE COURT: Would you run that by me again?

MR. KAPLAN: Yeah. The January 13th 2005 letter, it's exhibit, it's attached exhibit C to the complaint, the April27th 2005 letter.

THE COURT: Is that in any of the tabs? Is the

January 13th letter in your binder?

MR. KAPLAN: Yeah. That's tab five in the silver binder. That letter, in the first paragraph, that's the last sentence, references the November 12th 2004 letter, recognizes that that's a critical part of the termination process.

THE COURT: That again, talks about notice of breach.

MR. KAPLAN: But if you look at the November 12th letter, it talks about termination, that's tab --

THE COURT: I agree with you. I agree with you, in some regards, sadly, the terminology that was used in the settlement agreement, there is argument on the other side that it specifically says the January 13th letter is withdrawn, the notice of settlement, excuse me, it says that the January 13th letter is a notice of termination, and then it goes on to say that the notice of termination is withdrawn, but it doesn't talk about what really is the notice of termination letter, which is the November 12th letter.

MR. KAPLAN: But it does say, in that same provision, that Silvers reaffirms his obligations under the license agreement.

THE COURT: I understand that. That strike s me as being very ambiguous.

MR. HARTMANN: Judge, let me verify that if I can on behalf of Silvers, he did because he sent out, he did live up to his obligation because he had already put them on notice. That's what he was obligated to do, and he did that back in November. And I think he court is on to something with paragraph nine A, where the letter that goes out is a notice to the other party in event of breach, and that's the November letter. Notice in the event of breach. That's why we called it in the index of breach letter. The January letter was, frankly, they were terminated at the end of sixty days. We sent them a letter as a formality and a courtesy, but it's not required under the agreement to send them a second letter in sixty days.

THE COURT: Well, that's an interesting point, and let me talk about that point for a moment. If yours says that at the end of sixty days that it was terminated and no letter was required to actually terminate it, then your settlement agreement reinstated, actually did nothing because you're saying that at the end of the sixty day period. which had already expired by the time a settlement agreement was reached, that means that the settlement agreement restored the situation to a termination situation.

MR. KAPLAN: A pre-termination situation,

correct?

THE COURT: No, not pre-termination. By your statement, you're saying that it restored it to a termination statement because sixty days had expired.

MR. KAPLAN: Judge, in the settlement agreement, excuse me, simply states that the settlement complies with their obligations under the settlement agreement that had reached their need to be cured. So it's specifically saying that we're gonna suspend that termination, and see if you guys can comply with the settlement, and if you don't, then it's gonna be termination mode again, but if you do, it won't be. That's the deal that the parties had gotten.

THE COURT: It doesn't say that, and besides, it ain't gonna say that.

MR. KAPLAN: It doesn't say that it's gonna be terminated. The settlement agreement doesn't, there's no reference to termination in the settlement agreement. If you don't comply with an obligation in this agreement, it's gonna be terminated effective immediately without notice.

MR. HARTMANN: They wanted --

MR. KAPLAN: Wait a minute, don't interrupt. It's my rebuttal. Let's assume, Judge, that the settlement agreement didn't say anything about

withdrawing the prior termination letters, either of them, it's silent about that. It does reaffirm Silvers's obligations under the license agreement. They can't, there's no way they could come before this court and say that by entering into that settlement we didn't waive the prior termination. That we continued to accept Stelor's performance under this settlement agreement for three months, moving forward, we did all of those things that we've outlined in our declaration. They can't say that we did all that and had the right, if they slipped up in any way, to terminate them immediately without notice. At the minimum, if there's a good faith obligation, which they reference, you've got to apply some reasonable notice provision in there. That comes right out of their own Burger King cases. This, the situation that we're in now, clearly, isn't warranted under any of these agreements, and it's not a situation where he has to sit around forever and wait, like Mr. Hartmann argues. It's a sixty day notice provision under the license agreement. That's the most he has to sir around. We're dealing with a multimillion dollar property here, Judge. They can't legitimately, even if you do find there's an ambiguity, we've got prevail on a waiver argument under these circumstances, look

at the cases. There's clearly a likelihood of success on that, and I don't think, again, I think that the settlement agreement clearly reaffirms Silvers's obligations under the license agreement. By doing that, he reaffirms his obligation to provide notice. You can't, this court, with Silvers having reaffirmed his obligation without exception under the license agreement, how can we go back and pick and choose, which of the provisions under the license agreement were in effect or not in effect? We can't. It's got to be all of the provisions in the license agreement including the notice provision. That's the only way to give effect to that phrase in the settlement agreement, and especially since the defaults that they're talking about, at least the ones in their April 27th letter, occurred in April, therefore occurred after the period that the settlement agreement was entered into. Those aren't covered by the prior notice of default, even if it was in effect. They can't rely on those. It's not a rolling default period. If they're going to try and assert new defaults, which is what they do in that April letter, and you can look at it, it's exhibit C to the complaint. The first thing is failed to provide interest in the LLC. That didn't happen until March

2005. In reference to paragraph nine of the settlement agreement, failed to pay monthly installments on royalty advances, under paragraph ten A of the settlement agreement, and, again, they accepted payments in April and before as we documented. Failed to pay April 1st monthly advance on royalties for insurance coverage. Failed to cooperate in the audit. Judge, I showed you th e-mail from Gail McQuilkin, renewing the request for an audit at the end of April. There's no breach there anyhow, and with respect to the sample of licensed products, again, Ms. McQuilkin was at Stelor's offices in February of '05. So these are all post settlement agreement defaults, and even if that prior letter stayed in effect, and I don't think it did, it doesn't cover the defaults they're traveling under now. It's a new set of defaults, so they've got to provide notice of those new defaults, and, again, I don't want to lose sight of the fact here, that we provided evidence in this record with respect to each and everyone of these alleged defaults. They're totally unfounded. There's no factual basis for these defaults even if you find that they didn't have to provide any notice and can terminate the agreement effective immediately. So, we're gonna prevail even

if we get into the specifics of the defaults, just their disregarding the paragraphs of the agreements or record evidence, which we really have. The insurance, we provided the certificates. The April 1st payment, I showed you the e-mail acknowledging that it was sent. The insurance coverage issue, Silvers is required to document for us what he spends every month for insurance, health insurance, and we have fifteen days to provide him the reimbursement, and we never got that from him. So there's no, these are a bunch of trumped up defaults. Ms. McQuilkin in her e-mail, which I referenced, said they were silly. There's no substance to any of this, and there's no notice either. Silvers made a blanket reaffirmation of all of his obligations under the license agreement. If he wants raise a new set of defaults, then he's got provide notice of them, and he hasn't done that. Unless, until he satisfies that requirement, you can't put their whole company out of business, jeopardize the whole launch, and again, Mr. Hartmann admitted that they haven't contested the fact of irreparable harm, only the law. If they wanted to start it they should have come in here and sought an injunction under McDonald's case. That's what they should have done, but they didn't. They're trying to prevent any

judicial scrutiny of the problem here, and an expedited trial, six months isn't expedited. Six months from now Stelor's out of business. One month from now Stelor's out of business. These are narrow issues, if there's any doubt in Your Honor's mind, consolidate this preliminary injunction hearing with the final trial and let's set it thirty days down the road or shorter. We'll engage in expedited discovery. There's probably two witnesses, Mr. Esrig and Mr. Silvers, and let's get the thing tried, but there's no notice here. There's a clear requirement under the contracts and if you only look at the defaults alleged in the April letter, and that's the basis for this termination, there's no notice of any of those, and they're not covered by the prior default letter even if Your Honor's gonna conclude it somehow remained in effect, which I don't think they can legitimately take that position based on the agreement and based on their conduct after the agreement was entered into.

THE COURT: One minute until I respond, one minute.

MR. HARTMANN: If you look at tab four, which is the November notice of breach letter, and tab six, which is the second termination letter, you will find that those letters have, as a basis for termination,

the option, the agreement that we didn't get, the audit that we never got, the royalty reports that we complained about, the samples that we complained about, and you won't find in the first letter anything about the royalty advances because that happened later in the settlement, but we are not creating a whole new world of defaults, in fact, we put things into brief as I confessed, Your Honor, to show an overarching pattern by Stelor, but you heard me argue today about the points that violate the settlement agreement, that are in those default, in the notice letters, the termination, it's all there. We're not making new demands. Now, the final termination letter has extra things that we're not traveling on today. The insurance, it looks like they had it all the time, they just didn't tell us. The document they gave us showed us that they got insurance, and I didn't get up here and argue that that was a breach, and whether or not that was in the termination letter, it wasn't in the notice letter because we're not relying on that, we're relying on the key provisions, which are not technical they're material provisions, audit, royalty statements, option agreement, which is compensation, samples, those are key provisions to any licensor/licensee relationship. Now, Judge, we had,

you know, I think we had a duty when we entered in the settlement agreement to allow Stelor reasonable time to cure those breaches, I mean, I don't think we ewer trying to say aha, gotcha the day after the settlement agreement had been terminated, but we didn't have to go back and do a notice of breach which is what the agreement requires. I mean, we're required to comply with the agreements, Silvers verified he would do that, he had already done that. There wasn't anything more to do. They're really trying to get you to draft a new provision in the settlement agreement that says, if you want to sue us, or you want to terminate us based on a breach in the settlement, you have to give us notice and sixty days to cure. That ain't in the agreement, Judge, and the reason is we never would agree to that. Now, maybe we would have agreed to some other provision, but they didn't ask, and we wanted the stuff to get done quick and we're on them a lot, we're asking them for this, we're asking them for that. it didn't get done, so that's where we're at. Thank you. Judge.

MR. KAPLAN: Judge, if I could just make one quick point? Hold them to the terms of the April 27th letter. Now, I ask, Your Honor, to look at Mr. Esrig's declaration, paragraph twenty-eight, in

detail, why each of those alleged defaults is unfounded. Mr. Esrig's here, if there's any question he'll testify about that as well. It's all laid out in that declaration. We're not asking you to put a new provision in the settlement, we're asking you to enforce the express provisions in the license agreement that Mr. Silvers reaffirmed, and I'm happy to put Mr. Esrig right now, and we'll over each of those breaches and tell you why they didn't occur, but I know Your Honor's got that in the declaration, even if you haven't had a chance to read it yet. I hope you'll take the matter under advisement, and you have an opportunity to do that.

THE COURT: Very well.

MR. BAILIFF: As recording keeping, housekeeping matters, we have two offered exhibits that I didn't get. The mug and the shirt.

MR. HARTMANN: Your Honor, I don't feel compelled to make these part of the record. Demonstrative exhibits are to demonstrate things and they don't necessarily have to be evidence, I mean, it's up to the court. Do you want them?

MR. KAPLAN: I think they were used as demonstrative, that's more appropriate.

THE COURT: Any objection to taking them all

back?

MR. KAPLAN: I just want to make sure the court understands our position on that that Stelor didn't authorize Cafe Press to sell these products. We didn't know about it. We didn't authorize it. Judge, if you please, I had prepared a draft for court recommendation. If Your Honor would permit me I'd like to submit it to you as well.

THE COURT: Sure.

MR. KAPLAN: We would like to submit a purposed R and R. Thank You, Your Honor.

MR. HARTMANN: Thank you, Judge.

(Thereupon, the hearing concluded.)

CERTIFICATE

STATE OF FLORIDA)
) SS.
COUNTY OF ST. LUCIE)

I, PHILIP MAY, A NOTARY PUBLIC AND REPORTER OF THE STATE OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE HEARING AS REPORTED BY AND BEFORE ME AT THE TIME, PLACE AND THE DATE HEREIN BEFORE FORTH.

I DO FURTHER CERTIFY THAT I AM NEITHER A RELATIVE NOR EMPLOYEE NOT ATTORNEY NOR COUNSEL OF ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL, AND THAT I AM NOT FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AND OFFICIAL SEAL IN THE CITY OF FORT LAUDERDALE, COUNTY OF BROWARD, STATE OF FLORIDA, THIS 1ST, DAY OF JUNE, 2005.

BY: _____
PHILIP MAY
REPORTER

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