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4 Attorney for Plaintiff
DIGITAL NETWORK, L.L.C.

7 MUNICIPAL OF CALIFORNIA, COUNTY OF SAN DIEGO

8 SAN DIEGO COUNTY JUDICIAL DISTRICT

9 DIGITAL NETWORK, L.L.C., a California
10 limited liability company,
11 Plaintiff,
12 vs.
13 XYZ COMPANY, INC., a California
corporation; TOM JONES, an individual;
14 HOWARD STERNS, an individual; and DOES 1
through 50, inclusive,
15 Defendants

Case No.
COMPLAINT FOR DAMAGES
1. OPEN BOOK ACCOUNT
2. ACCOUNT STATED
3. REASONABLE VALUE
4. BREACH OF CONTRACT
principal \$21,235.00

16 Plaintiff complains and alleges as follows:

17 GENERAL ALLEGATIONS

18 1. The cause of action hereinafter stated is a money demand for less
19 than \$25,000.00, and is one of which the above-entitled Court has jurisdiction.
20 The venue and jurisdiction requirements of C.C.P. §§ 395 and 396 are attached
21 hereto as **Exhibit "1"** and incorporated herein as though fully set forth.

22 2. At all times mentioned herein, Plaintiff was, and is, a California
23 limited liability company authorized to do business in the County of San Diego,
24 State of California and whose transaction of business with furnishing of goods
and services to Defendants gives rise to this lawsuit.

25 3. At all times mentioned herein, this judicial district is where the
26 contracts were made and to be performed, where the obligation and liability arose

1 and where the breach occurred. Plaintiff and Defendants were and are doing
2 business within this judicial district. Defendants are liable to Plaintiff in
3 the capacity sued and named herein.

4 3.1 At all times mentioned herein, Plaintiff is informed and
5 believes and thereon alleges that Defendants TOM JONES, HOWARD STERNS and DOES 1
6 through 25 ("these individuals") are and were the responsible shareholders,
7 principals, officers, members, managers, directors and/or partners of defendant
8 entities referenced in paragraphs 3.2 through 3.4 below. Plaintiff and
9 Defendants were and are doing business within this judicial district. Defendants
10 are liable to Plaintiff in the capacity sued and named herein.

11 3.2 Plaintiff is informed and believes and thereon alleges that
12 these individuals have dominated and controlled Defendants XYZ COMPANY, INC., a
13 California corporation and DOES 26 THROUGH 50 ("these entities") and their
14 business, property and affairs, and that there existed, and now exists, such a
15 unity of ownership and interest between these entities and individuals, that the
16 individuality and separateness of these Defendants ceased to exist. Thus,
17 adherence to the separate existence of these individuals and entities would
18 promote injustice and/or sanction a fraud in that these entities were
19 undercapitalized and a mere shell, conduit and instrumentality through which
20 these individuals carried on their business as if these entities did not exist.

21 3.3 Plaintiff is further informed and believes and thereon alleges
22 that these entities are the mere alter egos of these individuals. These
23 individuals, in combination with, and by and through their and each of the
24 Defendants' employees, representatives and agents conspired to hinder, impede,
25 delay and defraud Plaintiff in the collection of the charges of the web site
26 merchandise and services provided by Plaintiff by seeking an extension of credit
27 and delivery of merchandise and services on credit, which benefited these
28 individuals, knowing that these entities lacked sufficient assets, income or

1 capital to satisfy said obligations. On multiple occasions during and after the
2 running of the below-referenced open book account agents of these defendants
3 represented to Jeffrey Pastore and others at Plaintiff's business that defendants
4 would pay the indebtedness in full but failed to do so.

5 3.4 As a direct and proximate result of the actions of Defendants,
6 by controlling, dominating, managing, and operating these entities and by seeking
7 an extension of credit and delivery of merchandise on credit for the convenience
8 and benefit of these individuals, and to evade payment of the obligations to
9 Plaintiff as set forth herein above, Plaintiff has been damaged in the principal
10 sum set forth below, together with pre- and post-judgment interest according to
11 law, attorneys' fees and costs in amounts to be proven at time of trial, for
12 which all Defendants are responsible.

13 4. Said obligation is commercial in nature, not based upon a retail
14 installment sales contract or a conditional sales contract, and not subject to
15 the provisions of Civil Code §§ 1812.10 and/or 2984.4. Said obligation is based
16 on an open book account pursuant to Civil Code §1717.5 which entitle Plaintiff
17 herein to reasonable attorneys' fees in addition to other costs.

18 5. The true names and/or capacities, whether individual, corporate,
19 associate or otherwise, of Defendants named in this action as DOES 1 through 50,
20 inclusive, are unknown to Plaintiff at this time; therefore, Plaintiff will amend
21 this Complaint to show their true names and capacities upon discovery of same.

22 6. At all times herein mentioned, each of the Defendants was the agent
23 of each of their Co-Defendants, and, in committing the acts hereinafter alleged,
24 said Defendants were acting within the scope of their authority as such agents,
25 or employees, or authorized representatives, and with the permission and consent
26 of said Co-Defendants named herein.

27 **FOR A FIRST CAUSE OF ACTION AGAINST ALL**

DEFENDANTS
(Open Book Account)

1
2 7. Plaintiff realleges and incorporates herein by reference each and
3 every allegation contained in ¶¶ 1 through 6 of the First Cause of Action, as
4 though fully set forth.

5 8. Plaintiff alleges that within the past four (4) years, namely on July
6 27, 1998, Defendants became indebted to Plaintiff on an open book account for a
7 balance due in the sum of \$21,235.00 for goods, wares, merchandise and/or
8 services, which were provided and delivered to Defendants at their request. No
9 part of the above sum has been paid and the sum of \$21,235.00 is now due and
10 owing from Defendants to Plaintiff, together with interest thereon at the legal
11 rate from and after July 27, 1998, plus reasonable attorneys' fees as allowed by
12 law.

FOR A SECOND CAUSE OF
ACTION AGAINST ALL DEFENDANTS
(Account Stated)

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14
15 9. Plaintiff realleges and incorporates herein by reference each and
16 every allegation contained in ¶¶ 1 through 8 of the First Cause of Action, as
17 though fully set forth.

18 10. Plaintiff alleges that on or about July 27, 1998, there was an
19 account stated between Plaintiff and Defendants, in which the sum of \$21,235.00
20 was agreed upon as the balance due to Plaintiff. No part of said sum has been
21 paid, and the sum of \$21,235.00 is now due and owing from said Defendants to
22 Plaintiff, together with interest thereon at the legal rate from and after July
23 27, 1998, plus reasonable attorneys' fees as allowed by law.

FOR A THIRD CAUSE OF

ACTION AGAINST ALL DEFENDANTS
(Reasonable Value)

11. Plaintiff realleges and incorporates herein by reference each and every allegation contained within ¶¶ 1 through 10 above, as though fully set forth.

12. Plaintiff alleges that on or about July 27, 1998, Defendants became indebted to Plaintiff in the sum of \$21,235.00 for goods, wares, merchandise and/or services, which were provided and furnished to Defendants at their request. Despite demands, no part of that sum has been paid and the sum of \$21,235.00 is now due and owing from the Defendants to Plaintiff, together with interest thereon at the legal rate from and after July 27, 1998, plus reasonable attorneys' fees as allowed by law. The above sum represents the reasonable value of said goods, wares, merchandise and/or services.

FOR A FOURTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Breach of Contract)

12. Plaintiff realleges and incorporates herein by reference each and every allegation contained within ¶¶ 1 through 11 above, as though fully set forth.

13. On or about April 15, 1998 Plaintiff and Defendants entered into a written contract and/or agreement wherein Plaintiff agreed to provide and furnish goods, wares, merchandise and/or services according to the terms and conditions of said written contract and/or agreement.

14. Pursuant to said contract and/or agreement, Plaintiff has performed all of the terms and conditions on its part to be performed. Any and all non-performance on Plaintiff's part was and is excused by the Defendants' acts, omissions and/or other conduct.

15. Defendants breached said contract and/or agreement by failing and refusing to pay the Plaintiff in accordance therewith. As a result, there is now

1 due owing and unpaid from Defendants to Plaintiff the sum of \$21,235.00 together
2 with interest thereon at the rate of ten percent (10%) per annum from and after
3 July 27, 1998, pursuant to said contract and/or agreement.

4 16. Said contract and/or agreement provides for attorneys' fees and
5 Plaintiff demands an award of reasonable attorneys' fees based upon the
6 institution of litigation herein.

7 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of
8 them, as follows:

9 **AS TO ALL DEFENDANTS ON THE**
FIRST, SECOND AND THIRD CAUSES OF ACTION

- 10 1. For the principal sum of \$21,235.00;
11 2. For interest at the proper legal rate on said principal sum from and
12 after July 27, 1998, and
13 3. For reasonable attorneys' fees pursuant to Civil Code § 1717.5.

14 **AS TO ALL DEFENDANTS ON THE**
FOURTH CAUSE OF ACTION

- 15 1. For the principal sum of \$21,235.00;
16 2. For interest at the rate of 10% per annum on said principal sum from
17 and after July 27, 1998, and
18 3. For reasonable attorneys' fees.

19 **AS TO ALL CAUSES OF ACTION**

- 20 1. For costs of suit incurred herein; and
21 2. For such other and further relief as is just and proper in this case.

22
23
24 DATED: _____

Mark P. Kronos, Esq.
Attorney for Plaintiff DIGITAL
NETWORK, L.L.C.

DECLARATION IN SUPPORT OF VENUE AND JURISDICTION

I, MARK P. KRONES, declare,

1. I am an attorney duly licensed to practice law, and am attorney of record for Plaintiff DIGITAL NETWORK, L.L.C. If called as a witness, I could and would competently testify to the facts stated below.

2. The Municipal Court of the San Diego Judicial District is the proper Court to commence and try the above-entitled action because:

2.1 This judicial district is where the contracts were made and to be performed, where the obligation and liability arose and where the breach occurred.

2.2 Defendants were and are doing business in this Judicial District.

2.3 The obligation sued upon was and is payable and merchandise made/services performed within this Judicial District.

2.4 The subject agreements were and are payable within this Judicial District.

2.5 The goods were manufactured and the agreements were made in this judicial district.

3. The causes of action sued upon are not subject to the provisions of Civil Code §§ 1812.10 or 2984; and

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

Executed this _____ day of _____, 1998 in San Diego, California.

Mark P. Krones