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 5 MARC HABERMAN, C-CUBED SOLUTIONS, Inc.
 a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS
 6 LIMITED, a business entity formed in India

FILED
 LOS ANGELES SUPERIOR COURT

FEB 19 2002

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES CENTRAL DISTRICT

10 C-CUBED SOLUTIONS, INC. a Delaware)
 11 Corporation, C-CUBED PRIVATE)
 SOLUTIONS LIMITED, a business entity)
 12 formed in India, ROCKY STEFANSKY, an)
 individual)
 13)
 Plaintiff,)
 14)
 v.)
 15 MARC HABERMAN, aka MOSHE)
 16 HABERMAN, an individual)
 17 Defendants.)
 18)
 ROCKY STEFANSKY,)
 19)
 Petitioner,)
 20 v.)
 21 MARC HABERMAN aka MOSHE)
 HABERMAN C-CUBED SOLUTIONS, Inc.)
 22 a Delaware Corporation, C-CUBED)
 PRIVATE SOLUTIONS LIMITED, a business)
 23 entity formed in India.)
 24 Respondents)

CASE NO.: BC 255351

RESPONSE TO PETITION TO
 CONFIRM AWARD OF ARBITRATION
 REQUESTING THAT AWARD BE
 VACATED AND SET FOR REHEARING
 or IN THE ALTERNATIVE
 CORRECTION OF AWARD;
 MEMORANDUM OF POINTS AND
 AUTHORITIES and DECLARATIONS
 with EXHIBITS of:
 1. Aviv L. Tuchman, Esq.
 2. Marc Haberman
 3. Steve Durham
 4. Asher Low
 5. Aron Gold
 [C.C.P. §§1285.2, 1286.2, 1284.4, 1286.6,
 1286.8 and 1287]

Date : Feb. 28, 2002
 Time : 9:00 a.m.
 Place : 18

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 26 RESPONDENTS MARC HABERMAN aka MOSHE HABERMAN, C-CUBED
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1 SOLUTIONS, Inc., a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a
2 Business entity formed in India (hereby "Respondents") responds to the petition to confirm the
3 arbitration award as follows:

- 4 1. Respondents request that the Court vacate said award and order a rehearing in front of
5 new arbitrators pursuant to California *Code of Civil Procedure* sections 1285.2 and
6 1286.2 or in the alternative correct the award pursuant to California *Code of Civil*
7 *Procedure* section 1286.6.
- 8 2. The parties stipulated on February 7, 2002 that this Response may properly be served
9 on and filed on February 19, 2002. Declaration of Aviv L. Tuchman, Esq. and Exhibit
10 16 attached hereto.

11 **ARBITRATION AGREEMENT, PARTIES and AWARD**

- 12 2. Respondents and Petitioner, Rocky Stefansky entered into an Arbitration Agreement
13 on July 4, 2001. A true and correct copy of the Arbitration Agreement is attached
14 hereto as Exhibit 1.
- 15 3. The arbitrators were Rabbi Nachum Sauer, Rabbi Gershon Bess and Rabbi Avrohom
16 Union. The arbitrators comprise the Rabbinical Court of the Rabbinical Counsel of
17 California located at 617 S. Olive St., Suite 515, Los Angeles CA 90014. The
18 Rabbinical Court and the Arbitrators are herein after collectively referred to as the
19 "R.C.C. or Beis Din."
- 20 4. The only parties to the arbitration were Rocky Stefansky as Plaintiff/Petitioner and
21 Marc Haberman, C-cubed Solutions and C-Cubed India as Defendants/Respondents.
22 The other plaintiffs found in the Arbitration Award were never parties to the
23 Agreement.
- 24 5. The agreement specifically provides as follows:
25 "We, the undersigned hereby agree to submit to binding arbitration the following
26 controversy: A comprehensive settlement of all claims and cross claims between
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Rocky Stefansky v. M. Haberman and C Cube Solutions & C Cube India.” (Exhibit 1)

6. Although requested, the Beis Din held hearings while Respondents were without representation on July 24, 2001 and late August 2001. Further hearings were held while Respondents had representation on September 10th and 11th, 2001.

7. Following the hearings the Arbitrators issued their Award on December 14, 2001. Attached hereto as Exhibit 3 is a true and correct copy of the Arbitration Award entitled “Psak Din/Judgment.”¹

AWARD MUST BE VACATED FOR GROSS MISCONDUCT OF ARBITRATORS AND OVERREACHING OF THEIR AUTHORITY

8. Respondent requests that the award be vacated and the matter be reheard in front of new arbitrators on the following grounds:

- a. The award was procured by corruption, fraud and other undue means;
- b. There was corruption against Respondents by the arbitrators;
- c. The rights of Respondents were substantially prejudiced by misconduct of a “neutral arbitrator”;
- d. The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; and
- e. The arbitrators failed to disclose within the time required for disclosure grounds for disqualification of which the arbitrator was then aware and was subject to disqualification pursuant to *California Code of Civil Procedure* section 1291.91 and 170.1.

9. Specifically, the Arbitrators failed to disclose that Arbitrator Rabbi Gershon Bess’s son (Mark Bess) was the President of a company called Sylmark, which was at the time of the arbitration, one of the largest clients of the C-Cubed Respondents. In

¹ “Psak Din” in hebrew means Judgment.

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August through October, 2001 Sylmark failed to pay the outstanding invoices for services rendered by the C-cubed Respondents. Sylmark owed the C-Cubed Respondents in excess of \$30,000.00.

- 10. On October 22, 2001 the C-Cubed Respondents forwarded an e-mail to Sylmark requesting payment of the outstanding invoices.
- 11. On November 4, 2001 Arbitrator Rabbi Union telephoned respondent Marc Haberman and told him that pursuant to some provisional remedy ordered by the Beis Din they were taking the monies owed by Sylmark and will apply it to the Award which had yet to be issued. Rabbi Union then threatened Mr. Haberman that C-cubed was not to discontinue service to Sylmark and that the outcome of the case depended upon it.
- 12. Although knowing of other clients of C-cubed which had outstanding balances, the Arbitrators only sought the monies owed by Sylmark.
- 13. The monies owed by Sylmark have never paid to C-cubed and C-cubed's service to Sylmark, out of necessity, had to be terminated.
- 14. No accounting has ever been made to determine if Sylmark ever paid the Beis Din, how they were paid, when they were paid or to whom they were paid.
- 15. The Beis Din had no authority to issue any provisional relief especially the appointing of a receiver or "comptroller", attach monies owed to Respondents, restrain Respondents from competing or otherwise maintain the operation of the business.
- 16. In fact, Petitioner sought provisional relief from the Superior Court and was specifically denied the requested relief by Honorable Dzintra Janavs Judge Presiding. Respondents were never informed of the ex-parte application nor were they informed that the relief requested was denied.

IN THE ALTERNATIVE, THE AWARD MUST BE CLARIFIED OR CORRECTED

- 17. In the alternative correction and clarification of the award is requested because: 1. the Award includes six plaintiffs that were never part of the Arbitration Agreement; and

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2. orders that liens be placed upon on "all income derived" from the customers and accounts receivable.

18. The arbitrators are without legal authority to include new plaintiffs with new claims or award a lien on all income derived to pay for a judgment. See Marsch v. Williams (1994) 23 Cal.App.4th 238, 248.

WHEREFORE, respondent prays as follows:

- 1. That the petition to confirm the award be denied.
- 2. That the award be vacated and that the court order the matter to be reheard in front of new arbitrators.
- 3. In the alternative, that the award be corrected and confirmed as corrected by removing the six plaintiffs that were never part of the Arbitration and remove the order for a lien to attach on all income derived by Respondents.
- 4. For costs of suit herein incurred.
- 5. For such further relief as the court may deem proper.

DATED: FEBRUARY 18, 2002

TUCHMAN & ASSOCIATES

AVIV L. TUCHMAN
 LOREN N. COHEN
 Attorneys for Respondents and Defendants
 MARC HABERMAN, C-CUBED
 SOLUTIONS, Inc. a Delaware Corporation, C-
 CUBED PRIVATE SOLUTIONS LIMITED, a
 business entity formed in India

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 The Arbitration award must be vacated, because the Arbitrators committed gross misconduct
4 and acted outside of their authority for the financial benefit of Mark Bess, the son of Arbitrator Rabbi
5 Gershon Bess.

6 Mark Bess, the President of Sylmark and then largest client of the C-cubed Respondents, is
7 the son of Arbitrator Rabbi Gershon Bess. This was discovered when Arbitrator Rabbi Union made
8 an ex-parte telephone call directly to respondent Marc Haberman on November 4, 2001. At the time
9 of this call Mr. Haberman was represented by counsel.

10 Sylmark owed outstanding invoices to the C-cubed defendants for the months of August 15th,
11 September, October and November of 2001. The total amount owed by Sylmark to C-cubed was
12 \$30,000.00 for services rendered. On October 22, 2001 C-cubed sent an email to Peter Babaian of
13 Sylmark requesting that payment be made on the outstanding invoices. This precipitated the
14 November 4, 2001 telephone call of Rabbi Union where he threatened Mr. Haberman that the monies
15 owed by Sylmark will be taken by the Beis Din¹ and that C-cubed "better continue service to Sylmark
16 or else."

17 Without authority and in direct violation of the relief specifically denied by Honorable Dzintra
18 Janavs Judge presiding on August 2, 2001, the Arbitrators created a fiction and pre-text that the
19 monies owed by Sylmark would go to the Beis Din to be used for payment of the award which had
20 yet to be issued. Although the Arbitrators had specific knowledge of other companies that had
21 outstanding balances owed to Respondents, they only contacted Sylmark.

22 No accounting has ever been made by the Beis Din regarding whether the monies had ever
23 been paid by Sylmark, how they were paid or when they were paid. The monies owed by Sylmark
24 were to pay labor and other related costs for services rendered, and without these funds C-cubed was

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26 ¹ The Arbitration was conducted by the Rabbinical Court of California and in Hebrew is
27 known as the "Beis Din."
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1 forced to cut service to Sylmark in early November 2001.

2 The award came out on December 14, 2001 and included six new plaintiffs that were not part
3 of the Arbitration Agreement or the Arbitration itself. The only reasoning provided in the
4 Determination section of the award is how Mr. Haberman and the C-cubed respondents violated the
5 Beis Din's interim orders which they knew were without authority. In addition, the award failed to
6 make mention of the Sylmark monies allegedly held by the Beis Din. The Beis Din only
7 acknowledged these monies in a letter dated February 3, 2002.

8 The Arbitrators' Award must be vacated pursuant to *California Code of Civil Procedure*
9 section 1286.2 on the grounds that:

- 10 1. the award was procured by corruption and fraud of the arbitrators and that their
11 misconduct substantially prejudiced the rights of respondents;
- 12 2. the arbitrator Rabbi Gershon Bess failed to disclose a familial relationship with a client
13 of one of the Respondents and inappropriately used his authority for the financial
14 benefit of his son to the detriment of Respondents;
- 15 3. the arbitrators exceeded their authority in attempting to benefit the son of one of the
16 arbitrators;
- 17 4. the arbitrators exceeded their authority by including six new plaintiffs/creditors in the
18 award who were not part of the Arbitration Agreement and improperly included a lien
19 on all income of Respondents.

20 In the alternative, this Court is requested to correct the Arbitration Award pursuant to
21 *California Code of Civil Procedure* section 1286.6. The six additional plaintiffs/creditors and the
22 language regarding the lien should be removed from the Award.

23 **2. TIME LINE OF EVENTS**

24 The following is a time line of events:

- 25 a. July 24, 2001 Arbitration Agreement signed by Rocky Stefansky on the one hand and
26 Marc Haberman for himself and the C-cubed respondents on the other. [Exhibit 1];
- 27 b. July 24, 2001 Arbitration hearing conducted. Mr. Haberman was without

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- 1 representation despite assurances of Rabbi Union. [Dec. Marc Haberman ¶22-29];
- 2 c. August 2, 2001 Plaintiff/Petitioner files complaint short captioned C-cubed Solutions,
- 3 Inc. a Delaware Corp. et. al. v. Marc Haberman LASC Case No. BC255351.
- 4 Complaint was not served until January 27, 2002. [Dec. Marc Haberman ¶40];
- 5 d. August 2, 2001 Ex-parte Application of Plaintiff/Petitioner is denied by Judge Dzintra
- 6 Janavs. No notice of the ex-parte or its results were provided to Respondents. [Dec.
- 7 Marc Haberman ¶43];
- 8 e. Late August 2001 Hearing date set by Arbitrators despite request for reasonable
- 9 continuance of Mr. Haberman to reschedule convenient date for his counsel. The
- 10 entire hearing concerned alleged violations of the non-existent provisional order. This
- 11 was the first time Mr. Haberman received the Arbitrators July 25, 2001 letter. [Dec.
- 12 Marc Haberman ¶30-31 & 38;
- 13 f. September 10th and 11th, 2001 further arbitration hearing conducted; [Dec. Marc
- 14 Haberman ¶35];
- 15 g. October 22, 2001 C-cubed respondents email to Sylmark request for payment of
- 16 outstanding invoices. [Dec. Steve Durham ¶9 & 10, Exhibit 13];
- 17 h. November 4, 2001 at about 12:23 p.m. Marc Haberman received a telephone call from
- 18 Arbitrator Rabbi Union. Rabbi Union told Mr. Haberman that the Beis Din is taking
- 19 the Sylmark funds owed C-cubed and threatened that if service is interrupted to
- 20 Sylmark it will effect the outcome of the award. [Dec. Marc Haberman ¶51-62,
- 21 Exhibit 7];
- 22 i. November 4, 2001 at about 12:39 p.m. Mr. Haberman telephoned his then counsel
- 23 Rabbi Fried. [Dec. Marc Haberman ¶63.];
- 24 j. November 4, 2001 at about 12:41 p.m. Mr. Haberman called Mr. Asher Low to report
- 25 the conversation and request funding to continue support of Sylmark. [Dec. M.
- 26 Haberman ¶54, Exhibit 7 and Dec. Asher Low];
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- k. November 4, 2001 Mr. Haberman called Aron Gold to report the conversation. [Dec. M. Haberman ¶65. Dec. Aron Gold];
- l. November 4, 2001 at 2:28 p.m. Mr. Haberman called Mr. Steve Durham to report the threatening call and to see if service to Sylmark could continue. [Dec. M. Haberman ¶67-70, Exhibit 7];
- m. November 4, 2001 at 2:52 p.m. Mr. Durham telephoned Arbitrator Rabbi Union and in the call Arbitrator Rabbi Union affirmed his statements to Mr. Haberman. ¶20-24, Exhibit 15];
- n. November 5, 2001 Mr. Durham forwarded a letter to Sylmark requesting that the money owed be paid to C-cubed and not the Beis Din. [Dec. Steve Durham ¶26 Exhibit 8];
- o. November, 2001 No other clients of C-cubed were contacted by the Arbitrators;
- p. November 6-9th, 2001 Service was cut to Sylmark. [Dec. Marc Haberman ¶75, Dec. 28, Exhibit 14]
- q. December 14, 2001 Arbitration Award includes six new plaintiffs/creditors, improperly orders a lien "on all income" and fails to set any grounds for the basis of the decision talking primarily about alleged violations of non-existent orders.

3. **ANALYSIS**

a. **Award Must Be Vacated Because Of Arbitrator Misconduct and Overreaching of Their Authority**

California *Code of Civil Procedure* section 1286.2 provides²:

- (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:
 - (1) The award was procured by corruption, fraud or other undue means.
 - (2) There was corruption in any of the arbitrators.

² California *Code of Civil Procedure* section 1285.2 provides: "A response to a petition under this chapter may request the court to dismiss the petition or to confirm or vacate the award."

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- (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified * * * but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. . .
- (b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to provisions of section 128.7.

C.C.P. §1286.2.

The Court in Betz v. Pankow (1st Dist. 1995) 31 Cal.App.4th 1503, 1508 ruled that “an award must be vacated if the court determines, inter alia, that the rights of a party were substantially prejudiced by the misconduct or bias of a neutral arbitrator.” (Code Civ. Proc. §1286.2, subs. (b) & (c).”

The Betz court went further to rule that:

the established test for making this determination when a party asserts prejudice because of an arbitrator’s conflict of interest is whether the record reveals facts which **might create an impression of possible bias**. The test is an objective one - **whether such an impression is created in the eyes of the hypothetical reasonable person**. As the cases demonstrate, the test is also fact specific. There is no bright line of demarcation for the existence of an impression of possible bias, and each case must be considered in light of its particular circumstances.

A frequent cause for an impression of possible bias is the existence of a present or past business relationship between the arbitrator and a party, its counsel or a witness. Such a relationship suggests a pecuniary interest on the part of the arbitrator or that the arbitrator will place unusual trust or confidence in the party with whom the relationship existed, thus giving the arbitrator reason to favor the party for reasons wholly unrelated to the merits of the arbitration.

Id at 1508-1509(emph. added & citations omitted).

In Ceriale v. Amco Ins. Co. (2nd Dist. 1996) 48 Cal.App.4th 500, 504 ruled:

the trial court may vacate an arbitration award pursuant to Code of Civil Procedure section 1286.2. In pertinent part, section 1286.2 states that ‘. . . the court shall vacate the award if the court determines . . . ¶(c) [t]he rights of the party were substantially

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prejudiced by misconduct of a neutral arbitrator.

California Rules of Court, rule 1606(a) provides that “[i]t shall be the duty of the arbitrator to determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1 of the Code of Civil Procedure . . .” In pertinent part, Code of Civil Procedure section 170.1, subdivision (a)(6) provides for disqualification of a judge when “a person aware of the facts might reasonably entertain doubt that the judge would be able to be impartial.”

Id. at 504.

In Ceriale the court vacated an arbitration award on the appearance of possible bias merely because the arbitrator in Ceriale was an attorney for a party in another non-binding arbitration where plaintiff’s counsel in the Ceriale case was the arbitrator. Id. at 506. The Ceriale court reasoned that the “decision is not a reflection on the integrity of the arbitrators involved here. We assume they maintain the highest ethical standards. Nonetheless, we must reverse the judgment because a reasonable person might have an impression of possible bias under the instant facts.” Id. at 506-507.

In the instant case, it is undisputed that:

1. Arbitrator Rabbi Gershon Bess is the son of Mark Bess the President of Sylmark and then largest client of respondents C-cubed [Exhibit 4, Dec. Marc Haberman ¶16 & 17];
2. this relationship was not disclosed by the Arbitrators. [Dec. Marc Haberman ¶16-21];
3. Sylmark owed C-cubed approximately \$30,000 in October/November of 2001 and that C-cubed requested payment on October 22, 2001 [Exhibit 13, Dec. Steve Durham ¶5-10];
4. Without authority the Arbitrators ordered Sylmark funds to be deposited with them in the December 14, 2001 Award [Exhibit 6, Transcript of August 2, 2001 hearing, Exhibit 10, Feb. 3, 2002 letter of Arbitrators];
5. The Arbitrators did not require other C-cubed clients with outstanding balances to deposit funds with them. [Dec. of Marc Haberman ¶76-77; Dec. Steve Durham ¶30-31; Dec. Asher Low ¶11;
6. No accounting had ever been provided regarding the Sylmark funds as would be required in any Court ordered receivership. It is unknown if the monies had been paid, how they been paid, when they were paid or to whom they were paid. [Dec. Marc Haberman ¶87, Dec. Steve

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Durham ¶29]

7. The Arbitration Award includes six plaintiffs/creditors that were never part of the arbitration agreement.[Exhibit 1 Arbitration Agreement & Exhibit 3, December 14, 2001 award]; and

8. The Arbitration Award provides no basis for findings of breach of fiduciary duty, but merely describes alleged violations of provisional remedies the Arbitrators had no authority to make. [Exhibit 3 and Exhibit 6].

Based upon these facts alone which cannot be disputed, a reasonable person would have to conclude an impression of possible bias and therefore the Award must be vacated and reheard with new arbitrators.

b. Arbitrator Rabbi Union's Threatening Telephone Call To Respondent Is Misconduct and Evidences Bias and Partiality of the Arbitrators

The telephone call from the Arbitrator was an inappropriate ex-parte communication which evidenced the bias and partiality of the Arbitrators against Respondents. The telephone call came after C-cubed's October 22, 2001 email requesting payment by Sylmark. Dec. Steve Durham ¶9 & 10 Exhibit 14. The phone records and the testimony of Marc Haberman, Steve Durham, Asher Low and Aron Gold evidence the threat made by the arbitrators.

Mr. Haberman's telephone records evidence an incoming call at 12:23 p.m. on November 4, 2001. The statement does not indicate incoming calls. Dec. Marc Haberman ¶52, Exhibit 7. Mr. Durham's telephone records indicate a telephone call to Rabbi Union at 2:52 p.m. on November 4, 2001 to the number 323-397-1018. Dec. Steve Durham ¶20 and Exhibit 15.

Ex-parte communications are inappropriate in an arbitration and under certain circumstances require vacation of an arbitration award. [A.M. Classic Construction, Inc. v. Tri-Build Development Co. 70 Cal.App.4th 1470, 1478.]

It is clear that the threats made by Rabbi Union implicated him in arbitrator misconduct for the benefit of one of the Rabbi's sons and evidences the biased state of mind of the arbitrators. The statements are supported by undisputed facts. Accordingly, the Arbitration Award must be vacated

1 for arbitrator misconduct.

2 **c. The Arbitrators Had No Authority To Grant Provisional Remedies**

3 Arbitrators ordinarily have no power to grant preliminary or provisional relief. See [Badgley
4 v. Van. Upp (1993) 20 Cal.App.4th 218, 221(ruling receivership and preliminary injunction
5 “ordinarily unavailable in arbitration.”); Outdoor Services, Inc. Pabagold, Inc. (1986) 185 Cal.App.3d
6 676, 685 (ruling “Attachment is relief unavailable through arbitration . . .”); and Marsch v. Williams
7 (1994) 23 Cal.App.4th 238, 246 (ruling Section 1281.8 does not authorize an arbitrator to appoint a
8 receiver.”]

9 The arbitrators own alleged interim order, in the instant action, acknowledged that the
10 Superior Court would have to order relief. Specifically the Arbitrators’ July 25, 2001 letter states:

11 The Beis Din authorizes the enforcement of these orders through the Superior Court
12 of Los Angeles, and explicitly authorizes filing for temporary protective orders and
13 appropriate restraining orders to uphold the terms contained herein, pending final
14 determinations of the arbitrators.

15 Exhibit 2.

16 On August 2, 2001 plaintiff Stefansky through counsel appeared before Honorable Dzintra
17 Janavs, in order to simply ‘rubber stamp’ the alleged interim order of the Arbitrators. Judge Janavs
18 denied the relief requested on the grounds that: 1. if the request was a confirmation hearing than
19 proper notice was “absolutely necessary” [Exhibit 6 p. 1 lns 22-28- p. 2 lns. 1-4]; 2. if the request was
20 to enjoin Mr. Haberman from competing then it was against the law [Exhibit 6 p. 2 lns. 19-27]; 3. if
21 the request was in the nature of a Writ of Attachment then plaintiff was in the wrong Court and failed
22 the wrong paper [Exhibit 6 p. 3 lns 1-4]; and 4. no irreparable harm was shown for any preliminary
23 injunction. [Exhibit 6 p. 3 lns 5-14]. Accordingly, the relief was denied. [Exhibit 6 p. ln. 19].

24 California *Code of Civil Procedure* section 1281.8(b) permits a party to an arbitration to seek
25 provisional relief from the court, but a proper showing must be made. Woolley v. Embassy Suites,
26 Inc. (1991) 227 Cal.App.3d 1520, 1527.

27 Marc Haberman was never informed of the ex-parte application or its results. [Dec. Marc
28 Haberman ¶43]. It is safely assumed, however, that the Arbitrators knew full well that the relief

1 sought from Judge Janavs was denied and that there was no authority for them to require turn over of
2 Sylmark's funds, Marc Haberman's personal assets or other the other restrictions they intended to
3 impose.

4 The whole matter of the Sylmark funds enuring to the financial benefit of one of the
5 Arbitrator's sons goes directly to the Arbitrators' lack of authority to require the turnover. The bias
6 and partiality of the Arbitrators is strewn throughout the award. The Arbitrators accuse respondents
7 of "a willful and flagrant violation of the law and the orders of this Beis Din." [Exhibit p.2 last
8 sentence]. The facts are however that there was no provisional order requiring respondents to do
9 anything. Accordingly, there was no violation of law and this was known to the arbitrators. On the
10 first paragraph of the last page of the Award the arbitrators also accuse respondents of violating
11 orders of law and the Beis Din regarding a comptroller/receiver.

12 The appointment of a receiver is "unique and cannot be extended to arbitrators in the absence
13 of legislative action." [Marsh v. Williams (4th Dist. 1994) 23 Cal.App.4th 238, 246]

14 The arbitrators had no authority to demand turnover of the Sylmark funds or the other
15 provisional requirements and it is evident from the award that the alleged violations of these non-
16 existent orders formed a large basis for their determinations.

17 The arbitrators overreaching of their authority is so intertwined with the Award and their
18 objective taint of bias and partiality that the Award must be vacated.

19 **d. Arbitrators Had No Authority To Include Six New Plaintiffs/Creditors or Put A**
20 **Lien On All Income Derived By Respondents**

21 An award on issues not submitted to the arbitrator "exceeds the arbitrator's powers" [Pacific
22 Crown Distributors v. Brotherhood of Teamsters & Auto Truck Drivers, Local 70 (1986) 183
23 Cal.App.3d 1138, 1143.]

24 The Arbitration Agreement sets forth the parties to the Arbitration. The Arbitration
25 Agreement states:

26 We, the undersigned, hereby agree to submit to binding arbitration the following
27 controversy: A comprehensive settlement of all claims and cross-claims between
28 Rocky Stefansky v. M. Haberman and Ccube Solutions & Ccube India.

1 Exhibit 1.

2 The Arbitration Award however includes six other plaintiffs including Rabbi Meir Silver,
3 Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Family Limited Partnership, Super
4 Reliable Management, and Rafi Katz. Exhibit 3.

5 It is clear that the arbitrators exceeded their authority by including alleged claims of six other
6 creditors. The only claims to be considered as set forth by the Arbitration Agreement is that of
7 Rocky Stefansky.

8 There is no way to determine what part of the award, if any, goes to Mr. Stefansky or the
9 other six plaintiffs. In addition, the inclusion of these plaintiffs evidences the bias and partiality of
10 these arbitrators in conformity with their threats made on November 4, 2001.

11 The award also exceeds the powers of these arbitrators by including at paragraph 15
12 award of:

13 "a lien on all income derived from the customers and accounts receivable of the
14 abovementioned businesses and their successors, assignees, and affiliates.

15 Exhibit 3 p. 3 ¶15.

16 The arbitrators have no authority to grant such a lien. They have failed to consider codified
17 exemptions for attachment orders and the enforcement of judgments is solely the province of the
18 Courts. [See Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conference Ctr. Bd (1996) 41
19 Cal.App.4th 1551, 1555 vacating an amendment to judgment to add judgment debtor as alter ego;
20 Jordan-Lyon Productions, Inc. v. Cineplex Odeon Corp. (1994) 29 Cal.App.4th 1459, 1467-1468.]

21 Since the arbitrators exceeded their authority by including new plaintiffs/creditors and
22 imposing a lien, the Award must be vacated, because it cannot be corrected without affecting the
23 merits of the decision.

24 **e. The Award Should Be Vacated and Reheard With New Arbitrators**

25 "Where the average person could well entertain doubt whether the [adjudicator] was
26 impartial, appellate courts are not required to speculate whether the bias was actual or merely
27 apparent, or whether the result would have dispassionately decided [citations], but should reverse the
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1 judgment and remand the matter to a different [adjudicator] for a new [hearing] on all issues.
2 [Citations]" [Roitz v. Coldwell Banker Residential Brokerage Co. (2nd Dist. 1998) 62 Cal.App.4th
3 716.]

4 The arbitrators misconduct and overreaching of their authority requires this Court to vacate
5 the award pursuant to California *Code of Civil Procedure* section 1286.2. A reasonably objective
6 person reviewing the facts would conclude that the award was procured by corruption of the
7 arbitrators which substantially prejudiced the respondents.

8 4. **IN THE ALTERNATIVE THE COURT SHOULD CORRECT THE AWARD**

9 California *Code of Civil Procedure* section 1286.8 provides that unless the court vacates the
10 award it shall correct the award if the arbitrators exceeded their powers but the award may be
11 corrected without affecting the merits of the decision upon the controversy submitted.

12 Although, it is unclear how the award could be corrected with the inclusion of six new
13 plaintiffs/creditors this Court should not confirm the award with these extra Plaintiffs/creditors
14 contained in the Award or the including of a lien in the order which is the sole domain of the court.

15 5. **CONCLUSION**

16 Based upon the forgoing, the Petition to Confirm Arbitration Award should be vacated.
17 There are sufficient facts, many of which are indisputable, that evidence that a reasonable person
18 would determine a possible if not likely bias and partiality of the arbitrators. This bias and partiality is
19 clearly seen within the arbitration award itself where new plaintiffs are included and it is unclear who
20 is owed what. The lengthy decision in the award regarding alleged violations of orders that did not
21 exist, and the failure to mention the Sylmark funds allegedly held by the Arbitrators evidences
22 substantial prejudice to Respondents.

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1 Accordingly, the Award should be vacated and set for rehearing in front of new arbitrators, or
2 in the alternative the award should be correct to exclude new plaintiffs/creditors and remove the order
3 for a lien.

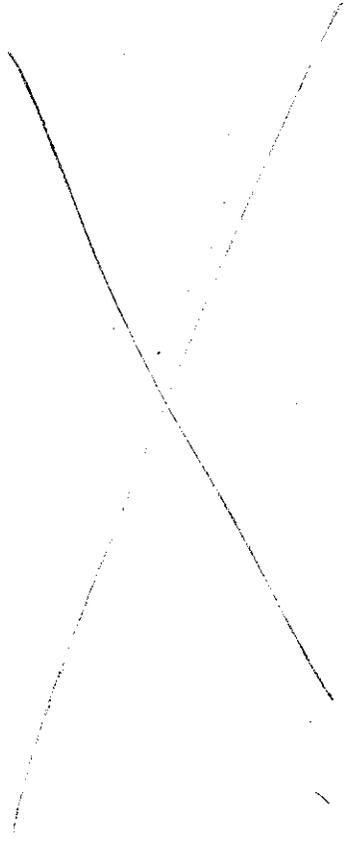
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TUCHMAN & ASSOCIATES



AVIV L. TUCHMAN
LOREN N. COHEN
Attorneys for Respondents and Defendants
MARC HABERMAN, C-CUBED
SOLUTIONS, Inc. a Delaware Corporation, C-
CUBED PRIVATE SOLUTIONS LIMITED, a
business entity formed in India



11/11/11 11:11:11

Dec. A. Tuchman

1 **DECLARATION OF AVIV L. TUCHMAN IN SUPPORT OF RESPONSE TO**
2 **PETITION TO CONFIRM AWARD OF ARBITRATION**

3 I, Aviv L. Tuchman declare as follows:

4 1. I am the attorney of record for the respondents MARC HABERMAN, C-CUBED
5 SOLUTIONS, Inc. a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a
6 business entity formed in India in this action.

7 2. I have personal knowledge of the facts and circumstances set forth herein and submit this
8 declaration in support of the Response to Petition To Confirm Award of Arbitration.

9 3. Unless otherwise stated herein, the statements contained in this declaration are true and
10 based on my personal knowledge, and if called upon to testify to these statements, I could and would
11 competently do so under oath.

12 4. We were retained by Mr. Haberman and C-cubed in or around February 4, 2002. I
13 telephoned Mr. Benjamin Kiss, counsel for petitioner and respondent and requested that the hearing
14 date now set for February 28, 2002 be continued. Mr. Kiss did not want to move the hearing date.
15 We agreed that this Response will properly be due, filed and served, by February 19, 2002. Attached
16 hereto as Exhibit 16 is a true and correct copy of our February 7, 2002 agreement.

17 I declare under the penalty of perjury under all the laws of the State of California that the
18 forgoing is true and correct.

19 This declaration is executed this 18th day of February 2002 in Los Angeles, California.

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22 AVIV L. TUCHMAN

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**DECLARATION OF MARC HABERMAN IN SUPPORT OF
OPPOSITION TO PETITION TO CONFIRM AWARD OF ARBITRATION and IN
SUPPORT OF PETITION TO VACATE SAID AWARD**

I, Marc Haberman declare as follows:

1. I am over the age of eighteen and reside in the County of Los Angeles. I am one of the defendants/respondents in regard to the subject petition. For all relevant periods I was the Chief Executive Officer of defendants/respondents C-Cubed Solutions, Inc. a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a business entity formed in India.(herein "C-CUBED Defendants")
2. I have personal knowledge of the facts and circumstances set forth herein and submit this declaration in support of the Opposition To Petition To Confirm Award of Arbitration and In Support of Petition to Vacate Said Award.
3. Unless otherwise stated herein, the statements contained in this declaration are true and based on my personal knowledge, and if called upon to testify to these statements, I could and would competently do so under oath.

AGREEMENT TO ARBITRATE

4. In or around June 21, 2001 a dispute arose between C-Cubed Defendants and Mr. Rocky Stefansky.
5. In order to resolve the dispute Mr. Stefansky and myself agreed to arbitration.
6. Mr. Stefansky and I are Orthodox Jews. Therefore we agreed to have the Rabbinical Court of California (herein "R.C.C." or "Beis Din") arbitrate the matter.
7. Prior to this period neither myself nor the C-cubed defendants have ever been involved in any litigation or arbitration and this was my first experience with the RCC.
8. I chose to arbitrate the matter in front of the RCC, because I thought that they would be neutral arbitrators, fairly apply Jewish law to the dispute and abide by the agreement To Submit To Binding Arbitration.

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- 9. The R.C.C. is the only standing Rabbinical Court in Los Angeles for the Orthodox community. It is known as the "R.C.C. Beis Din."
- 10. In early July, 2001 I contacted the R.C.C. regarding the procedures for arbitration for civil matters. I was referred to speak with Rabbi Union. This was the first time I ever spoke with Rabbi Union or had any dealings with him.
- 11. On July 24, 2001 an arbitration agreement was signed by myself, both individually and on behalf of the C-Cubed Defendants on the one hand, and Mr. Rocky Stefansky on the other. Attached hereto as Exhibit 1 is a true and correct copy of the Agreement To Submit To Binding Arbitration (herein "Arbitration Agreement") with the R.C.C.
- 12. The Arbitration Agreement set forth that Rocky Stefansky was the Plaintiff and that C-Cubed Solutions, C-Cubed India and myself were defendants. There were no other parties to the Arbitration Agreement.
- 13. The Arbitration Agreement provided that Rabbi Nachum Sauer, Rabbi Gershon Bess and Rabbi Avrohom Union (herein "Arbitrators") would be the arbitrators for the matter.
- 14. It should be noted that these three Rabbis are the only arbitrators for the R.C.C. that handle civil business dispute matters. Accordingly there is no selection process of arbitrators in the R.C.C. for these disputes.
- 15. Prior to entering into the Arbitration Agreement, I did not know anything of Rabbi Gershon Bess or Rabbi Avrohom Union (except for my preliminary discussions with Rabbi Union in early July 2001.) I did speak with Rabbi Nachum Sauer two times nearly nine months prior to the arbitration regarding Sabbath issues. Aside from this, I never spoke with or had any dealings with these Arbitrators.

THE ARBITRATORS NEVER PROVIDED WRITTEN DISCLOSURES OF THEIR CONFLICTS

- 16. At no time throughout the arbitration process did the arbitrators provide me, in writing or orally, facts that would reasonably call into question their neutrality or impartiality.

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17. During the Arbitration process the Arbitrators never disclosed to me that Rabbi Gershon Bess was the father of Mark Bess the President of Sylmark who was then a major client of the C-Cubed defendants. Attached hereto as Exhibit 4 is a true and correct copy of a print out from the Sylmark web site indicating that Mark Bess is the President. In the hearing on September 10th and 11th, Sylmark was raised several times in the Arbitration.

18. I did not find out about the relationship between Rabbi Gershon Bess and his son Mark Bess until November 2001. This is more fully set forth below.

19. Sylmark in the last half of August stopped paying their invoices and therefore owed the C-cubed defendants in excess of \$30,000.00.

20. Throughout 2001 the C-cubed defendants were a young start up Internet based company that was experiencing extreme cash flow and financial problems. The failure of Sylmark to pay the monies owed for the services rendered made it impossible for the C-cubed defendants to pay the costs associated with the services provided including the payment of workers.

21. I also have not received any disclosures, either written or oral, regarding their relationships with plaintiff Mr. Stefansky, any of the new persons incorporated into the Arbitration agreement or Mr. Stefansky's counsel, Rabbi Spiegol.

ARBITRATION PROCEEDING ON JULY 24, 2001

22. There were four arbitration hearings which occurred in the matter on July 24, 2001, August, 2001 and September 10th and 11th, 2001.

23. The July 24, 2001 hearing occurred immediately after Mr. Stefansky and myself signed the Arbitration Agreement.

24. At the time we entered into the Arbitration Agreement the claims that were being brought against myself and the C-cubed defendants were not fully set forth and I did not fully understand Mr. Stefansky's allegations.

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25. In my initial conversation with Rabbi Union in early July, 2001 he explained that I was entitled to know the allegations being brought against me and the C-cubed defendants. Since I did not have counsel, Rabbi Union said that we will have a hearing on July 24, 2001 so that plaintiff could present his claims. Rabbi Union assured me that at this time I would not have to substantively respond.

26. I came without counsel at the July 24, 2001 hearing. Mr. Stefansky appeared with counsel, Rabbi Spiegel.

27. At the July 24, 2001 hearing Mr. Stefansky's counsel requested that the Arbitrators restrain my assets and the assets of C-cubed. Rabbi Spiegel waived a document in the air and requested permission if he could file it with the court. I never received a copy of the document displayed by Rabbi Spiegel. I believe that the Arbitrators said that it was okay for Mr. Spiegel to file the document.

28. I was caught completely unprepared and off guard at this hearing. As stated earlier, Rabbi Union said that the July 24, 2001 hearing will be for me to learn about Plaintiff's allegations.

29. I then told the arbitrators that I will retain counsel and that the hearing must be continued in order for me to prepare.

THE ARBITRATORS KNOWINGLY SET A HEARING DATE WHEN MY COUNSEL WAS UNABLE TO ATTEND

30. The Arbitrators set a hearing date in the later half of August, 2001.

31. My retained counsel, Rabbi Fried, sent them a letter a week before the hearing was scheduled requesting that the hearing take place a week later. Due to my counsel's diabetic condition and difficulty in travel he was unable to attend on the scheduled date. I also had an attorney, Mr. Wisnicki from Wolf, Rifkin and Shapiro also contact the arbitrators to request a continuance. Mr. Wisnicki, however, does not represent parties in Beis Din arbitrations and was only asking for a continuance.

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- 32. The arbitrators insisted that the hearing take place in August, 2001 and again I had no representation.
- 33. There were two days scheduled in August. The first day solely concerned the Arbitrators presumed injunction and my alleged violation. Rabbi Union called witnesses personally and asked them to come in.
- 34. On the second day, my counsel Mr. Wisnicki called the arbitrators to inform them that I could no longer appear before them without representation.
- 35. The arbitrators then set the September 10th and 11th dates.
- 36. The Arbitration Agreement provides that "we understand that we have the right to be represented by attorneys or other advisors in the arbitration at any time but that any party may elect to proceed without an attorney and the parties have the right to argue for themselves before the arbitrators." Exhibit 1.
- 37. My counsel, Rabbi Fried requested a reasonable extension and it should have been provided.

THE ARBITRATORS' PRELIMINARY INJUNCTION WAS WITHOUT AUTHORITY

- 38. During the hearing in late August 2001, I received a letter dated July 25, 2001 from the R.C.C. entitled "Psak Din/Judgment." A true and correct copy of the July 25, 2001 letter is attached hereto as Exhibit 2. I never received this letter prior to this hearing.
- 39. The entire hearing in August concerned my alleged violations of the July 25, 2001 letter. The July 25, 2001 R.C.C. later in the last paragraph states:

The Beis Din authorizes the enforcement of these orders through the Superior Court of Los Angeles, and explicitly authorizes filing for temporary protective orders and appropriate restraining orders to uphold the terms contained herein, pending final determinations of the arbitrators.
- 40. On or about January 27, 2002 I was presented with a Complaint For: 1. Breach of Contract; 2. Declaratory Relief; 3. Breach of Fiduciary Duty; 4. Conversion; 5. Fraud; and 6. Injunctive Relieve. Attached hereto as Exhibit 5 is a true and correct copy of

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the complaint short captioned, C-Cubed Solutions, Inc. a Delaware Corp. et. al v. Marc Haberman LASC Case No. BC255351.

41. The copy of the complaint that I was served with indicates that the complaint was filed on August 2, 2001.

42. On February 8, 2002 it came to my attention that on August 2, 2001 Plaintiff Stefansky, represented by Mr. Benjamin Kiss, Esq., attempted to obtain a Temporary Restraining Order and Preliminary Injunction.

43. I never received any notice from anyone that Mr. Stefansky or his counsel were going to court on August 2, 2001 nor was I ever informed of its results.

44. I understand that the ex-parte application for preliminary injunction was denied by Hon. Dzintra Janavs Judge. Attached hereto as Exhibit 6 is a true and correct copy of the transcript of the August 2, 2001 ex-parte hearing.

45. At no time when I entered into the written "Agreement To Submit To Binding Arbitration" (Exhibit 1) was I told that the Arbitrators would have the authority to act in such a manner during the pendency of the arbitration. I never had the understanding that the Arbitrators would have authority to issue provisional remedies.

46. My understanding of the Arbitration Agreement was that the arbitrators would conduct an arbitration to make a "comprehensive settlement of all claims and cross claims." (Exhibit 1.)

47. In my review of the Arbitration Agreement I do not see that the arbitrators would have the authority to issue orders to restrain me or the C-Cubed Defendants from doing anything pending the arbitration.

48. I was never informed by the Arbitrators, Mr. Stefansky or his counsel that an ex-parte application had been denied by the Court.

49. After the August 2001 hearing I was then ordered by the R.C.C. to turn over approximately \$36,500.00 of my personal money to them pending the arbitration. I drafted the check and turned over the money to the R.C.C.. I requested that an

escrow be opened for these funds, but this was never done.

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2 50. The December 14, 2001 Award (Exhibit 3) never made mention of the \$36,500.00
3 which was held by the R.C.C. The R.C.C. only acknowledged these funds in their
4 February 3, 2002 letter.(Exhibit 10).

5 **FOLLOWING THE ARBITRATION, BUT BEFORE THE AWARD WAS ISSUED,**
6 **THE ARBITRATORS**
7 **ATTEMPTED TO COERCE FREE SERVICES FOR**
8 **ARBITRATOR RABBI GERSHON BESS'S SON**

- 9 51. On November 4, 2001 at about 12:23 p.m. I received a telephone call from Rabbi
10 Union. This was the first time any of the arbitrators contacted me directly since
11 September 2001. At this time I was represented by Rabbi Fried (and Norman Wisnicki
12 of Wolf, Rifkind and Shapiro). Since September 2001 correspondence always through
13 Rabbi Fried.
14 52. Rabbi Union's call is evidenced by my cellular phone bill for December 5, 2001.
15 Attached hereto as Exhibit 7 is a true and correct copy of the my phone bill indicating
16 the sequence of calls. The call is indicated by the "incoming" call at 12:23 p.m. on
17 November 4, 2001.
18 53. Rabbi Union stated that he was calling from Miami Florida.
19 54. Rabbi Union told me that the Beis Din are "aware that Sylmark [Mark Bess's
20 Company] owes C-Cubed approximately \$30,000.00." Rabbi Union stated that "they
21 knew this for awhile."
22 55. Rabbi Union told me that the Beis Din is "ordering that the monies owed by Sylmark
23 be paid to the Beis Din and not to C-cubed."
24 56. Rabbi Union stated that "this is merely a courtesy call, but that [he] is very concerned
25 that service [to Sylmark] not be interrupted." Rabbi Union wanted the monies owed
26 by Sylmark to go to the Beis Din, but did not want the C-cubed defendants to stop
27 servicing the Sylmark accounts.
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57. Rabbi Union threatened me that **"If service is interrupted then the Beis Din will hold you [me] personally responsible for the damage caused to Sylmark's business."**
58. Rabbi Union further threatened that **"I would lose the case and that there is a very fine line between civil and criminal conversion"**
59. Again Rabbi Union stated that **"any cessation in services to Sylmark will have a major impact on its business and that I and the company [C-cubed defendants] would be personally responsible for any damages caused."** Rabbi Union also stressed that **"if you [C-cubed] were to continue the service then we [Beis Din] will look upon the case more favorably."**
60. I was shocked and dismayed at the remarks made by Rabbi Union and I felt threaten because I was concerned about the award and did not understand his statements of "criminal conversion." It was clear from my conversation with Rabbi Union that the Beis Din wanted C-cubed to continue service to Sylmark, the business of Arbitrator Rabbi Gershon Bess's son (Mark Bess) without getting paid, and it was clear that the outcome of the award depended upon C-cubed's ability to comply with the demand.
61. I explained to Rabbi Union that "if the workers are not paid their wages than there is no way that C-Cubed could keep them working." I further explained that C-cubed is "struggling to keep afloat and that the money was necessary to pay for the costs incurred in the services provided to Sylmark."
62. Rabbi Union then replied **"that the choice is yours [mine], or else"** and then he hung up the phone.
63. At 12:39 p.m. I then telephoned my Rabbinic Counsel, Rabbi Fried, at 718-686-7908 to tell him what happened. Rabbi Fried was not in. This call is evidenced by Exhibit 7, telephone invoice. The call is indicated in the exhibit as a call to Brooklyn New York at 12:39 p.m. on November 4, 2001 to 718-686-7908.

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64. Following my call to counsel I then telephoned Mr. Asher Low at 12:41 p.m. at phone number (732)522-410. Mr. Low is a representative of a large investor in C-cubed. Mr. Low's company's name is United Systems Investments, LTD. This call is evidenced by Exhibit 7 and is indicated as the 12:41 p.m. call to New Brunswick, New Jersey phone number 732-522-4101.

65. I told him the statements of Rabbi Union and requested the necessary funds to comply with the Arbitrators demands. Mr. Low told me in no uncertain terms that neither he nor his company will advance the necessary monies to maintain service to Sylmark without their payment. See Declaration of Asher Low.

66. I then telephoned Aron Gold who is an advisor to the same company as Asher Low in order to see if he could change Mr. Low's mind on this issue. Mr. Gold also told me that United Systems will not be providing and more funds. See Declaration of Aron Gold.

67. I then telephoned Mr. Steve Durham at 714-865-5358 who is the Chief Operations Officer for the C-cubed defendants. This call is evidenced by Exhibit 7 and indicated as the 2:28 p.m call to Pomona California at 714-865-5358.

68. I told Mr. Durham of the threats made by Rabbi Union. I tried to discuss with him whether it was possible to keep the service going with Sylmark if they do not pay their invoices. Mr. Durham said that would be impossible and that he will call the Rabbi to explain the situation and hope to convince him to release the funds to the company so that the workers and other bills could be paid. See Declaration of Steve Durham.

69. At this time C-cubed was still a young company that was experiencing significant cash flow problems and losses. There was no money in the bank to maintain the costs of providing the ongoing salaries and other related expenses. The monies owed by Sylmark were to pay for the ongoing operations of the business. It was impossible for the C-cubed defendants to continue to provide service to Sylmark and incur the costs involved if it was not going to be paid. In fact, the previous month the company had a

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loss in excess of \$30,000.00.

70. I provided Mr. Durham, Rabbi Union's phone number which is 323-397-1018. I obtained the number from my caller identification on my cellphone.

71. I called Mr. Durham at about 2:55 p.m. on November 4, 2001. Mr. Durham informed me that he spoke with Rabbi Union and that he explained to the Rabbi that the workers need to be paid or else service cannot continue. Mr. Durham informed me that Rabbi Union told him that the monies will go to the Beis Din and that he confirmed that the Beis Din did not want the services to Sylmark stopped. Mr. Durham told me that at this point he became upset and Rabbi Union hung up on him. See Declaration of Steve Durham.

72. Following this conversation with Mr. Durham, I telephoned Rabbi Union at about 4:10 p.m. on the same day. I told Rabbi Union that I was working very hard to try and get the necessary funding or get the permission to have C-cubed continue to provide services to Sylmark. I told Rabbi Union that "Steve Durham is a person that can help and that [he] should have a conversation with him." The Rabbi stated to me that he had to hang up on Mr. Durham because "he does not listen to profanities."

73. On November 5, 2001 Mr. Durham tried to convince Mr. Bess from Sylmark not to pay the monies directly to the Beis Din. Mr. Durham reported to me that Mr. Bess stated that he felt compelled to pay the money to Beis Din and that he expressed that "he hoped the service continues."

74. I was carbon copied with a letter from Mr. Durham who wrote to Mr. Bess requesting that the money owed to C-cubed be provided to C-cubed and not the Beis Din. The letter explained that this money was necessary to pay for labor and other costs incurred in the services rendered to Sylmark. The letter further stated that the Arbitrators were without authority to issue such provisional relief. Attached hereto at Exhibit 8 is a true and correct copy of Mr. Durham's November 5, 2001 letter.

1 75. Payment from C-cubed regarding these outstanding invoices was never received by
2 any of the C-cubed defendants. Accordingly, on Friday, November 9, 2001 the C-
3 cubed defendants cut service to Sylmark. As of the making of this Declaration I do not
4 know if the Sylmark funds had ever been paid to anyone.

5 76. The C-cubed defendants had approximately four other clients during this November
6 2001 time period. The names of these companies were brought up during the
7 arbitration and made known to the Arbitrators. It was further brought up and made
8 known to the Arbitrators that there were outstanding balances owed from these
9 companies.

10 77. The Arbitrators never contacted these other companies. The only client of the C-
11 cubed defendants that the Arbitrators did contact was Rabbi Bess's son's company,
12 Sylmark.

13 **THE AWARD**

14 78. I received the Psak Din/Judgment on or about December 14, 2001 (herein Award).
15 Psak Din means judgment in Hebrew. Attached hereto as Exhibit 3 is a true and
16 correct copy of the December 14, 2001 award.

17 a. **Award Included Plaintiffs Never Made Part Of The Arbitration**

18 79. On the very first paragraph of the award the Arbitrators included new plaintiffs that
19 were never part of the Arbitration Agreement. The only plaintiff part of the arbitration
20 was Rocky Stefansky. Exhibit 1.

21 80. The award includes six other plaintiffs. These persons include: 1. Rabbi Meir Silver,
22 Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Family Limited
23 Partnership, Super Reliable Management and Rafi Katz.

24 81. At no time did I ever agree to arbitrate any disputes with these persons and entities. I
25 only agreed to arbitrate the disputes of Mr. Rocky Stefansky. At the initial July 24,
26 2001 hearing the claims set forth were only those of Mr. Rocky Stefansky.

27 82. The petition brought herein is only by Mr. Rocky Stefansky.
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83. It is impossible to know from the award what portion is that of Rocky Stefansky and that of the other persons named in the judgment.

b. The Award Never Made Mention Of The Sylmark Monies Allegedly Held By The Beis Din

84. Although the Award included as part of the Arbitrators determinations the events concerning the July 25, 2001 interim order, the Award fails to address the monies allegedly held by the Beis Din from Sylmark or myself.

85. In fact, the Award sets forth certain dollar amounts in the judgment and makes no allocation for the Sylmark funds.

86. This fact raises serious and significant questions about whether the Beis Din ever collected monies owed for outstanding invoices from Sylmark.

87. I have requested an accounting, but have never received an accounting from the Beis Din to clarify when the monies were paid, how much was paid, where were the funds were stored and when were the funds provided to Mr. Stefansky or any of the other new plaintiffs/creditors included in the judgment.

88. I do not believe that these monies were ever collected from Sylmark or if the funds were paid late which would have benefitted Sylmark's cash flow problems.

THE ARBITRATORS FAILED TO PROVIDE A COGENT EXPLANATION OF THEIR DECISION

89. I instructed new counsel, Mr. Baruch Cohen, Esq. to request that the Arbitrators clarify the Award. Attached hereto as Exhibit 9 is a true and correct copy of the carbon copy I received from Mr. Cohen, Esq. of his January 24, 2002 letter to the Arbitrators.

90. The letter requested explanation and resolution on the additional plaintiffs/creditors included in the judgment, explanation of the "joint asset" that was claimed to be converted, explanation of the amounts and remedy ordered, and explanation of the whereabouts of the Sylmark monies.

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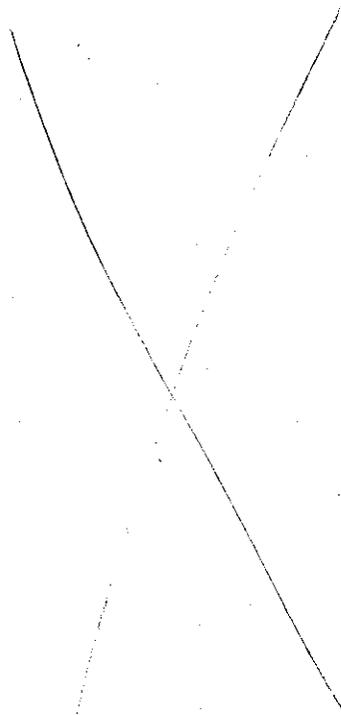
91. I received a responsive letter from the Beis Din on February 3, 2002. Attached hereto as Exhibit 10 is a true and correct copy of the Beis Din Response Letter.

92. It is clear from paragraph 5 of this letter that the Beis Din did not account for the monies allegedly held by them from Sylmark in the judgment. Prior to my request the Beis Din never mentioned these monies in the judgment and award. Again it is my sincere belief that these monies were either never paid or were paid substantially late. Sylmark was always having cash flow problems and any delay in payment for Sylmark would have been a benefit to them.

I declare under the penalty of perjury under all of the laws of the State of California that the foregoing is true and correct.

This declaration is ____ day of February, 2002 in Los Angeles County.

MARC HABERMAN



UNIVERSITY OF CALIFORNIA

Dec. Steve Durham

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**DECLARATION OF STEVE DURHAM IN SUPPORT OF
OPPOSITION TO PETITION TO CONFIRM AWARD OF ARBITRATION and IN
SUPPORT OF PETITION TO VACATE SAID AWARD**

I, Steve Durham declare as follows:

1. I am over the age of eighteen and reside in the County of Orange. I am the Chief Operations Officer of defendants/respondents C-Cubed Solutions, Inc. a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a business entity formed in India.(herein "C-CUBED Defendants").
2. I graduated Harvard Business School in 1975 with a Master in Business Administration. I have a Bachelors of Arts degree in Geology from Hofstra University obtained in 1970. I also have a Masters of Arts degree in Geography from University of South Carolina obtained in 1972.
3. I have worked for several large corporations in marketing, advertising and operational positions. Some of the company's I have worked for include: 1. General Mills, 2. J. Walter Thompson as account supervisor for the advertising firm; 3. McCann-Ericson as an account supervisor for the advertising firm; 4. Geneva Companies now part of CitiGroup as a senior vice president of marketing and member of the executive advisory committee; 5. Nostalgia Television Network now called Good T.V. as a Senior Vice President of Marketing; and 6. Westland Associates as a Chief Operations Officer. I was also a University instructor of geology, geography and geomorphology at Hofstra University and University of South Carolina.
4. I have personal knowledge of the facts and circumstances set forth herein and submit this declaration in support of the Opposition To Petition To Confirm Award of Arbitration and In Support of Petition to Vacate Said Award.
5. Unless otherwise stated herein, the statements contained in this declaration are true and based on my personal knowledge, and if called upon to testify to these statements, I could and would competently do so under oath.

SYLMARK OWES C-cubed In Excess of \$30,000.00

- 1
2 3. Sylmark is a company that was a significant client of the C-cubed defendants from
3 2000 and during 2001. C-cubed began its operations in or around September or
4 October of 2000 and Sylmark was its first customer.
- 5 4. Sylmark sells products such as the AB Slide and Phase 4 Orthotics shoe inserts
6 through television infomercials. C-cubed would handle their email customer relations.
7 Specifically, C-cubed would respond to customers who submitted inquiries and
8 complaints through their web-site.
- 9 5. The last invoice paid by C-cubed was an August 1-15, 2001 bill. Attached hereto as
10 Exhibit 11 is a true and correct copy of the August 1-15, 2001 bill.
- 11 6. Attached hereto as Exhibit 12 are true and correct copies of the six outstanding
12 invoices that Sylmark has not paid to C-cubed. These are summarized as follows:

	Invoice Date	Phase 4 Amount	AB Slide Amount
13			
14	a. August 16-31, 2001	\$6,575.87	\$605.05
15	b. Sept. 01-15, 2001	\$5,032.29	\$298.11
16	c. Sept. 15-30, 2001	\$5,523.26	\$180.94
17	d. Oct. 01-15, 2001	\$5,292.29	\$184.30
18	e. Oct. 15-31, 2001	\$5,366.83	\$154.67
19	f. Nov. 01-15, 2001	<u>\$2,342.27</u>	<u>\$61.89</u>
20	Totals	<u>\$30,132.81</u>	<u>\$1,484.96</u>

- 21 7. The November invoices were never submitted to Sylmark and represent the last work
22 performed by the C-cubed defendants to Sylmark.
- 23 8. On September 26, 2001 I forwarded the August 15-31 and September 1-15, 2001
24 invoices to Sylmark. Attached hereto as Exhibit 13 is a true and correct copy of the
25 email forwarding the invoices.
- 26 9. Concerned about the outstanding balances I drafted an email to Peter Babaian of
27 Sylmark. Peter Babaian is Sylmark's director of customer service who was my
28

1 primary interface with Sylmark. Attached hereto as Exhibit 14 is a true and correct
2 copy of the October 22, 2001 email I sent to Peter Babaian of Sylmark.

- 3 10. In the email I informed Mr. Babaian of the four outstanding invoices which were
4 overdue. I spoke with Alyssa Heisten from Sylmark who stated that she needed the
5 invoices signed and approved by Peter Babaian before she could process them for
6 payment.

7 **EVENTS OF NOVEMBER 4, 2001**

- 8 11. Since my October 22, 2001 email I did not hear from Sylmark regarding the
9 outstanding balances.
- 10 12. The outstanding balances posed serious cash flow and operation problems on C-
11 cubed. C-cubed was a start up Internet company that was working extremely hard to
12 become viable. The cash flow was tight and the outstanding Sylmark monies were
13 necessary to go to paying necessary operating costs including labor which were
14 incurred in generating the fees.
- 15 13. On November 4, 2001 at about 2:28 p.m. I received a telephone call from Mr. Marc
16 Haberman.
- 17 14. Mr. Haberman informed me that one of the arbitrators to the arbitration telephoned
18 him. Mr. Haberman stated that the arbitrators name was Rabbi Union. I was not
19 involved in the arbitration and had no contact with any of the arbitrators or counsel for
20 any party.
- 21 15. Mr. Haberman reported to me that Rabbi Union stated that the Arbitrators were
22 aware that Sylmark owed C-cubed money for services rendered.
- 23 16. Mr. Haberman explained to me that the Arbitrators were going to require Sylmark to
24 pay them (Beis Din) the monies owed so that it could be used for the judgment. Mr.
25 Haberman further stated that Rabbi Union threatened that the Arbitrators will "rule
26 against C-cubed" and hold Mr. Haberman "personally responsible" if C-cubed severed
27 its services to Sylmark.

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- 17. I was very upset at this turn of events. The money owed by Sylmark was necessary to pay the labor costs and other expenses incurred in the services to Sylmark. None of this money would have been taken as profit to the company. C-cubed during 2001 was having cash flow and operational difficulties. I personally had already taken a significant reduction in salary in an effort to make C-cubed a viable business.
- 18. It was impossible for C-cubed to continue service to Sylmark without being paid anything.
- 19. I then offered to call Rabbi Union myself to explain to him the situation.
- 20. On November 4, 2001 at 2:52 p.m. I telephoned Mr. Rabbi Union at 323-397-1018. This call is evidenced by my telephone statement. Attached hereto as Exhibit 15 is a true and correct copy of my telephone statement of November 13, 2001 which evidences the calls I made to Rabbi Union.
- 21. Rabbi Union answered the phone and I identified myself as the Chief Operations Officer of C-cubed. I had never spoken with Rabbi Union prior to this call. I informed him that I just got off the phone with Marc Haberman and that he explained to me that the Arbitrators want the monies owed by Sylmark and have directed C-cubed to continue service to Sylmark or "else C-cubed faced an adverse decision and that Marc would be held personally responsible."
- 22. Rabbi Union stated that is a "C-cubed matter and the parties involved will have to make those decisions and I am not going to talk to you."
- 23. I became very upset considering the devastating financial impact this would have on C-cubed. At this point I began to raise my voice and I told Rabbi Union that "I don't think it is possible that C-cubed can continue service if it does not get paid. That the workers have to get paid. That it is there money and nobody else's." At this point Rabbi Union hung up the phone.
- 24. I then tried two more calls but received Rabbi Union's voice mail. Exhibit 15 Numbers 43 and 44. I left a voice message both time. I said "Please call me back. I

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have unbiased information which no one has contacted me about. This is grossly unfair.”

- 25. Rabbi Union never returned my calls.
- 26. On November 5, 2001 I drafted a letter to Mark Bess requesting that he pay the invoice to C-cubed and not the Rabbinical Court. I informed Mr. Bess that C-cubed could not conceivably continue service if payment is not made. Attached hereto as Exhibit 8 is a true and correct copy of the November 5, 2001 letter I sent to Mr. Bess.
- 27. In addition to my November 5, 2001 letter I left several messages with Mr. Bess inviting him to lunch so that we can talk about this issue. Mr. Bess returned my calls shortly after and stated that “there was nothing he could do.”
- 28. On November 6, 2001 at 8:54 a.m. I sent an email to Peter Babaian noting that the chat icon link from the Sylmark web-site. The chat icon links C-cube’s chat software to the Sylmark web-site which enables Sylmark’s customers to engage in chats regarding their problems, concerns or questions.
- 29. I do not know if Sylmark ever paid these funds, how they were paid, when they were paid or to whom they were paid. I never received an accounting from anyone regarding this issue.
- 30. The C-cubed defendants had approximately five other clients during this November 2001 time period. Combined these companies owed significant outstanding balances to C-cubed. To my knowledge these companies were never contacted by the Arbitrators or anyone in regard to the Arbitration, to obtain monies these companies owed to C-cubed. I never received any communication from this companies regarding a demand from the Arbitrators.
- 31. The only client that I am aware of that the Arbitrators requested funds from was Sylmark.

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32. I have been informed that Mark Bess who is the President of Sylmark is also the son of one of the Arbitrators Mr. Rabbi Gershon Bess.

I declare under the penalty of perjury under all the laws of the State of California that the forgoing is true and correct.

This declaration is executed this ____ day of February 2002 in the County of Orange.

STEVE DURHAM

Feb-14-2002 05:20am

From-Tuchman & Associates

2133850595

T-476 P.006/006 F-153

HABERMAN

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32. I have been informed that Mark Bess who is the President of Sylmark is also the son of one of the Arbitrators Mr. Rabbi Gershon Bess.

I declare under the penalty of perjury under all the laws of the State of California that the forgoing is true and correct.

This declaration is executed this 14 day of February 2002 in the County of Orange.



STEVE DURHAM



SECRET

Dec. Asher Low

1
2 **DECLARATION OF ASHER LOW IN SUPPORT OF**
3 **OPPOSITION TO PETITION TO CONFIRM AWARD OF ARBITRATION and IN**
4 **SUPPORT OF PETITION TO VACATE SAID AWARD**

5 I, Asher Low declare as follows:

- 6 1. I am over the age of eighteen and reside in Lakewood, New Jersey. I am the financial
7 consultant for United Systems Investments, Ltd. United Systems Investments, Ltd.'s
8 United States operations invests in American businesses.
- 9 2. United Systems Investments, Ltd. had made a loan of \$273,000.00 to C-cubed
10 Solutions. Subsequently additional monies were loaned to C-cubed Solutions so as to
11 keep the company solvent.
- 12 3. I have personal knowledge of the facts and circumstances set forth herein and submit
13 this declaration in support of the Opposition To Petition To Confirm Award of
14 Arbitration and In Support of Petition to Vacate Said Award.
- 15 4. Unless otherwise stated herein, the statements contained in this declaration are true
16 and based on my personal knowledge, and if called upon to testify to these statements,
17 I could and would competently do so under oath.
- 18 5. On November 4, 2001, Marc Haberman telephoned me and reported to me that he just
19 received a call from Rabbi Union. Rabbi Union was one of the arbitrators in the Beis
20 Din Arbitration between Mr. Stefansky and C-cubed Solutions.
- 21 6. Mr. Haberman reported to me that Rabbi Union said that "the Beis Din is ordering
22 that the monies owed to Sylmark be paid to the Beis Din and not to the company [C-
23 cubed.]"
- 24 7. Mr. Haberman further reported to me that Rabbi Union said that "the Beis Din does
25 not want the company [C-cubed] to interrupt service to Sylmark." Sylmark was the
26 largest client of C-cubed during late 2000 and throughout 2001. Mr. Haberman told
27 me that Rabbi Union stated that "If service [to Sylmark] is stopped, then I [Marc]

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would lose the case and that they [Beis Din] were threatening me [Marc] with criminal charges.”

8. Marc Haberman asked if United Systems Investments, Ltd. would provide the necessary funding to keep the service open to Sylmark.

9. I conferred with the principals at United Systems Investments, Ltd in regard to Mr. Haberman’s request.

10. United Systems decided that it would absolutely not agree to fund any service to Sylmark unless the bills are paid to C-cubed solutions. I reported this to Mr. Haberman shortly after our telephone call.

11. There were several other clients of C-cubed during the later half of 2001 that owed outstanding balances to C-cubed.

I declare under the penalty of perjury under all the laws of the State of California that the forgoing is true and correct.

This declaration is executed this 15th day of February 2002 in the New York City, New York.


ASHER LOW

BEIS DIN
RABBINICAL COURT

ועד הרבנים דקליפארניא

AGREEMENT TO SUBMIT TO BINDING ARBITRATION

We, the undersigned, hereby agree to submit to binding arbitration the following controversy:

A comprehensive settlement of all claims and cross claims between Rocky Stefausky
V. M. Haberman and CCube Solutions & CCube India

The arbitration shall be conducted in the state of California under the auspices of the Beth Din of the Rabbinical Council of California, 617 S. Olive Street, Los Angeles, California. We further agree that the controversy be heard and determined by the following arbitrators:

Rabbi Nachum Sauer

Rabbi Gerschon Bess

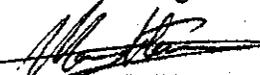
Rabbi Avraham Union

The parties recognize and acknowledge that by agreeing to binding arbitration, they waive and surrender their right to present their dispute to a court. The only recourse to court will be in the event that one of the parties hereto does not honor this agreement or the decisions made by the arbitrators under this agreement. In the event that a party does not honor the decisions of the arbitrators or seeks to vacate the award, we authorize the arbitrators to award additional legal fees and costs.

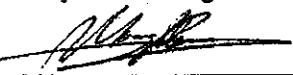
It is agreed that 50% of the arbitrators fee shall be paid by each party to the controversy; that the arbitrators may make their award based upon Din Torah, or compromise or any other manner they wish to reach a decision; that the arbitrators need not explain the basis of their decision verbally or in writing; that no transcript of the proceedings need be made unless the arbitrators decide to hire a stenographer or minute taker whose cost shall be paid equally by the parties; that the arbitrators need not be sworn to hear and decide the controversy and that no witness or party need be sworn unless the arbitrators so direct; that the arbitration may be conducted in whole or in part in a language other than English; that the arbitrators may follow any lawful procedure as they decide; that the parties waive the right to cross-examination except under the procedures set by the arbitrators; that the arbitrators may determine evidentiary issues; that the arbitrators have the power to issue subpoenas for witnesses and production of documents; that the arbitrators are authorized to make an award on attorneys fees and legal costs; that the award of the arbitrators shall be in writing and shall be signed by at least two arbitrators and need not be acknowledged or notarized in order to be confirmed or enforced; that the hearings may be held on Sundays or any legal holiday; that the arbitrators will be held blameless for their decision; that the parties agree that they will faithfully abide by and implement the award of the arbitrators and that judgment upon the award may be entered in the court pursuant to applicable California law; and that the award of the arbitrators may be enforced pursuant to the laws of the State of California, the states Delaware, Nevada, and

We understand that we have the right to be represented by attorneys or other advisors in the arbitration at any time but that any party may elect to proceed without an attorney and the parties have the right to argue for themselves before the arbitrators. The undersigned hereby waive formal notice of the time and place of the arbitration proceeding and consent that the arbitration be held and commence with the jurisdiction of the arbitrators to continue until a final award is made. The terms of this agreement are severable, and the illegality or violability of any terms of this agreement shall not affect remainder of this agreement, which shall remain valid and enforceable. If any party to this agreement fails to participate pursuant to the terms of this agreement, the arbitrators may decide the matter before them ex parte, in the absence of such party and may issue a valid and binding award without the necessity of obtaining a court order.

Dated: 7-24-2001

Signed: 

Moshe Haberman



CCUBE SOLUTIONS

Rabbinical Council of California

617 S. Olive St., Suite 515, Los Angeles, CA 90014 (213) 489-8080 Fax (213) 489-8077 Rocky Stefausky

INDEXES NEGATIVES

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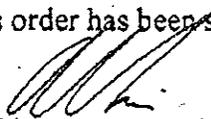
PSAK DIN/JUDGMENT

Pursuant to the arbitration agreement executed on July 24, 2001 between Rocky Stefansky, Marc Haberman, C-Cube Solutions, Inc., and C-Cube India aka C-Cube Solutions Private Limited, this arbitration court (hereafter, "Beis Din"), orders the following provisional remedies:

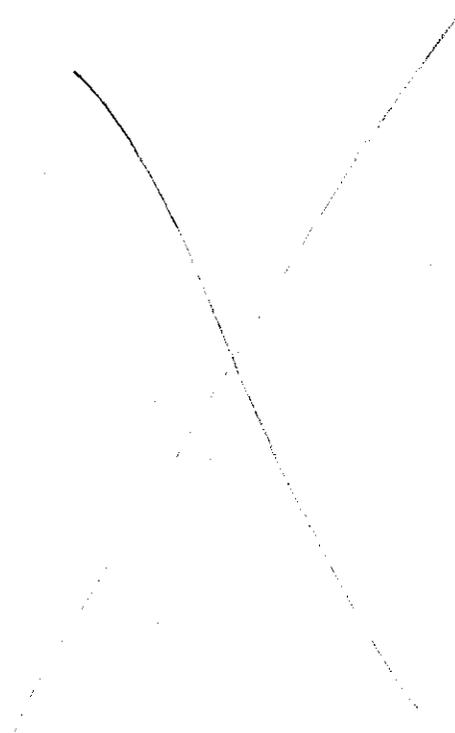
1. Pending further determination, Mr. Haberman is hereby restrained from transferring and or disposing any of his personal assets, real property, or otherwise.
2. Pending further determination, Mr. Haberman is hereby restrained from transferring, converting, utilizing, or hypothecating any of the assets of C-Cube Solutions, Inc, and C-Cube India aka C-Cube Solutions Private Limited.
3. Pending further determination, Mr. Haberman is hereby restrained from forming or operating any competing business.
4. Pending further determination, Mr. Haberman is hereby restrained from raising loans or equity capital in the above named firms without the knowledge and approval of Rocky Stefansky.

The Beis Din authorizes the enforcement of these orders through the Superior Court of Los Angeles, and explicitly authorizes filing for temporary protective orders and appropriate restraining orders to uphold the terms contained herein, pending the final determinations of the arbitrators.

This order has been signed in the name of the Beis Din on 5 Av, 5761 (July 25, 2001).


Rabbi Avrohom Union
Rabbinic Administrator

SECRET



PSAK DIN/JUDGMENT

In the matter of the dispute between Rocky Stefansky, on behalf of himself personally and on behalf of Rabbi Meir Silver, Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Family Limited Partnership, Super Reliable Management, and Rafi Katz, (hereafter collectively known as "Plaintiff") v. Mark Haberman, C-Cubed Solutions Inc ("CC-US"), and C-Cubed India a.k.a. C-Cubed Solutions Private Limited ("CC-I"), (hereafter, "Respondent"), concerning breach of contract, conversion of assets, and other claims related to their joint business dealings; after a full hearing of the arguments and presentation of evidence, our arbitration court (hereafter, "Beis Din") makes the following determinations:

A. Recitation of Facts-

1. In the early spring of 2000, the above mentioned parties entered into verbal and written agreements for a joint venture in providing computer services utilizing a labor force in India and marketed to firms in the United States. To this end, they formed C-Cubed Solutions, Inc., a Delaware corporation, C-Cubed Pvt. Ltd., an Indian corporation, and C-Cubed Holdings Inc., a Nevada corporation.
2. The Plaintiff was to provide venture capital in equity and debt, while the Respondent would serve as managing partner of the business. The parties agree that the Plaintiff and Respondent would jointly own the United States corporation on a 70% / 30% basis, with the Plaintiff receiving the larger share. The terms of ownership of the Indian corporation were disputed in the Beis Din hearing.
3. On June 21, 2001, the Respondent sent a letter to the Plaintiff terminating their business relationship by informing him that "due to breach of contract by C-Cubed Inc. ... Therefore you are hereby being notified that Mr. Marc Haberman and the rest of the staff at CC-US will no more be working for CC-US. They will be working directly for CC-I." Since that date, amidst numerous disputes between the parties, the business previously associated with C-Cubed Inc. has ceased to function under that name.

B. Claims

4. The Plaintiff claimed that the Respondent has improperly converted a joint asset; caused damages to the investors; brought about significant losses; and deliberately ruined the planned business strategy of making the company a publicly owned

Rabbinical Council of California

corporation. The Plaintiff seeks damages and redress for all of these causes of action.

The Plaintiff further claimed that the Respondent failed to return an additional \$25,000 that he received for investment in "Hamerock", a communications firm they started in India.

Finally, the Plaintiff requested reimbursement for legal costs and expenses.

- 5. The Respondent replied that it was the Plaintiff who breached their contract by failing to adequately capitalize the business, and that he was within his legal rights to cease working for C-Cubed Solutions Inc. ("CC-US") and begin the same operations under the aegis of C-Cubed Pvt. Ltd.

The Respondent further claimed that the Plaintiff owes him the amount of \$74,500. This sum represents unpaid wages, monies he personally invested in the Indian corporation, and other expenses he incurred in relation to the C-Cubed and Hamerock ventures.

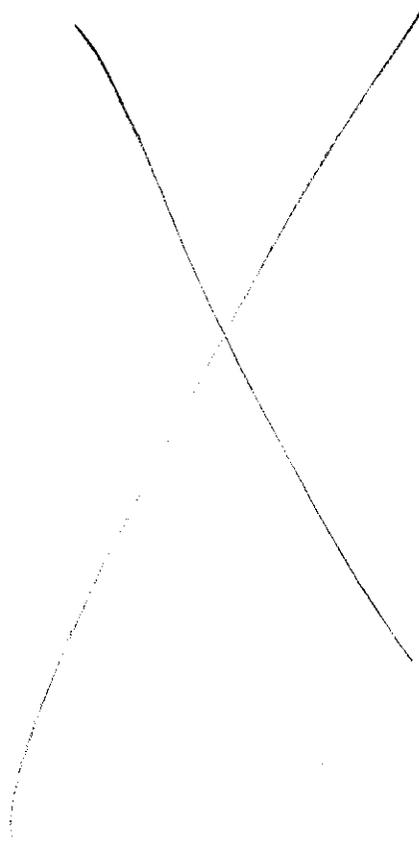
Regarding the \$25,000 he received for Hamerock, the Respondent maintains that the all of the funds were spent in support of the venture, which eventually failed.

C. Determinations

- 6. Based upon the evidence and the law, the Beis Din makes a determination of fact that C-Cubed Private Limited, an Indian corporation, is a wholly owned subsidiary of C-Cubed Solutions Inc., a U.S. corporation ("CC-US").
- 7. Based upon the evidence and the law, the Beis Din makes a determination of fact that the Respondent severely and irreparably breached his fiduciary duty.
- 8. Based upon the evidence and the law, the Beis Din makes a determination of fact that the Respondent engaged in specific actionable fraud by the solicitation of additional investment funds for C-Cubed Solutions Inc. after he had already decided to terminate his relationship with said company, and by fraudulent conveyances of assets.

On July 25, 2001, the Beis Din issued a written interim judgment recording the orders of the previous day's hearing with the parties. This judgment stated that pending further determination, the Respondent "is hereby restrained from transferring and or disposing any of his assets, real property, or otherwise". The following day, the Respondent transferred more than thirty six thousand dollars from his personal bank account, and deeded numerous interests in properties, to various associates. This was a willful and flagrant violation of the law and the orders of this Beis Din.

12/17/2001 12:27 2104030011



SECRET

10/10/2020 10:10:10 AM



**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)
MARC HABERMAN, aka MOSHE HABERMAN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)**

C-CUBED SOLUTIONS, INC., a Delaware Corporation,
C-CUBED PRIVATE SOLUTIONS LIMITED, a business Entity
formed in India, ROCKY STEFANSKY, an individual,

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
111 N. Hill Street
Los Angeles, CA

CASE NUMBER: *(Número del Caso)*

BC255351

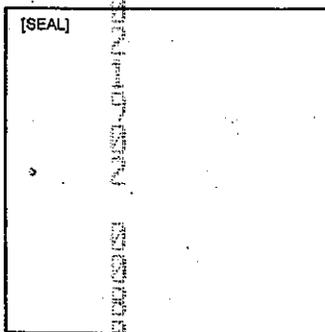
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
BENJAMIN KISS, SB# 121879 310 785-1111
Fischer, Bang & Kiss
1800 Avenue of the Stars, Suite 320
Los Angeles, CA 90067

JOHN A. CLARKE, CLERK

C.L. Coleman

DATE: **AUG 02 2001**
(Fecha)

by _____ by _____, Deputy
(Actuario) (Delegado)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
 other:

4. by personal delivery on *(date)*: **1/27/02**

ORIGINAL FILED

AUG 02 2001

**LOS ANGELES
SUPERIOR COURT**

1 Benjamin Kiss, SBN 121879
2 Fischer, Bang & Kiss
3 1800 Avenue of The Stars, Suite 320
4 Los Angeles, California 90067
5 (310) 785-1111

6
7
8 Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF LOS ANGELES
11

12 C-CUBED SOLUTIONS, INC., a)
13 Delaware Corporation, C-CUBED)
14 PRIVATE SOLUTIONS LIMITED, a)
15 business entity formed in India , ROCKY)
16 STEFANSKY, an individual,)

17 Plaintiffs,

18 vs.

19 MARC HABERMAN, aka MOSHE)
20 HABERMAN, an individual,)
21

CASE NO.: **BC255351**

COMPLAINT FOR:

- 22 **1. BREACH OF CONTRACT**
- 23 **2. DECLARATORY RELIEF**
- 24 **3. BREACH OF FIDUCIARY DUTY**
- 25 **4. CONVERSION**
- 26 **5. FRAUD**
- 27 **6. INJUNCTIVE RELIEVE**

28 Plaintiffs alleges as follows:

INTRODUCTORY ALLEGATION

1. Plaintiff C-CUBED SOLUTIONS INC. hereinafter "C-Cubed USA" is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business in the City of Los Angeles, Los Angeles County, California at 3550 Wilshire Blvd., Suite 900, Los Angeles, CA 90010.

2. C-Cubed USA's. business in essence provides live e-mail chat and support for companies with an Internet presence

1 3. Plaintiff C-CUBED PRIVATE SOLUTIONS LTD. hereinafter
2 "C-Cubed India" is and at all times herein mentioned is a corporation duly organized
3 and existing under the law of the Country of India and having its principal place of
4 business in the City of Los Angeles, Los Angeles County California at 3550 Wilshire
5 Blvd., Suite 900, Los Angeles, California 90010. C-Cubed India is a sister corporation
6 and wholly owned subsidiary of C-Cubed USA and it fulfills the contracts of C-Cubed
7 USA.

8 4. Plaintiff Rocky STEFANSKY hereinafter "STEFANSKY" is an
9 individual residing in the State of New Jersey.

10 5. Defendant Marc Haberman aka Moshe Haberman, hereinafter
11 "HABERMAN" is, and at all times herein mentioned was an individual residing in the
12 City of Los Angeles, County of Los Angeles, State of California. He is also a
13 shareholder in plaintiff C-Cubed USA and C-Cubed India and as such is a properly
14 named defendant within the jurisdiction of this court.

15 6. Plaintiffs are presently unaware of the true names and capacities of the
16 defendants sued herein as DOES 1 through 20, and based thereon, sues these
17 defendants under such fictitious names.

18 7. Plaintiffs are informed and believe, and based thereon allege, that each
19 of the defendants designated herein as a DOE is legally responsible in some manner for
20 the events and happenings herein referred to, and legally responsible to plaintiffs for
21 damages as herein alleged. Plaintiffs will amend this complaint to allege the true
22 names and capacities of the fictitiously named defendants when they have been
23 ascertained.

24 8. Plaintiffs are informed and believe, and based thereon allege, that at all
25 times mentioned herein, each of the defendants was the agent, servant, employee or
26 co-venturer of each of the remaining defendants, and at all times herein mentioned,
27 was acting within of the purpose and scope of said relationship.
28

1 9. At all times herein mentioned STEFANSKY was and is a 70% shareholder of
2 all of the share of stock of C-Cubed USA.

3 10. At all times herein mentioned, STEFANSKY was, and is, a 70%
4 shareholder of all of the shares of stock of C-Cubed India.

5 11. In or about April 1, 2000 an agreement was entered into between
6 plaintiff STEFANSKY and defendant Haberman wherein STEFANSKY would
7 provide financing for a start up company in exchange for a 70% ownership. The
8 concept was discussed and agreed to and a business plan was activated.

9 12. To accomplish the goals of the business plan , the company C-Cubed
10 USA was formed to solicit and contract with companies to would purchase services set
11 forth in the business plan, to provide live e-mail chat and customer support.

12 13. In accordance with the business plan C-Cubed India was formed and
13 began operating as the fulfillment end of C-Cubed USA.

14 14. The agreement between the parties also provided that Mr. Haberman
15 would be an employee of both companies and receive remuneration therefor. Said
16 contract further provided that in the event of termination for cause or by resignation
17 that Defendant HABERMAN would not compete with or form another company to
18 perform similar services. This was a key component of the agreement and the
19 inducement for STEFANSKY to inject venture capital into the businesses.

20 15. On or about June 21, 2001 defendant HABERMAN noticed his
21 resignation of C-Cubed USA and alleged he was the majority owner of C-Cubed India.
22 This letter of resignation further informed defendants STEFANSKY that the entire
23 operation of C-Cubed USA was now working for C-Cubed India at the same location
24 with the same personnel office and equipment. HABERMAN further alleged orally that
25 he controlled 70% of C-Cubed India.

26 16. Thereafter on July 24, 2001 the parties signed a binding arbitration to
27 have their disagreements arbitrated through binding arbitration with the Beis Din,
28

1 Rabbinical Court of the Rabbinical Counsel of California located at 617 S. Olive
2 Street, Suite 515, Los Angeles, CA 90014. By bringing this complaint plaintiffs herein
3 do not waive the agreement to arbitrate but merely ask this court to retain jurisdiction
4 for the provision of provisional remedies pursuant to Section 1281.8 of the California
5 Code of Civil Procedure, and for confirmation of any final award.

6 **FIRST CAUSE OF ACTION**

7 **(BREACH OF CONTRACT AGAINST HABERMAN AND DOES 1 through 20)**

8 17. Plaintiff repeat and incorporate by this reference the allegations set forth
9 in paragraphs 1- 22, inclusive as does set here in full.

10 18. On about June 21, 2001 defendants and each of them breached the April
11 2000 agreement failing to carry out the business plan as promised.

12 19. Defendants further breached set agreement by converting corporate
13 assets in alleging ownership of C-Cubed India and transferring said assets thereto.

14 20. As a result of said breach, plaintiffs and each of them have been injured
15 in the sum to be proven.

16 **SECOND CAUSE OF ACTION**

17 **(DECLARATORY RELIEF AGAINST MARC HABERMAN and DOES 1**
18 **through 20)**

19 21. Plaintiffs repeat and incorporate by this reference the allegations set
20 forth in paragraphs 1-26, inclusive as those set forth here in full.

21 22. There know exists a dispute a between plaintiffs and defendants which
22 requires a judicial resolution.

23 23. Plaintiffs contend that the defendants do not have the majority
24 ownership in C-Cubed India and as such are required to return all assets and corporate
25 property of C-Cubed USA.

26 24. A judicial determination is necessary to determine the rights of the
27 parties pursuant to the original business plan as represented to plaintiff STEFANSKY.
28

1 **THIRD CAUSE OF ACTION**

2 **(BREACH OF FIDUCIARY DUTY AGAINST MARC HABERMAN**

3 **and DOES 1 through 20)**

4 25. Plaintiffs repeat and incorporate by this reference the allegations
5 contained in paragraph 1-22, inclusive as those set forth here in full.

6 26. STEFANSKY trusted defendants and invested considerable sums of
7 money to accomplish the business plan and agreed that in accordance with the business
8 plans HABERMAN would be employed as the president and chief operating officer of
9 both C-Cubed USA and C-Cubed India.

10 27. Defendants breached their duties and obligations to plaintiffs herein and
11 have attempted to assume control of C-Cubed USA by merging set company into
12 C-Cubed India in which they wrongfully claimed majority ownership.

13 28. Plaintiffs are informed and believe, and based thereon allege, defendants
14 used their position of trust convert C-Cubed's assets to their own personal use. Their
15 were able to do so only because of their position of trust. This was done a complete
16 disregard of plaintiffs rights herein.

17 29. As a result the defendants breach of fiduciary duty as herein and alleged,
18 plaintiffs have been damaged in the amount not yet ascertained, but believed to be an
19 excess of \$2 million dollars to be shown at the time of trial.

20 30. In committing the acts alleged herein, defendants acted with oppression,
21 fraud, and malice, and plaintiffs are entitled to punitive and exemplary damages.

22 **FOURTH CAUSE OF ACTION**

23 **(CONVERSION AGAINST MARC HABERMAN AND DOES 1-20)**

24 31. Plaintiffs repeat and incorporate by this reference the allegations
25 contained in paragraphs 1 through 22 , inclusive as those set forth here in full.

26 32. At all times herein mentioned, plaintiffs were and still are entitled to
27 possession of all of the assets of C-Cubed USA and C-Cubed India including all
28

1 contracts with employees, furniture, fixtures, leases and equipment as well as the
2 accounts receivable of the corporations.

3 33. Plaintiffs are informed and believe, and based thereon allege, that
4 defendants took the assets and operations of C-Cubed USA and C-Cubed India
5 converted them to their own use by virtue of the letter transmitted on June 20, 2001.

6 34. Plaintiffs have demanded immediate return of the assets, books and
7 records and defendants have failed and refused and continue to fail and refuse to return
8 the corporate assets rightfully belonging to C-Cubed USA and C-Cubed India.

9 35. As approximate result of defendants conversion plaintiffs have suffered
10 damages in the amount not yet ascertained but believed to be in excess of \$2 million
11 dollars to be shown at the time of trial.

12 36. The aforementioned acts of the defendants were willful, wanton,
13 malicious and oppressive, and would undertaken in an attempt to defraud and thus
14 justifies the awarding of exemplary and punitive damages.

15
16 **FIFTH CAUSE OF ACTION**

17 **(FRAUD AGAINST MARC HABERMAN)**

18 37. Plaintiffs repeat and incorporate by this reference the allegations
19 contained in paragraphs 1-22, inclusive as those set for here in full.

20 38. On or about April 2000, defendant HABERMAN made the following
21 representations to plaintiff STEFANSKY: (1) in exchange of an investment of
22 necessary capital STEFANSKY would receive 70% ownership C-Cubed USA. (2) That
23 an exchange for the investment of necessary capital in C-Cubed India STEFANSKY
24 would receive 70% ownership of said company. (3) That defendant would undertake to
25 run the companies C-Cubed USA and C-Cubed India for the benefit of the
26 shareholders.

27 39. Representation made by defendant HABERMAN were in fact false and
28

1 the true facts were as follows: (1) Haberman did not intend C-Cubed USA to remain in
2 existence but was merely a ploy for him to obtain capital. (2) Defendant did not
3 provide 70% of ownership of C-Cubed India. (3) Defendant would not operate the
4 company so as to be for the benefit of the shareholders, but rather would operate said
5 company so as to convert the same to his own use.

6 40. When defendant HABERMAN made these representations, he knew
7 them to be false, and he made his misrepresentations with the intent to deceive and
8 defraud plaintiff STEFANSKY and to induce plaintiff STEFANSKY to act and rely on
9 these representations in the manner herein alleged and invest substantial monies in the
10 business plan and companies
11 C-Cubed USA and C-Cubed India.

12 41. Plaintiff STEFANSKY, at the time these representations were made by
13 defendant Haberman, and at all times defendant HABERMAN took the actions herein
14 and alleged was ignorant of the falsity of defendants representations and believe them
15 to be true. Relying upon these representations, plaintiff STEFANSKY was induced to
16 invest substantial monies in said companies.

17 42. As a approximate result of the fraudulent conduct of defendant herein
18 alleged, plaintiff STEFANSKY was induced to spend over a year of time and energy,
19 and the substantial investment of funding in an attempt to earn a profit from C-Cubed
20 USA and C-Cubed India and build the business, but instead was only to find out that
21 the entire business plan was a scheme to induce the investment of capital by others until
22 said company was successful whereupon defendant HABERMAN would convert the
23 same to his own use.

24 43. The acts of defendants was an intentional misrepresentation, deceit, and
25 misstatement of fact known to defendants, with the intention of the part of the
26 defendants and thereby depriving plaintiff STEFANSKY of his property and/or legal
27 rights otherwise causing injury, and was despicable conduct, subjecting plaintiff
28

1 STEFANSKY to cruel and unusual punishment and in conscious disregard of
2 STEFANSKY's rights so as justify an award of exemplary and punitive damages.

3
4 **SIXTH CAUSE OF ACTION**

5 **(INJUNCTIVE RELIEF AGAINST MARC HABERMAN AND DOES 1-20)**

6 44. Plaintiffs repeat and incorporate by this reference the allegations
7 contained in paragraphs 1-22, inclusive as those set forth herein full.

8 45. Plaintiffs are unable to ascertain the true nature and the extent of their
9 damages resulting from the acts and/or omissions of the defendants, and each of them
10 as herein alleged. It would be impossible for plaintiffs to determine the amount of
11 damages they have suffered, and continue to suffer, with respect to the economical
12 loose of plaintiffs business and business opportunity, if the defendants, and each of
13 them continue to interfere with same.

14 46. Unless the court issues temporary and permanent injunctions are issued
15 against defendants, each of them, defendants will continue to unfairly and improperly
16 occupy plaintiffs premises and posses all the furniture and equipment and contractual
17 assets of plaintiff, continue to unfairly and improperly convert them to their own use
18 and thereby cause damage to plaintiff with the loss of assets, business, customers,
19 employees and goodwill developed by plaintiff companies.

20
21 **WHEREFORE**, Plaintiffs pray judgment against defendants each of them as
22 follows:

- 23 1. On the first cause of action:
24 (A) for damages according to proof.
25 2. On the second cause of action:
26 (A) for a declaration of rights, as prayed for in the complaint.
27 3. On the third cause of action;
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(A) for general damages according to proof.

(B) for punitive and exemplary damages

4. On the fourth cause of action;

(A) for general damages according to proof.

(B) for punitive and exemplary damages

5. On the fifth cause of action;

(A) for general damages according to proof.

(B) for punitive and exemplary damages

6. On the sixth cause of action:

(A) a temporary restraining order restraining defendants from occupying the premises, from possessing the businesses of plaintiff, disposing of plaintiffs assets and interfering with plaintiffs business and business opportunities, from exercising power of ownership of C-Cubed and C-Cubed India.

7. On all causes of action:

(1) for cost suit herein;

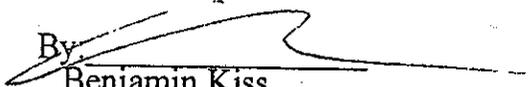
(2) for reasonable attorneys fees;

(3) and for such other and further relief as the court may deem just and

proper.

Dated: July 31, 2001

Fischer, Bang & Kiss

By: 
Benjamin Kiss
Attorneys for Plaintiff

**NOTICE OF CASE ASSIGNMENT
LOS ANGELES SUPERIOR COURT**

CASE NUMBER _____

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

	ASSIGNED JUDGE	DEPT	ROOM
X	Hon. Judith M. Ashmann	31	407
X	Hon. Helen I. Bendix	18	308
	Hon. Elihu M. Berle	42	416
	Hon. Paul Boland	36	410
	Hon. Soussan Bruguera	71	729
	Hon. Susan Bryant-Deason	52	510
	Hon. Alan Buckner	14	300
	Hon. Ronald E. Cappai	23	315
	Hon. James C. Chalfant	13	630
	Hon. Lawrence W. Crispo	58	516
	Hon. J. Stephen Czuleger	50	508
	Hon. Ralph W. Dau	57	517
	Hon. James R. Dunn	26	316
	Hon. Reginald A. Dunn	44	418
	Hon. Emilie Elias	3	224
	Hon. Irving Feffer	51	511
	Hon. Edward A. Ferns	69	621
	Hon. Madeleine Flier	37	413
	Hon. Kenneth R. Freeman	64	601
	Hon. Haley J. Fromholz	20	310
	Hon. Richard Fruin	15	307
	Hon. Ray L. Hart	10	631
	Hon. Robert L. Hess	24	314
	Hon. William Highberger	32	406
	Hon. Ernest Hiroshige	54	512

	ASSIGNED JUDGE	DEPT	ROOM
	Hon. Marilyn L. Hoffman	78	730
	Hon. David Horowitz	30	400
	Hon. Richard C. Hubbell	62	600
	Hon. Morris B. Jones	48	506
	Hon. Owen Lee Kwong	49	509
	Hon. Marvin Lager	38	412
	Hon. Malcolm H. Mackey	84	835
	Hon. Jon M. Mayeda	72	731
	Hon. David L. Minning	61	632
	Hon. Anthony J. Mohr*	309	CCW-1409
X	Hon. Aurelio Munoz	47	507
	Hon. Mary Ann Murphy	25	317
	Hon. Alban I. Niles	34	408
	Hon. Rodney E. Nelson	46	500
	Hon. Gregory O'Brien	21	313
	Hon. S. James Otero	68	617
	Hon. Victor H. Person	39	415
	Hon. Mel Recana	45	632
	Hon. Frances Rothschild	28	318
	Hon. Stanley M. Weisberg	55	515
	Hon. John P. Shook	53	513
	Hon. Ronald Sohigian	41	417
	Hon. Fumiko Wasserman	16	306
	Hon. Alexander Williams III	35	411
	Hon. David A. Workman	40	414
	Hon. George Wu	33	409
	OTHER		

(Revised 01/01/01)

_____, DEPUTY CLERK

SECRET

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. DZINTRA JANAVS, JUDGE

C-CUBED SOLUTIONS, INC.,

PLAINTIFF,

VS.

NO. BC 255 351

MARC HABERMAN, AKA MOSHE HABERMAN,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, AUGUST 2, 2001

APPEARANCES:

FOR THE PLAINTIFF:

LAW OFFICES OF FISCHER, BANG & KISS
BY: BENJAMIN KISS, ESQ.
1800 AVENUE OF THE STARS
SUITE 320
LOS ANGELES, CALIFORNIA 90067
(310) 785-1111

COPY

JEANIE CAMPBELL, CSR 11859, RPR
OFFICIAL REPORTER

1 CASE NUMBER: BC 255 351
2 CASE NAME: C-CUBED VS. HABERMAN
3 LOS ANGELES, CALIFORNIA FRIDAY, AUGUST 2, 2001
4 DEPARTMENT 85 HON. DZINTRA JANAVS, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED)
6 REPORTER: JEANIE CAMPBELL, CSR NO. 11859
7 TIME: A.M. SESSION
8
9

10 THE COURT: C-CUBED SOLUTIONS, INC., VERSUS HABERMAN.
11 MR. KISS: GOOD MORNING, YOUR HONOR. BENJAMIN KISS
12 ON BEHALF OF THE PLAINTIFF.

10:43 AM

13 THE COURT: WELL, I HAVE A WHOLE BUNCH OF PROBLEMS
14 WITH THIS APPLICATION, AND I HAVE A COUPLE OF QUESTIONS.

15 FIRST, IT'S NOT CLEAR TO ME FROM YOUR PAPERS.
16 YOU SEEM TO BE SAYING AT ONE POINT THAT THIS IS IN THE
17 NATURE OF A PETITION TO CONFIRM THE ARBITRATION AWARD, IF
18 YOU WILL, NAMELY, THAT THE RABBINICAL COURT DECREE OR
19 PRELIMINARY DECREE; THEN THE REST OF THE PAPERS AND THE
20 PROPOSED ORDER SEEMS BE A PLAIN AND SIMPLE TRO, PRELIMINARY
21 INJUNCTION APPLICATION.

10:43 AM

22 IT SEEMS TO ME THERE IS A BIG DIFFERENCE,
23 FIRST OF ALL, PROCEDURALLY, HOW ONE HANDLES IT. IF THIS IS
24 A PETITION TO CONFIRM THE ARBITRATION DECREE OR RABBINICAL
25 DECREE, THEN YOU NEED A PETITION TO CONFIRM, AND IT NEEDS
26 TO BE ON NOTICED MOTION. IT ABSOLUTELY HAS TO BE ON
27 NOTICED MOTION, SEEMS TO, ME BECAUSE THAT'S THE WAY THE
28 STATUTES READ. THAT'S THE WAY THE RULES PROVIDE.

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SO IF THAT'S WHAT YOU ARE SEEKING, THAT HAS TO BE DENIED ON THE BASIS THAT YOU HAVE FILED NEITHER A PETITION TO CONFIRM NOR A NOTICED MOTION, WHICH, AS I SAY, I THINK IS ABSOLUTELY NECESSARY.

10:44 AM
10:44 AM

NOW, ASSUMING THAT THAT'S NOT WHAT IT IS AND IT IS SIMPLY A PLAIN OLD, RUN-OF-THE-MILL APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION. THEN WE LOOK AT THE STANDARD BASES FOR GRANTING SUCH RELIEF; AND OF COURSE, NORMALLY, I START BY LOOKING AT THE COMPLAINT AND SEE WHAT IT IS ASKING FOR.

10:45 AM

BASICALLY, THIS IS A BREACH OF CONTRACT COMPLAINT, AND YOU DO HAVE THE DEC RELIEF, BREACH OF FIDUCIARY DUTY, CONVERSION, FRAUD, ET CETERA, ET CETERA. I'M NOT SURE -- I'M NOT SURE WHETHER OR NOT THIS IS EVEN A PROPER COMPLAINT, NOW THAT YOU HAVE BOTH SUBMITTED AND ARE ACTUALLY IN THE PROCESS OF BEING HEARD BY THE RABBINICAL COURT. SO THIS MAY BE TOTALLY A SUPERFLUOUS KIND OF A THING IN THE FIRST PLACE.

10:45 AM

SECONDLY, THE PROBLEMS THAT I HAVE HERE FROM THE LEGAL POINT OF VIEW FROM WHAT IS ALLEGED IN THE COMPLAINT AND ALSO THIS EMPLOYMENT AGREEMENT THAT'S ATTACHED AS EXHIBIT 1 TO THE MEMORANDUM OF POINTS AND AUTHORITIES, WE DO SEE WHERE THE DEFENDANT, MR. HABERMAN, WAS AN EMPLOYEE OF THIS COMPANY. CALIFORNIA LAW IS QUITE CLEAR AS A GENERAL RULE, BUSINESS AND PROFESSIONS CODE SECTION 16600 THAT YOU CAN'T, FOR ONE, ENJOIN THEM FROM COMPETING. THAT'S NOT A VALID TYPE OF AGREEMENT.

10:45 AM

10:46 AM

THE OTHER PROBLEMS THAT I SEE HERE ARE THAT

1 BASICALLY, WHAT YOU ARE SEEKING IS IN THE NATURE OF A
2 PREHEARING ATTACHMENT WHICH IS A LEGAL REMEDY. YOU CAN GO
3 DOWN THERE AND GET IT IF YOU CAN SHOW, SO WHY SHOULD I
4 GRANT YOU EQUITABLE RELIEF?

10:46 AM

5 AND ALSO, SINCE YOU DO HAVE THIS DECREE FROM
6 THE RABBINICAL COURT WHICH GRANTS YOU, IN ESSENCE, EXACTLY
7 WHAT YOU ARE ASKING THIS COURT TO GRANT, I DON'T SEE ANY
8 IRREPARABLE HARM OR THREAT THAT HAS BEEN SHOWN BECAUSE
9 THERE IS NO INDICATION BEFORE ME WHATSOEVER THAT I CAN
10 SEE -- AND I READ THESE THINGS QUICKLY, GRANTED, BECAUSE I
11 HAD FOUR OF THEM, AND THERE ARE PROBABLY TEN INCHES OR MORE
12 OF PAPER -- I HAVE LOOKED THROUGH THIS QUITE CAREFULLY, AND
13 I DON'T SEE ANY INDICATION WHERE MR. HABERMAN HAS SHOWN ANY
14 PROCLIVITIES TO NOT COMPLY WITH THIS RABBINICAL ORDER.

10:46 AM

10:46 AM

15 SO FOR ALL OF THOSE REASONS, THE BASES
16 FACTUALLY AND LEGALLY, I DON'T THINK YOU HAVE SHOWN ANY
17 ENTITLEMENT TO THE RELIEF YOU ARE SEEKING. THIS COURT HAS
18 TENTATIVELY COME TO THE CONCLUSION TO DENY THIS RELIEF.

10:47 AM

19 MR. KISS: MAY I RESPOND?

20 THE COURT: YES.

10:47 AM

21 MR. KISS: BASICALLY, YOUR HONOR, THE WAY THE
22 PLEADINGS ARE PHRASED OR, IN THE ALTERNATIVE, BECAUSE WE'RE
23 CAUGHT IN BETWEEN TWO DIFFERENT PROCEDURAL REMEDIES, THE
24 PROCEDURAL REMEDY FOR PROVISIONAL REMEDIES IS QUITE CLEAR.
25 I MUST FILE A COMPLAINT EVEN IF IT IS SUBMITTED TO AN
26 ARBITRATION PROCEEDING. THE COMPLAINT SPECIFICALLY SAYS
27 SO, AND IT SAYS WE'RE FILING THIS COMPLAINT FOR THE PURPOSE
28 OF BEING ABLE TO GIVE THE COURT JURISDICTION TO FILE --

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GRANT PROVISIONAL REMEDIES.

THAT IS THE BASIS.

THE COURT: NO, BUT YOU SEE, YOU HAVE YOUR OTHER ADEQUATE LEGAL REMEDY, AND YOU ALREADY HAVE GOTTEN IT.

MR. KISS: YOUR HONOR, IF I MAY CONTINUE? THE STATUTE SPECIFICALLY PROVIDES THAT IN AN ARBITRATION PROCEEDING THAT THE COURT HAS JURISDICTION TO GRANT A PROVISIONAL REMEDY IF WE FILE A COMPLAINT. AND WE ALLEGE IN THE COMPLAINT THAT THE MATTER HAS BEEN SUBMITTED TO ARBITRATION WHETHER WE WAIVE THAT RIGHT OR NOT WAIVE THAT RIGHT. AND IT IS STATED IN THE APPLICATION WHETHER OR NOT WE ARE WAIVING OUR RIGHT TO ARBITRATION.

THE SECOND ISSUE IS THAT THE PETITION IS A PROPER FORMAT IF, IN FACT, THE RABBINICAL COURT SAYS THIS IS OUR JUDGMENT. BUT WHAT THEY PROVIDED WAS A PROVISIONAL REMEDY, AND I DON'T KNOW THAT THE CODE AUTHORIZES ME TO PETITION AN AWARD THAT IS NOT AN AWARD OF THE ARBITRATOR. IT IS AN INTERIM AWARD. IT IS NOT SOMETHING THAT IS THE FINAL AWARD OF THE ARBITRATOR.

SO THEREFORE, I'M CAUGHT BETWEEN THESE TWO REMEDIES. I CAN'T FILE A PETITION THE WAY I READ THE LAW, AND I MUST FILE A COMPLAINT IN ORDER TO GET THE PROVISIONAL REMEDY.

THE COURT: BUT YOU ALREADY HAVE THE PROVISIONAL REMEDY FROM THE RABBINICAL COURT, AND THERE IS ABSOLUTELY NO SHOWING THAT HE WOULD NOT COMPLY WITH THAT.

MR. KISS: THERE IS NOTHING THAT THE RABBINICAL COURT DOES THAT IS GOING TO IN THE CIVIL FORUM PROVIDE THE RELIEF

10:48 AM

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10:49 AM

10:49 AM

1 THAT WE WANT. THE RABBINICAL COURT THEMSELVES SAID THAT.
2 GO TO SUPERIOR COURT AND GET AN ORDER SO IT'S SOMETHING
3 THAT YOU'RE GOING TO BE ABLE TO ENFORCE.

10:49 AM

4 I CAN'T GO TO SOMEONE AFTER A FRAUDULENT
5 TRANSFER --

10:49 AM

6 THE COURT: I DON'T FIND THE EVIDENCE HERE SUFFICIENT
7 TO ESTABLISH IRREPARABLE HARM OR RIGHT TO THAT KIND OF
8 RELIEF.

9 THE RABBINICAL COURT PERHAPS CAN GIVE SOME
10 RELIEF, BUT THIS COURT CANNOT. NORMALLY, ON JUST BREACH OF
11 CONTRACT, MONETARY DAMAGES IS ADEQUATE IN THE FIRST PLACE;
12 SECONDLY, AS I SAY, IN THIS CASE, I QUESTION WHETHER OR NOT
13 LEGALLY YOU CAN ENFORCE A NON-COMPETE AGREEMENT IN THE
14 FIRST PLACE.

10:49 AM

15 I HAVE A PROBLEM THAT THERE'S A LEGAL REMEDY
16 OF PREJUDGMENT ATTACHMENT WHICH HAS NOT BEEN EXHAUSTED
17 HERE. SO ALL OF THESE REASONS ARE REASONS WHY I DO NOT
18 FIND THIS COURT OUGHT TO BE GRANTING ANY OF THIS RELIEF
19 THAT YOU'RE SEEKING.

10:50 AM

20 MR. KISS: IF I COULD RESPOND BRIEFLY ONE MORE TIME?
21 I AGREE WITH THE COURT ABOUT THE CONCEPT OF THE EMPLOYMENT
22 AGREEMENT. I AGREE WITH THE COURT THAT, IN ESSENCE, WE ARE
23 SEEKING A PREJUDGMENT WRIT -- THAT'S ALL FINE AND DANDY --
24 BY US COMING INTO THE COURTHOUSE TO DETERMINE THE
25 UNDERLYING CAUSES OF ACTION AND THE UNDERLYING LAW.

10:50 AM

26 BUT THAT WAS DONE BY THE RABBINICAL COURT. SO
27 IF THE RABBINICAL COURT MAKES THIS RULING, AND THAT IS THE
28 FORM OF LAW THAT THE PARTIES CHOSE TO ABIDE BY, THEN THEIR

10:50 AM

1 DECISION BECOMES THE DECISION THAT THIS COURT HAS THE POWER
2 TO CONFIRM.

10:50 AM

3 THE COURT: NOT IF YOU ARE SEEKING FOR ME TO EXERCISE
4 MY DISCRETION IN GRANTING THE RELIEF THAT I HAVE TO GRANT
5 UNDER THE LAW THAT APPLIES TO THAT PARTICULAR RELIEF.

10:51 AM

6 MR. KISS: I'M NOT SEEKING THAT.

7 THE COURT: YOU'RE SEEKING A TEMPORARY RESTRAINING
8 ORDER AND AN OSC RE PRELIMINARY INJUNCTION, WHICH I COULD
9 NOT GRANT BASED UPON YOUR COMPLAINT AND THE OTHER PAPERS
10 FOR THE REASONS I HAVE INDICATED.

10:51 AM

11 MR. KISS: BUT I'M ASKING THE COURT TO GRANT IT BASED
12 UPON THE AWARD OF THE RABBINICAL COURT.

13 THE COURT: WELL, I DON'T KNOW OF ANYTHING THAT GIVES
14 ME THE POWER TO DO THAT, AND I'M NOT GOING TO DO THAT,
15 PARTICULARLY WHERE IT IS INCONSISTENT WITH WHAT THE LAW
16 WOULD BE IF I WERE DOING THIS MYSELF.

10:51 AM

17 AND EVEN ASSUMING I COULD DO IT, I FIND THAT
18 THERE'S NO EVIDENCE HERE THAT MR. HABERMAN WOULD NOT COMPLY
19 WITH THIS RABBINICAL INTERLOCUTORY ORDER. NONE WHATSOEVER.
20 WHY SHOULD I BE INTERFERING AND GRANTING THIS RELIEF IF
21 THERE IS NOT EVEN THE SLIGHTEST SHOWING OF THAT AT ALL?

22 MR. KISS: BECAUSE THE COURT ITSELF, THE RABBINICAL
23 COURT ITSELF, FELT THAT BY ISSUING IN THEIR JUDGMENT THAT
24 THE PLAINTIFF SHOULD COME INTO SUPERIOR COURT TO GET THE
25 TEMPORARY RESTRAINING ORDER.

10:52 AM

26 THE COURT: THE COURT IS GOING TO DENY THE
27 APPLICATION FOR THE REASONS I HAVE INDICATED.

28 I DO NOT BELIEVE THAT A SHOWING HAS BEEN MADE

1 AND THAT THIS COURT SHOULD GRANT THIS ON THE APPLICATION
2 THAT'S BEEN PRESENTED.

10:52 AM

3 MR. KISS: MAY I INQUIRE JUST FOR THE RECORD THAT IT
4 IS THIS COURT'S POSITION THAT A PETITION TO HAVE THE
5 CONFIRMATION OF THE ARBITRATION AWARD IS PROPER WHEN IT IS
6 ONLY A PROVISIONAL REMEDY?

10:52 AM

7 THE COURT: I'M NOT GOING TO GIVE YOU ADVICE ON THIS.
8 YOU ARE A LAWYER. YOU ARE SUPPOSED TO FIGURE THIS OUT. I
9 DON'T KNOW. I AM NOT GOING TO -- ASSUMING YOU WERE TO DO
10 THAT, I SUPPOSE IT WILL BE ASSIGNED TO SOMEBODY, AND THAT
11 JUDGE WILL DEAL WITH IT IN THE NORMAL COURSE OF BUSINESS.

10:52 AM

12 BUT YOU SEE, IN THAT CASE, YOU WOULD HAVE TO
13 HAVE AT LEAST A NOTICED MOTION. IT WOULD HAVE TO BE SERVED
14 THE WAY A COMPLAINT AND SUMMONS IS SERVED, AND I HAVEN'T
15 DONE RESEARCH ON THIS. YOU ARE THE LAWYER. I'M NOT GOING
16 TO GIVE YOU ADVICE. ALL I'M SAYING IS THAT BASED UPON
17 WHAT'S BEFORE ME, I DON'T THINK THAT I HAVE THE PROPER
18 LEGAL AND FACTUAL BASIS FOR GRANTING THE RELIEF YOU'RE
19 SEEKING. SO IT'S DENIED.

10:53 AM

20 MR. KISS: JUST ONE MORE ISSUE, YOUR HONOR. I WASN'T
21 ASKING THE COURT FOR LEGAL ADVICE. AT THE OUTSET WHEN THE
22 COURT WAS TALKING ABOUT THAT A PETITION WOULD BE PROPER, I
23 JUST WANTED TO KNOW WHETHER THE COURT BASED ITS RULING ON
24 THAT AS WELL.

10:53 AM

25 THE COURT: IF YOU ARE ASKING ME TO TREAT THIS AS A
26 PETITION, I AM NOT GOING TO DO IT BECAUSE THAT'S NOT WHAT
27 IT IS.

10:53 AM

28 MR. KISS: THANK YOU, YOUR HONOR.

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THE COURT: AND IT SHOULD HAVE BEEN ON NOTICE IN THAT
CASE.

(THE PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER WERE CONCLUDED.)

1
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. DZINTRA JANAVS, JUDGE

C-CUBED SOLUTIONS, INC.,
PLAINTIFF,
VS.
MARC HABERMAN, AKA MOSHE HABERMAN,
DEFENDANTS.

NO. BC 255 351

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS

I, JEANIE CAMPBELL, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS
ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1
THROUGH 8, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE MATTER OF THE
ABOVE-ENTITLED CAUSE ON FRIDAY, AUGUST 2, 2001.

DATED THIS 13TH DAY OF FEBRUARY, 2002.

COPY

JEANIE CAMPBELL CSR NO. 11859, RPR
OFFICIAL REPORTER

View Bill for MARC HABERMAN

Select MIN

Bottom of Form

Balance **Summary** **Payment Details** **Invoice**

Wireless Number: 310-779-1079

Date of Invoice: 12/05/01

View details below. To view information for another month, please return to the [balance page](#) and select another month from the drop down box.

AnyWho

Anywho Reverse Number Lookup

Select any phone number on your bill to find out who it is.

Home Airtime and Long Distance Charges

Ref	Date	Time	Number Called	Calls To	Calls From	Minutes	Air Distance	Long
0001	11/04	11:39A		INCOMING	LX	1		
0002	11/04	12:09P	<u>323-939-0825</u>	LOSANGELES CA	LX	1		
0003	11/04	12:23P		INCOMING	LX	13		
0004	11/04	12:39P	<u>718-686-7908</u>	BROOKLYN NY	LX	2		
0005	11/04	12:41P	<u>732-522-4101</u>	NEWBRNSWCK NJ	LX	16		
0006	11/04	2:12P		INCOMING	LX	11		
0007	11/04	2:28P	<u>714-865-5358</u>	POMONA CA	LX	1		
0008	11/04	2:43P		INCOMING	LX	10		
0009	11/04	2:53P	<u>714-865-5358</u>	POMONA CA	LX	1		
0010	11/04	2:55P	<u>714-865-5358</u>	POMONA CA	LX	3		
0011	11/04	4:10P	<u>323-397-1018</u>	MOBILE	LX	2		
0012	11/04	6:12P		INCOMING	LX	17		
0013	11/04	6:50P		INCOMING	LX	1		
0014	11/05	9:50A	<u>714-865-5358</u>	POMONA CA	LX	2		
0015	11/05	9:58A		INCOMING	LX	1		
0016	11/05	9:59A	<u>213-369-1097</u>	LOSANGELES CA	LX	1		
0017	11/05	10:11A		INCOMING	LX	11		
0018	11/05	10:41A	<u>MSG</u>	MORII F	LX	2		

11/05/01 10:41:11 AM

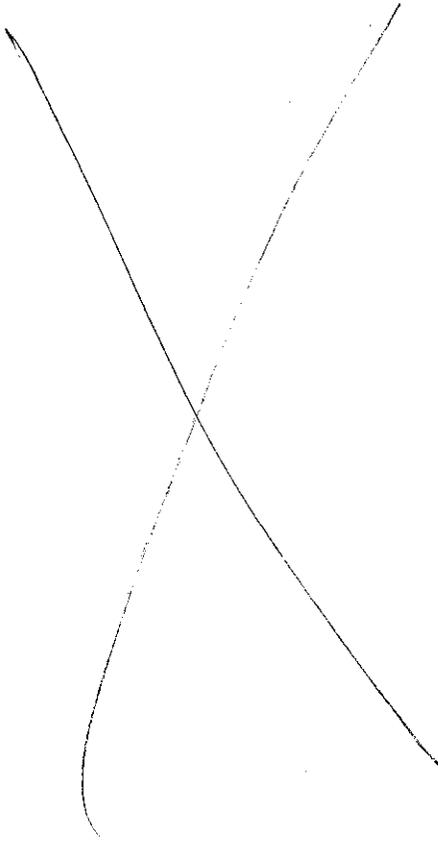
RETRIEVED

0019	11/05	11:06A	INCOMING	LX	2
0020	11/05	11:14A	INCOMING	LX	1
0021	11/05	11:37A	INCOMING	LX	4
0022	11/05	11:40A W	INCOMING	LX	31
0023	11/05	12:06P W	INCOMING	LX	1

SECRET

X

40200000 10/20/2000



Law Office of
Baruch C. Cohen, Esq.
A Professional Law Corporation
4929 Wilshire Boulevard, Suite 940 Telephone: (323) 937-4501
Los Angeles, California 90010-3823 Facsimile: (323) 937-4503

January 21, 2002

Via Facsimile Transmission: 213/489-8077

Rabbi Gershon Bess
Rabbi Nachum
Rabbi Avrohom Union
Rabbinical Council of California
617 South Olive Street, Suite 515
Los Angeles, California 90014

Re: Rocky Stefansky vs. Mark Haberman

Dear Rabbi Bess, Rabbi Sauer & Rabbi Union:

Please be advised that I have been recently retained by Mr. Mark ("Moshe") Haberman to present a motion for clarification of the R.C.C. Bais Din's Psak Din Judgment of December 14, 2001. Please direct any and all correspondence to my office.

1. Introduction

The R.C.C. Bais Din's Psak Din Judgment of December 14, 2001 ordering Moshe to pay \$600,891.75 completely devastated him. Notwithstanding his shock and profound disappointment with the outcome, Moshe is now attempting to make logic out of it and figure out a way to satisfy the Psak Din, in light of his dire financial situation.

In analyzing and scrutinizing the text of the Psak Din, Moshe realized that several ambiguities exist that would preclude and frustrate the plaintiff's enforcement, and would equally interfere and impede with his attempts to

honor his commitments to pay the Psak Din.

>From reviewing the file and the Psak Din, one can only appreciate the herculean task that the Bais Din had in weeding out the facts of the case to come to its decision. Certainly, the Bais Din took great care in drafting its Psak Din to provide the parties with a clear and concise statement of Moshe's liability, that would enable the plaintiff to confirm in state court and ultimately enforce.

Since efforts are underway by the plaintiff to enforce his judgment (plaintiff has filed but has not served a Petition to Conform Award Of arbitration and the hearing is scheduled for February 11, 2002 at 08:30 a.m., Moshe requests that the Bais Din stay plaintiff's state court proceedings to confirm the award until the Bais Din clarifies its award. Should the Bais Din and the plaintiff disregard this advice and proceed with the confirmation of the December 14, 2001 Psak Din as is, plaintiff will be running the risk of having an unenforceable judgment. It would make sense to err on the side of caution to stay the state court proceedings pending the Bais Din clarification. Caveat emptor.

It is my experience that concerning enforcement of an arbitration award turned into a judgment, the Los Angeles County Sheriff's office requires unequivocal language in judgments in order to enforce them. Should a judgment contain vague and ambiguous language, it is my experience that the Sheriffs "kick back" the judgment for their inability to prosecute, and that a Pandora's Box of litigation erupts in the state court to interpret the judgment, usually resulting in a frustrated and exacerbated court remanding the matter back to the Bais Din for further clarification. I have seen this happen several times with arbitration awards that contained ambiguities.

I have taken the liberty of discussing said ambiguities with the Los Angeles County Sheriff's department, as well as a clerk of the court that issues writs of possession and execution. The Bais Din is welcome to get a 2nd opinion from a state court litigator specializing in enforcement of judgments in California to verify what is being presented herein; that a vaguely worded award will have great difficulties in enforcement.

Further, as a bankruptcy attorney, I can tell you that should Moshe file a Chapter 7 bankruptcy to discharge his debt to plaintiff, and assuming further that the plaintiff would file an action for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2), (a)(4), & (a)(6), plaintiff will not succeed on summary judgment to preclude Moshe from relitigating his non-liability from scratch, based on the principles of res judicata and collateral estoppel, since the Psak Din contains ambiguities. The parties would have to re-litigate the entire case from scratch in the bankruptcy court, causing the parties to re-spend thousands of dollars in litigation

fees - that could all be avoided if the Bais Din acts now to clarify. I am currently defending such a case in bankruptcy court.

Therefore, efforts made to clarify the Psak Din now, will hopefully yield great dividends by avoiding litigation down the road. Ayzehu Chacham; Haroeh es Hanolad.

I believe that it behooves the Bais Din, the plaintiff and all to cooperate in the clarification process to avoid unnecessary litigation down the road. By requesting clarification now, we are avoiding the inevitable.

Therefore by this clarification motion, Moshe hopes to accomplish several things: (i) to tighten up the language of the Psak Din in order to streamline potential enforcement issues down the road; and (ii) to provide clarification as to whether the Psak Din allows for various forms of payment.

Caveat: This clarification motion is not a motion for reconsideration, and it is not a challenge to this Bais Din's Psak Din and to its authority. By raising these deficiencies in the Psak Din, Moshe is not trying to be a wise guy, is not trying to poke holes through the Psak Din, is not trying to ridicule anyone, is not trying to embarrass the drafter of the Psak Din, is not trying to obfuscate matters and is not trying to avoid liability. Great care was taken to insure that the clarification request be done consistent with Halacha and with Derech Eretz.

2. Arguments: Issues That Need Clarification

These serious ambiguities, as defined below, if not clarified, will no doubt prevent plaintiff from confirming the Psak Din and enforcing his judgment.

a. Who Is the Judgement Creditor?

i. The Parties to the Shtar Birurin Differ from the Parties to the Psak Din

On July 24, 2001 Moshe signed the Bais Din's Shtar Birurin with Rocky Stefansky, CCube Solutions and CCube India. However, the December 14, 2001 Psak Din identifies additional parties as the plaintiffs, such as: Rocky Stefansky as acting on behalf of himself, Rabbi Meir Silver, Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Limited Partnership, Super Reliable Management, and Rafi Katz.

This serious procedural problem is compounded by the fact that Rabbi Meir Silver, Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Limited Partnership, Super Reliable Management, and Rafi Katz did not sign the July 24, 2001 Shtar Birurin, were not parties to the arbitration, and therefore

would have no right to enforce the Psak Din. Moshe could not be legally bound to them. The Psak Din does not explain how these entities became plaintiffs. But the Psak Din as it reads, implies that they are each the victors.

What further compounds the problem is that the lawsuit that was filed in state court by attorney Ben Kiss is captioned C Cubed Solutions Inc vs Marc Haberman, LASC # BC255351, the plaintiffs in the state court file: (i) C-Cubed Solutions, Inc., a Delaware Corporation, (ii) C-Cubed Private Solutions Limited, a business entity formed in India, and (iii) Rocky Stefansky. Both C-Cubed Solutions, Inc., a Delaware Corporation, C-Cubed Private Solutions Limited were not named as the victors in the Psak Din.

To add to the confusion, the petition to confirm the arbitration award filed by Ben Kiss, shows that the petitioner is only Rocky Stefansky, and that the other entities: (i) C-Cubed Solutions, Inc., a Delaware Corporation, & (ii) C-Cubed Private Solutions Limited, a Business Entity Formed in India are now defendants.

There is great confusion in the file as to who were the parties to the arbitration, who were the victors, and who gets to enforce the judgment. It is impossible to be both the plaintiff and the defendant. Something is seriously wrong here. A copy of the cover sheet of the petition to confirm the arbitration award is enclosed.

What if Rabbi Reuven Silver attempts to collect on the Judgment. Does Rabbi Silver have the right of enforcement, and if so, by how much? The whole \$600,891.75 or his pro rata share (whatever that may be)? Or does Rocky Stefansky have the sole right of enforcement (on behalf of the others)?

Assuming arguendo that Moshe pays Rabbi Silver the \$600,891.75, does that satisfy the debt, and can Stefansky still demand payment?

And what about the C-Cubed Solutions, Inc., a Delaware Corporation, & C-Cubed Private Solutions Limited, a Business Entity Formed in India; are they the victors. Can they collect?

The C.C.P. § 1285 dealing with the confirmation, correction or vacation of an arbitration award specifically provides that "Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award." [Emphasis added].

With all due respect, the petition to confirm will have its share of problems, since the court will have equally difficult time figuring out who

is entitled to confirm the award. Will it be Rocky Stefansky? Will it be Rocky Stefansky on behalf of Rabbi Meir Silver, Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Limited Partnership, Super Reliable Management, and Rafi Katz? Will it be state court plaintiffs C-Cubed Solutions, Inc., a Delaware Corporation, C-Cubed Private Solutions Limited, a business entity formed in India?

Unless this confusion is clarified, the confirmation and enforcement process will be impeded. The time to address this is now, before the Psak Din gets confirmed as is.

b. What Was the "Joint Asset" That Was Improperly Converted?

Item # A Recitation of Facts, subparagraph 1 of the Psak Din states that in the spring of 2000 the parties agreed to create "a joint venture" in providing computer services and formed three business entities: (i) C-Cubed Solutions Inc, a Delaware corporation; (ii) C-Cubed Pvt. Ltd., an Indian corporation; & (iii) C-Cubed Holdings, Inc., a Nevada corporation.

Item # B Claims, subparagraph # 4 of the Psak Din states plaintiff's position that Moshe improperly converted "a joint asset" (in the singular tense) but does not define what that joint asset was. Which of the three business entities did Moshe improperly convert? Or did the Bais Din find that Moshe converted all three? The Psak Din remains vague and ambiguous as to this point and it must be clarified.

c. Once We Identify the Wrongfully Converted Asset, Moshe Will Satisfy the Psak Din Award By Returning Said Asset to Plaintiff

The upshot of this inquiry, and the reason why it is a very important point of clarification is because Moshe would like to honor his Halachic obligations to plaintiff and to the Bais Din and satisfy the \$512,000.00 component of the award listed in Item # 10 of the Psak Din Judgment by returning what was improperly converted.

In fact, whatever the improperly converted joint asset is, Moshe will effectuate the immediate turnover of the improperly converted business (and the shares therein) to plaintiff and be done with this case.

There is substantial Halachic precedent for this method of repayment and satisfaction of the award.

The Rambam, in Hilchos Geneivah 2 (1) states that the Halacha is for a thief to pay with the chattel that he has. If the Bais Din cannot locate the

Gazlan's chattel, only then does the Bais Din look to the Gazlan's other property for satisfaction of the debt (i.e., the Gazlan's real property). Here, the Bais Din can easily locate the improperly converted asset. It is one or all three of the three business entities: (i) C-Cubed Solutions Inc, a Delaware corporation; (ii) C-Cubed Pvt. Ltd., an Indian corporation; & (iii) C-Cubed Holdings, Inc., a Nevada corporation, and does not need to look to Moshe's other real properties and/or money for the complete satisfaction of the debt.

Further, the Rambam, in Hilchos Gezeilah V'Aveidah, Perek Bais, Halachah Aleph provides that a stolen object that has not undergone a fundamental change to its essential nature and is as it was, even though it's owner has given up hope of retrieving it, and even though the thief dies and now it is in the domain of the children, the object itself is returned to its original owners. This law is from the Torah itself as it says "And you shall return the stolen object that was stolen: (Vayikra 5). Here, the company or companies have not undergone fundamental changes to their essential nature. They were and remain Delaware, Indian and Nevada companies.

Further, the Rambam, in Hilchos Geneivah, Perek Hei, Halacha Bais provides that if one stole an object then sold it, and the original owner did not give up hope of retrieving the object, if witnesses come and say that they recognize that this person stole the object and they recognize what the stolen object was, the law is that the object is to be returned to the original owner, the original owner gives the one who purchased the object the monetary value of the object and then attempts to recover that sum from the thief. It is important to highlight this Halacha because it demonstrates how enshrined a principle it is under Halacha; that an object is returned to the owner as opposed to the monetary payment of damages.

The Sefer Chinuch Mitzvah 130, provides that the commandment is to return the stolen object to its rightful owners, that is, if the actual object that was stolen is by the thief and it has not undergone a fundamental change, then he must return it as it is and not take it for himself and pay money to the owner. What is a change that would allow the thief to keep the object and pay money? One that cannot be changed back afterwards. For example, if wood was stolen and then it was burned. But if one stole a tablet of wood and used it to build a structure, this can be changed back by disassembling the structure. The rationale of this commandment is self-understood. Again, here, the companies are in the exact same "shape" as before. In fact, the companies are still operational.

The Shulchan Oruch Choshen Mishpat Siman Shin Samach Gimel (363) provides that if one stole animals and they became weak, a weakness that could be healed, or one stole indentured servants and they became old, or stole a coin that ceased to be legal tender in that country, but remains legal tender in a

different country (even though this causes the owner difficulty to exchange), or stole fruits and some of them became moldy, or Terumah that became impure, or Chametz that subsequently went through Passover, or an animal that subsequently was used for an immoral act, or got a physical defect rendering it unfit to be brought as an animal offering, or if it was being taken out to be stoned by Bais Din, the thief can acquit himself by saying to the owner "I place before you what is yours." Here, the company / companies in question still exist. They have not been dissolved, they have not been placed into bankruptcy, and they are still operational.

The Shulchan Oruch Choshen Mishpat Siman Shin Nun Dalet provides that the stolen object that is in the hands of the thief, and did not undergo a fundamental change, whether it is before the original owner gave up hope on recovering it or whether it was afterwards, goes back to the original owner. The difference, though, is that after the owner gave up hope on recovering the object the increase in the value belongs to the thief.

The Gemorah in Mesechta Bava Kamma 98(b) provides that: One shall return the stolen object that he stole (Vayikra, 5) Why does the Torah repeat itself to state again "that he stole?" To teach us that one should return exactly that which one stole. From here we learn that if someone stole a coin and it ceased to be legal tender, or fruits that became rotten, or wine which became vinegar, or Terumah which consequently became impure, or Chametz which subsequently went through Pesach (thus becoming forbidden to eat or derive any pleasure from), or an animal that subsequently was used for an immoral act, thus requiring the animal to be put to death, or an animal that killed someone, requiring it to be put to death, the thief can say to the owner "I place what is yours before you" and acquits himself of any further liability."

Moshe's position, is that whatever the improperly converted asset was, Moshe can simply relinquish the company/ies and the shares back to plaintiff in full satisfaction of the Psak Din Judgment.

Should plaintiff decline Moshe's proposed satisfaction of the debt, and argue that the improperly converted joint venture asset is not worth \$512,000.00, then Moshe's response will be: "Memo Nafshach" - if stealing the company resulted in an award worth \$512,000.00, then how can returning the company not be worth the same amount? Plaintiff's argument would be specious.

3. Conclusion

Moshe recognizes that he has an obligation to pay the Psak Din and intends to honor it. Moshe needs the Bais Din's oversight to retain jurisdiction to clarify key elements of the Psak Din, and to insure that Moshe's proposed payment is authorized by the Bais Din and that closure can be brought to the



ועד הרבנים דקליפארניא
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כ"א-טבת-תשס"ב
February 3, 2002

Mr. Baruch Cohen
4929 Wilshire Blvd. Suite 940
Los Angeles, California 90010-3823
VIA FACSIMILE

Re: Stefansky v. Haberman

Dear Mr. Cohen,

The Beis Din is in receipt of your letters of January 21st and January 24th, and we are gratified to learn of Mr. Haberman's commitment to abide by and uphold the judgment. The following clarifications should assist him in the task.

1. Parties to the arbitration and judgment. Rocky Stefansky clearly stated in Beis Din, prior to commencement of the proceedings, that he was representing a consortium of investors in addition to himself personally. This consortium is named in our judgment, and Mr. Haberman was aware that they were all represented by Mr. Stefansky. Two of them were present for portions of the arbitration proceeding, and there was no need for them to separately sign the arbitration agreement. In so far as they are all named in this judgment, none of them have the right to initiate new proceedings to receive an award outside the scope of this judgment.
2. Petition to confirm. You expressed confusion over the filing of the Petition to Confirm. I am informed that the format of the petition is explained in Footnote number one. For any other questions on the petition itself I refer you to Mr. Benjamin Kiss, counsel for the Plaintiff and author of the Petition to Confirm.
3. "Joint Asset". This question is a little irritating. The three entities referred to in paragraph four are all legal frameworks for one and the same asset. Surely Mr. Haberman understands the Plaintiff invested money in a joint venture that operated on two continents, and to this end incorporated these three entities to further its single and sole business charter. Please refer to paragraph six of the

Post-It® Fax Note	7671	Date	2-3-02	# of pages	1
To	Moshe Haberman	From	Family Gdn		
Co./Dept.		Co.			
Phone #		Phone #	323 937 4501		
Fax #	323 937 4112	Fax #	323 937 4503		

ADDITIONAL PAGES

11

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd

3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-08-01-01A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Aug 21, 2001**
Due Date: **Sept. 15, 2001**
Period Covered **08/01/01 - 08/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
41 14.50	ABslide e-mails processed processing rate per hour <i>effective rate per email (detail)</i>	\$9.00 \$0.62	\$25.45
483 7.50	ABslide Chat Sessions number completed per hour <i>effective rate per chat session (detail)</i>	\$9.00 \$1.20	\$679.60
<i>Total e-mails & Chats this report</i>		524	
<i>Total days this report</i>		15	
<i>Average daily e-mails & Chats this report</i>		35	

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

SubTotal	\$605.05
Taxes	
State	
Federal	
TOTAL	\$605.05

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This Invoice is due and payable by 9/15/01*

Please make
all checks
payable
to:

C-Cubed Solutions Pvt Ltd

3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-08-01-01P

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **August 21, 2001**
Due Date: **Sept. 15, 2001**
Period Covered **08/01/01 - 08/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
353 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$226.93
5,323 7.50	Phase4 Chat Sessions processed (unique capture since 7/09) number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$6,387.60
	Total e-mails & Chats this report	5,676	
	Total days this report	15	
	Average daily e-mails & Chats this report	378	

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

SubTotal	\$6,614.53
Taxes	
State	
Federal	
TOTAL	\$6,614.53

Office Use Only

Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 9/15/01

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd

C/O 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-08-01-02A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Sept 26, 2001**
Due Date: **Oct. 15, 2001**
Period Covered **08/16/01 - 08/31/01**

Qty	Description	Unit Price/Hr.	TOTAL
48 14.00	ABSslide e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$30.86
295 7.50	ABSslide Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$354.00
	<i>Total e-mails & Chats this report</i>	343	
	<i>Total days this report</i>	16	
	<i>Average daily e-mails & Chats this report</i>	21	

SubTotal	\$384.86
Taxes	
State	
Federal	
TOTAL	\$384.86

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Office Use Only

Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This Invoice is due and payable by 10/15/01

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd

C/O 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-09-01-01A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Sept 25, 2001**
Due Date: **Oct. 15, 2001**
Period Covered **09/01/01 - 09/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
40 14.00	ABSlide e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$25.71
227 7.50	ABSlide Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$272.40
	<i>Total e-mails & Chats this report</i>	267	
	<i>Total days this report</i>	15	
	<i>Average daily e-mails & Chats this report</i>	18	
		SubTotal	\$298.11

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes State _____
Federal _____
TOTAL \$298.11

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This Invoice is due and payable by 10/15/01*

C-Cubed = Customized Customer Communications

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd

C/O 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. **Syl-09-01-02A**

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Oct 1, 2001**
Due Date: **October 31, 2001**
Period Covered **09/15/01 - 09/30/01**

Qty	Description	Unit Price/Hr.	TOTAL
22 14.00	ABSilde e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$14.14
139 7.50	ABslide Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$166.80
	Total e-mails & Chats this report	161	
	Total days this report	15	
	Average daily e-mails & Chats this report	11	

SubTotal **\$180.94**

Payment Details

- Corporate Check
- Other Check

Bank _____
Check # _____

Taxes	State	
	Federal	
	TOTAL	\$180.94

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 10/31/01*

C-Cubed = Customized Customer Communications

Please make
checks
payable
to:

C-Cubed Solutions Pvt. Ltd.

o/o 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-10-01-01A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **October 17, 2001**
Due Date: **Nov. 15, 2001**
Period Covered **10/01/01 - 10/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
34 14.50	ABslide e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.62	\$21.10
136 7.50	ABslide Chat Sessions number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$163.20
ABslide			
	Total e-mails & Chats this report	170	
	Total days this report	15	
	Average daily e-mails & Chats this report	11	
	SubTotal		\$184.30

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes State _____
Federal _____
TOTAL \$184.30

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 11/15/01*

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd

C/O 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-10-01-02A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Nov 2, 2001**
Due Date: **Nov 30, 2001**

Period Covered **10/15/01 - 10/31/01**

Qty	Description	Unit Price/Hr.	TOTAL
39 14.00	ABSslide e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$25.07
108 7.50	ABSslide Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$129.60
	<i>Total e-mails & Chats this report</i>	147	
	<i>Total days this report</i>	16	
	<i>Average daily e-mails & Chats this report</i>	9	

SubTotal **\$154.67**

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes

State

Federal

TOTAL

\$154.67

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 11/30/01*

C-Cubed = Customized Customer Communications

Please make
all checks
payable
to:

CustomerFocus

137 N. Larchmont Blvd., #431
Los Angeles, CA 90004
Phone 714-865-5358

Invoice No. Syl-11-01-02A

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Nov 16, 2001**
Due Date: **Dec 16, 2001**
Period Covered **11/01/01 - 11/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
16 14.00	ABSslide e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$10.29
43 7.50	ABSslide Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$51.60
	Total e-mails & Chats this report	59	
	Total days this report	15	
	Average daily e-mails & Chats this report	4	

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes

State	
Federal	
TOTAL	\$61.89

SubTotal **\$61.89**

Office Use Only

Payment Terms: Invoices are generated upon delivery of services.
Payment is due to CustomerFocus
within 30 Days after the end of the billing period.
This invoice is due and payable January 31, 2002

C-Cubed Solutions PVT Ltd.

C/O 3550 Wilshire Blvd., Suite 1280
 Los Angeles, CA 90010
 Phone 213-351-9750 Fax 213-351-9793

Invoice No. **Syl-08-01-02P**

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
 Address **4929 Wilshire Boulevard, Suite 500**
 City **Los Angeles** State **CA** ZIP **90010**
 Phone **323-938-9200**

Date **Sept. 25, 2001**
 Due Date: **Oct. 15, 2001**
 Period Covered **08/16/01 - 08/31/01**

Qty	Description	Unit Price/Hr.	TOTAL
991 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$637.07
4,949 7.50	Phase4 Chat Sessions processed (unique capture since 7/09) number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$5,938.80
	Total e-mails & Chats this report	5,940	
	Total days this report	16	
	Average daily e-mails & Chats this report	371	

Payment Details

Corporate Check
 Other Check

Bank _____
 Check # _____

SubTotal	\$6,575.87
Taxes	
State	
Federal	
TOTAL	\$6,575.87

Office Use Only

Payment Terms: Invoices are generated upon delivery of services.
 Payment is due to C-Cubed Solutions
 within 30 Days after the end of the billing period.
 This invoice is due and payable by 10/15/01

C-Cubed Solutions PVT Ltd.

C/O 3550 Wilshire Blvd., Suite 1280
 Los Angeles, CA 90010
 Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-09-01-01P

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
 Address **4929 Wilshire Boulevard, Suite 500**
 City **Los Angeles** State **CA** ZIP **90010**
 Phone **323-938-9200**

Date **Sept 25, 2001**
 Due Date: **Oct. 15, 2001**
 Period Covered **09/01/01 - 09/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
800 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$514.29
3,765 7.50	Phase4 Chat Sessions processed (unique capture since 7/09) number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$4,518.00
	Total e-mails & Chats this report	4,565	
	Total days this report	15	
	Average daily e-mails & Chats this report	304	

SubTotal	\$5,032.29
Taxes	
State	
Federal	
TOTAL	\$5,032.29

Payment Details

- Corporate Check
- Other Check

Bank _____
 Check # _____

Office Use Only

Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 10/15/01

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd.

C/O 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-09-01-02P

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Oct 1, 2001**
Due Date: **Oct. 31, 2001**
Period Covered **09/15/01 - 09/30/01**

Qty	Description	Unit Price/Hr.	TOTAL
1,588 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$1,020.86
3,752 7.50	Phase4 Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$4,502.40
	<i>Total e-mails & Chats this report</i>	5,340	
	<i>Total days this report</i>	15	
	<i>Average daily e-mails & Chats this report</i>	356	
	SubTotal		\$5,523.26

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes	State	
	Federal	
	TOTAL	\$5,523.26

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 10/31/01*

Please make
checks
payable
to:

C-Cubed Solutions Pvt. Ltd.

c/o 3550 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-10-01-01P

INVOICE

Customer

Name **Sylmark: Attention: Peter Babaian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **10/17/01**
Due Date: **Nov. 15, 2001**
Period Covered **10/01/01 - 10/16/01**

Qty	Description	Unit Price/Hr.	TOTAL
1,232 14.50	PHASE4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.62	\$764.69
3,773 7.50	PHASE4 Chat Sessions number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$4,527.60
PHASE4			
	Total e-mails & Chats this report	5,005	
	Total days this report	15	
	Average daily e-mails & Chats this report	334	
	SubTotal		\$5,292.29

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes State _____
Federal _____
TOTAL \$5,292.29

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This invoice is due and payable by 11/15/01*

Please make
all checks
payable
to:

C-Cubed Solutions PVT Ltd.

C/O 3650 Wilshire Blvd., Suite 1280
Los Angeles, CA 90010
Phone 213-351-9750 Fax 213-351-9793

Invoice No. Syl-10-01-02P

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalan**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Nov 2, 2001**
Due Date: **Nov 30, 2001**
Period Covered **10/15/01 - 10/31/01**

Qty	Description	Unit Price/Hr.	TOTAL
682 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$438.43
4,107 7.50	Phase4 Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$4,928.40
	<i>Total e-mails & Chats this report</i>	4,789	
	<i>Total days this report</i>	16	
	<i>Average daily e-mails & Chats this report</i>	299	
	SubTotal		\$5,366.83

Payment Details

- Corporate Check
 Other Check

Bank _____
Check # _____

Taxes State _____
Federal _____
TOTAL **\$5,366.83**

Office Use Only

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Payment is due to C-Cubed Solutions
within 30 Days after the end of the billing period.
This Invoice is due and payable by 11/30/01

Please make
all checks
payable
to:

CustomerFocus
137 N. Larchmont Blvd., #431
Los Angeles, CA 90004
Phone 714-865-5358

Invoice No. **Syl-11-01-02P**

INVOICE

Customer

Name **Sylmark: Attention: Peter Babalian**
Address **4929 Wilshire Boulevard, Suite 500**
City **Los Angeles** State **CA** ZIP **90010**
Phone **323-938-9200**

Date **Nov 16, 2001**
Due Date: **Dec 16, 2001**
Period Covered **11/01/01 - 11/15/01**

Qty	Description	Unit Price/Hr.	TOTAL
1,103 14.00	Phase4 e-mails processed processing rate per hour effective rate per email (detail)	\$9.00 \$0.64	\$709.07
1,361 7.50	Phase4 Chat Sessions processed number completed per hour effective rate per chat session (detail)	\$9.00 \$1.20	\$1,633.20
	<i>Total e-mails & Chats this report</i>	2,464	
	<i>Total days this report</i>	15	
	<i>Average daily e-mails & Chats this report</i>	164	

SubTotal	\$2,342.27
Taxes	State
	Federal
TOTAL	\$2,342.27

Payment Details

- Corporate Check
- Other Check

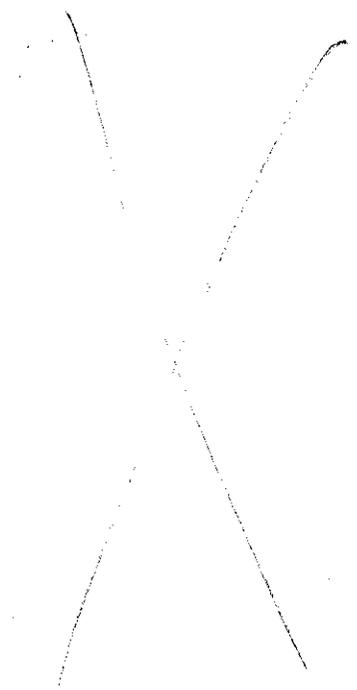
Bank _____
Check # _____

Taxes

Office Use Only

*Payment Terms: Invoices are generated upon delivery of services.
Payment is due to CustomerFocus
within 30 Days after the end of the billing period.
This invoice is due and payable January 31, 2002*

SECRET



Main Identity

From: "Steve Durham" <sdurham@coubedsolutions.com>
To: "Peter Babaian" <PeterB@syimark.com>
Cc: "Steve Durham (2)" <sfd@aol.com>; "Alyssa Heisten" <Alyssah@syimark.com>
Sent: Monday, October 22, 2001 10:57 AM
Attach: Phase4 Invoice for Aug 16-31 2001.xls; ABslide Invoice for Aug 16-31 2001.xls; ABslide Invoice for Sept 1-15th 2001.xls; Phase4 Invoice for Sept 1-15th 2001.xls
Subject: These are the Overdue Invoices again - Need your help
 Dear Peter,

These are the 4 invoices which are overdue. Alyssa Heisten did not have these in her system. I had sent these to you on September 26th (original message attached below), but when you forwarded them on that was about the time Olga was leaving. Alyssa says she needs these signed by you to process them.

Please get back to me (or please ask Alyssa to) on the status of them.

I am best reached on the cellphone at 714-865-5358.

Best regards,

Steve Durham

--- Original Message ---

From: Steve Durham
To: Peter Babaian
Cc: Steven Forrest Durham
Sent: Wednesday, September 26, 2001 11:57 AM
Subject: Invoices for Aug 15-Sept 15 attached

Dear Peter,

I am attaching invoices for the period August 16-31 as well as the period September 1-15th. I don't believe these were sent out. I was in the hospital, so we definitely, dropped the ball on these. To be fair, even though the first two (for August 15-31) would be due at the end of this month, we would not expect payment on these until October 15th (of course, if they can be paid earlier, that would be fine).

(1) Here are the ABslide details: for August 16-31

<i>ABslide Production: August 16 - 31</i>			
Date	Incoming emails	Processed emails	Chats
8/16/01	0	0	15
8/17/01	6	7	31
8/18/01	1	1	14
8/19/01	5	6	14
8/20/01	1	0	25
8/21/01	2	0	21
8/22/01	0	0	22
8/23/01	4	2	11
8/24/01	2	5	11
8/25/01	3	2	17
8/26/01	3	3	19

8/27/01	12	4	21
8/28/01	3	0	26
8/29/01	1	10	25
8/30/01	6	5	10
8/31/01	2	3	13
Total	50	48	295

(2) Here are the Phase4 Details for August 16-31:

<i>Phase4 Production: August 16 - 31</i>			
Date	Incoming emails	Processed emails	Chats
8/16/01	264	2	319
8/17/01	96	65	318
8/18/01	17	53	197
8/19/01	3	43	240
8/20/01	246	30	396
8/21/01	147	43	353
8/22/01	153	68	318
8/23/01	161	31	275
8/24/01	61	84	316
8/25/01	101	59	242
8/26/01	19	89	224
8/27/01	49	79	375
8/28/01	24	56	437
8/29/01	129	91	340
8/30/01	43	81	298
8/31/01	43	117	303
Total	1556	991	4949

September 1-15th

These would also be due October 15th if possible:

(3) Here are the ABslide details for September 1-15th:

<i>ABslide Production: September 1 - 15</i>			
Date	Incoming emails	Processed emails	Chats
9/1/01	2	5	12
9/2/01	2	0	13
9/3/01	2	0	15

9/4/01	4	1	19
9/5/01	5	0	23
9/6/01	6	1	32
9/7/01	6	2	17
9/8/01	0	1	10
9/9/01	0	0	7
9/10/01	15	3	24
9/11/01	1	11	14
9/12/01	6	5	13
9/13/01	4	0	15
9/14/01	1	0	6
9/15/01	4	11	7
Total	58	40	227

(4) Here are the Phase4 Details for September 1-15th.

<i>Phase4 Production: September 1 - 15</i>			
Date	Incoming emails	Processed emails	Chats
9/1/01	17	43	242
9/2/01	32	103	182
9/3/01	13	98	241
9/4/01	38	26	443
9/5/01	8	17	368
9/6/01	2	85	288
9/7/01	14	79	258
9/8/01	17	55	238
9/9/01	5	0	243
9/10/01	11	8	427
9/11/01	13	11	176
9/12/01	0	32	179
9/13/01	655	68	191
9/14/01	996	106	130
9/15/01	342	69	159
Total	2163	800	3765

For these 4 invoices, payment should be made out to C-Cubed Solutions Pvt. Ltd..

I will try to call later today.

Best regards,

Main Identity

From: "Steve Durham" <sdurham@ccubedsolutions.com>
To: "Peter Babalan" <PeterB@sylmark.com>
Sent: Tuesday, November 08, 2001 8:54 AM
Subject: Chat icons
Hi Peter,

Where's the chat icons? They seem to have disappeared.

Steve Durham

11/8/2001 8:54 AM



Account Number
714 282-0225 964 S 1182

Statement Date
Nov 13, 2001

Page 4

Questions about your Pacific Bell bill?

800-310-2355

Pacific Bell Calls from 714 282-0225

• Direct Dialed Calls

• Zone 3 Calls (continued)

	Date	Time	Place and Number Called	Type	Rate	Minutes	Amount
1.	Nov 5	1:26pm	NEWPTBEACHCA 949 719-2634	Direct	Day	7	.16
							1.32

• Local Toll Calls

	Date	Time	Place and Number Called	Type	Rate	Minutes	Amount
2.	Oct15	9:55am	LOSANGELESCA 213 351-9750	Direct	Day	1	.09
3.	Oct15	10:31am	BEVERLYHLSCA 310 779-1079	Direct	Day	2	.17
4.	Oct15	10:33am	LOSANGELESCA 213 351-9750	Direct	Day	1	.09
5.	Oct16	8:57pm	SAN MONICACA 310 398-1430	Direct	Eve	1	.07
6.	Oct16	8:57pm	LOSANGELESCA 213 351-9750	Direct	Eve	2	.13
7.	Oct16	8:59pm	SAN MONICACA 310 398-1430	Direct	Eve	2	.13
8.	Oct17	9:25am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
9.	Oct18	8:48am	BEVERLYHLSCA 310 779-1079	Direct	Day	7	.55
10.	Oct22	9:42am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
11.	Oct22	9:42am	BEVERLYHLSCA 310 779-1079	Direct	Day	10	.78
12.	Oct23	9:19am	BEVERLYHLSCA 310 779-1079	Direct	Day	2	.17
13.	Oct23	11:54am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
14.	Oct26	12:17pm	BRBN SNYY CA 818 253-6084	Direct	Day	1	.10
15.	Oct30	10:38am	LOSANGELESCA 323 938-9200	Direct	Day	2	.17
16.	Oct30	10:40am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
17.	Oct30	10:49am	TORRANCE CA 310 408-9683	Direct	Day	1	.09
18.	Oct30	12:09pm	CANOGAPARKCA 818 591-8700	Direct	Day	1	.10
19.	Oct30	1:02pm	LONG BEACHCA 562 714-1277	Direct	Day	2	.12
20.	Oct31	1:01pm	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
21.	Oct31	1:14pm	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
22.	Oct31	4:35pm	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
23.	Nov 1	9:59am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
24.	Nov 1	10:20am	BEVERLYHLSCA 310 779-1079	Direct	Day	9	.71
25.	Nov 1	10:28am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
26.	Nov 1	10:45am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
27.	Nov 1	10:46am	BEVERLYHLSCA 310 779-1079	Direct	Day	2	.17
28.	Nov 1	10:51am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
29.	Nov 1	10:52am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
30.	Nov 1	11:04am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
31.	Nov 1	11:05am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
32.	Nov 1	11:10am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
33.	Nov 2	9:43am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
34.	Nov 2	10:12am	LOSANGELESCA 323 938-9200	Direct	Day	2	.17
35.	Nov 2	11:01am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
36.	Nov 2	11:02am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
37.	Nov 2	12:24pm	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
38.	Nov 2	1:28pm	NATL411SYC 714 411-0000	Direct	Day	1	1.10
39.	Nov 2	6:27pm	LONG BEACHCA 562 714-1277	Direct	Eve	5	.21
40.	Nov 4	9:39am	NATL411SYC 714 411-0000	Direct	Night	1	1.10
41.	Nov 4	2:42pm	BEVERLYHLSCA 310 779-1079	Direct	Night	10	.47
42.	Nov 4	2:52pm	HOLLYWOOD CA 323 397-1018	Direct	Night	1	.05
43.	Nov 4	2:54pm	HOLLYWOOD CA 323 397-1018	Direct	Night	1	.05
44.	Nov 4	2:59pm	HOLLYWOOD CA 323 397-1018	Direct	Night	2	.10
45.	Nov 5	10:10am	BEVERLYHLSCA 310 779-1079	Direct	Day	11	.88
46.	Nov 5	10:58am	LOSANGELESCA 323 938-9200	Direct	Day	1	.09
47.	Nov 5	10:59am	LOSANGELESCA 323 938-9200	Direct	Day	2	.17
48.	Nov 6	8:54am	BEVERLYHLSCA 310 779-1079	Direct	Day	1	.09
49.	Nov 6	11:25am	LOSANGELESCA 323 938-9200	Direct	Day	3	.25
50.	Nov 7	6:26am	LOSANGELESCA 323 938-9200	Direct	Night	4	.19
51.	Nov 9	10:30am	LONG BEACHCA 562 714-1277	Direct	Day	1	.08
							10.33

322
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Total Calls from 714 282-0225 **\$11.65**

① Rabbi Wein hung up on me
②③ Got his voice mail only

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and am not a party to the within action; I reside in the County of Los Angeles.

On February 18, 2002 I served the foregoing **RESPONSE TO PETITION TO CONFIRM AWARD OF ARBITRATION REQUESTING THAT AWARD BE VACATED AND SET FOR REHEARING** or **IN THE ALTERNATIVE CORRECTION OF AWARD**; Memorandum of Points and Authorities; Declarations and Exhibits on interested parties in this action by placing a true copy thereof, enclosed in a sealed envelopes, on the date hereinabove set forth in this Certificate, in sealed envelopes with the postage thereon fully prepaid for certified mail, return receipt requested, addressed as follows:

Benjamin Kiss, Esq.
Fisher, Bang & Kiss
1800 Avenue of the Stars, Suite 320
Los Angeles, CA 90067

BY MAIL:

I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid. **FEDERAL EXPRESS NEXT DAY OVER NIGHT**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of the addressee. **PROOF OF SERVICE IS TO BE FILED.**

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 19, 2002, at Los Angeles, California.

LOREN N. COHEN

Type or Print

Name signature

