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4 Attorney for Plaintiff  
COMPUTER GRAPHICS, INC.

7 MUNICIPAL OF CALIFORNIA, COUNTY OF SAN DIEGO

8 SAN DIEGO JUDICIAL DISTRICT

9  
10 COMPUTER GRAPHICS, INC., a California  
corporation,  
11 Plaintiff,  
12 vs.  
13 SEISMIC PROPORTIONS, LLC aka PETER LANDE  
INTERNATIONAL, LLC aka PETER LANDE INTL.  
14 LLC, a California limited liability  
company; SDF MARKETING, INC. aka GROPER  
HOWARD GREENHOUSES, INC., a California  
15 corporation; RTG ACQUISITION CORP., a  
Delaware corporation not qualified to do  
16 business in California; PETER S. LANDE,  
an individual; PETER W. HOWARD, an  
17 individual; JOHN GROPER, an individual;  
and DOES 1 through 50, inclusive,  
18  
19 Defendants

Case No. 192653  
AMENDED COMPLAINT FOR DAMAGES  
1. OPEN BOOK ACCOUNT  
2. ACCOUNT STATED  
3. REASONABLE VALUE  
4. BREACH OF CONTRACTS  
5. FRAUD AND DECEIT  
6. NEGLIGENT MISREPRESENTATION  
principal \$7,581.13

20 Plaintiff complains and alleges as follows:

21 **FOR A FIRST CAUSE OF ACTION AGAINST ALL**  
**DEFENDANTS**  
22 **(Open Book Account)**

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

1 site for venue per the attached account agreement and terms of sale is in this  
2 judicial district.

3 2. At all times mentioned herein, Plaintiff was, and is, a California  
4 corporation authorized to do business in the County of San Diego, State of  
5 California and whose transaction of business with furnishing of goods to  
6 Defendants gives rise to this lawsuit. Plaintiff is informed and believes and  
7 thereon alleges that on August 27, 1998 Defendant SDF MARKETING, INC. aka GROPER  
8 HOWARD GREENHOUSES, INC., a California corporation merged into RTG ACQUISITION  
9 CORP., a Delaware corporation ("RTG") which is presently not qualified to do  
10 business in California.

11 3. At all times mentioned herein, Plaintiff is informed and believes and  
12 thereon alleges that Defendants PETER S. LANDE, PETER W. HOWARD, JOHN GROPER and  
13 DOES 1 through 25 ("these individuals") are and were the responsible  
14 shareholders, principals, officers, members, managers, and/or partners of  
15 defendant entities referenced in paragraphs 3.1 through 3.3 below. Plaintiff and  
16 Defendants were and are doing business within this judicial district. Defendants  
17 are liable to Plaintiff in the capacity sued and named herein.

18 3.1 Plaintiff is informed and believes and thereon alleges that  
19 these individuals have dominated and controlled Defendants SEISMIC PROPORTIONS,  
20 LLC aka PETER LANDE INTERNATIONAL, LLC aka PETER LANDE INTL. LLC, a California  
21 limited liability company; SDF MARKETING, INC. aka GROPER HOWARD GREENHOUSES,  
22 INC., a California corporation; and DOES 26 through 50 ("these entities") and  
23 their business, property and affairs, and that there existed,  
24 and now exists, such a unity of ownership and interest between these entities and  
25 individuals, that the individuality and separateness of these Defendants ceased  
26 to exist. Thus, adherence to these entities' independent existence would, under  
27 the circumstances, promote injustice and/or sanction fraud.

1           3.2 Plaintiff is further informed and believes and thereon alleges  
2 that these entities are the mere alter egos of these individuals. These  
3 individuals, in combination with, and by and through their and each of the  
4 Defendants' employees, representatives and agents conspired to hinder, impede,  
5 delay and defraud Plaintiff in the collection of the charges of the merchandise  
6 provided by COMPUTER GRAPHICS, INC. by seeking an extension of credit and  
7 delivery of merchandise on credit, which benefited these individuals, knowing  
8 that these entities lacked sufficient assets, income or capital to satisfy said  
9 obligation.

10           3.3 As a direct and proximate result of the actions of Defendants,  
11 by controlling, dominating, managing, and operating these entities and by seeking  
12 an extension of credit and delivery of merchandise on credit for the convenience  
13 and benefit of these individuals, and to evade payment of the obligation to  
14 Plaintiff as set forth herein above, Plaintiff has been damaged in the principal  
15 sum set forth below, together with pre- and post-judgment interest according to  
16 law, attorneys' fees and costs in amounts to be proven at time of trial, for  
17 which all Defendants are responsible.

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

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



ACTION AGAINST ALL DEFENDANTS  
(Reasonable Value)

10. Plaintiff realleges and incorporates herein by reference each and every allegation contained within ¶¶ 1 through 9 above, as though fully set forth.

11. Plaintiff alleges that on or about July 28, 1998, Defendants became indebted to Plaintiff in the sum of \$7,581.13 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 \$7,581.13 is now due and owing from the Defendants to Plaintiff, together with interest thereon at the legal rate from and after July 28, 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 Contracts)

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 November 6, 1997, Plaintiff and Defendants entered into written contracts and/or agreements wherein Plaintiff agreed to provide and furnish goods, wares, merchandise and/or services according to the terms and conditions of said written contracts and/or agreements. Copies of said contracts are attached as **Exhibit "2A"** and **"2B"** to the Complaint and incorporated herein. The only site for venue per the attached account agreement and terms of sale ("account agreement") is in this judicial district. The account agreement also provides for service charges/interest at the rate of 18% per annum.

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

5 15. Defendants breached said contracts and/or agreements by failing and  
6 refusing to pay the Plaintiff in accordance therewith. As a result, there is now  
7 due owing and unpaid from Defendants to Plaintiff the sum of \$7,581.13 together  
8 with interest thereon at the rate of eighteen percent (18%) per annum from and  
9 after July 28, 1998, pursuant to said contracts and/or agreements.

10 16. The account agreement provides for attorneys' fees and Plaintiff  
11 demands an award of reasonable attorneys' fees based upon the institution of  
12 litigation herein.

13 **FOR A FIFTH CAUSE OF**  
**ACTION AGAINST ALL DEFENDANTS EXCEPT RTG**  
14 **(Fraud and Deceit)**

15 17. Plaintiff realleges and incorporates herein by reference each and  
16 every allegation contained within ¶¶ 1 through 16 above, as though fully set  
17 forth.

18 18. From the fall of 1997 and continuing thereafter, Defendants, and  
19 each of them, engaged in a course of conduct, representations, and business  
20 pretenses whereby Defendants, and each of them, falsely and fraudulently  
21 represented to Plaintiff 1) the entity names of their companies and their  
22 businesses, 2) that they did business as reputable business people and had  
23 adequate assets and resources with which to pay for Plaintiff's services and  
24 products, 3) that they would order significant merchandise from Plaintiff and pay  
25 for that merchandise promptly and 4) that they were legitimately operating in  
26 California throughout all their dealings.

1           19.    The representations made by Defendants were in fact false.  The true  
2 facts were that Defendants, and each of them, were operating under several  
3 limited liability company, corporate and business names in order to confuse their  
4 creditors and to thwart collection attempts, were not reputable businesspersons,  
5 were not representing business interests that would benefit Plaintiff, had no  
6 intention of paying Plaintiff all sums due, whether for goods or services and  
7 were not operating legitimately in California.

8           20.    When Defendants, and each of them, made the representations, they  
9 knew them to be false, and Defendants, and each of them, made these  
10 representations with the intent to deceive and defraud Plaintiff and induce  
11 Plaintiff to act in the manner herein alleged.

12           21.    Plaintiff, at the time these representations were made by Defendants,  
13 and each of them, and at the time Plaintiff took the actions alleged, was  
14 ignorant of their falsity and believed them to be true.  In reliance on these  
15 representations, Plaintiff was induced to and did act as indicated herein.  Had  
16 Plaintiff known the actual facts, it would not have taken such action and  
17 extended credit to Defendants.  Plaintiff's reliance on these representations was  
18 justified because the contracts were made under ordinary circumstances and  
19 Plaintiff attempted to ascertain the true intent of Defendants.

20           22.    As a proximate result of the fraud and deceit of Defendants, and each  
21 of them, as herein alleged, Plaintiff was induced to engage in business with  
22 Defendants, and each of them, and extend credit as stated above, by reason of  
23 which it has been damaged in the principal sum of \$7,581.13, together with  
24 interest at the proper legal rate from July 28, 1998.

25           23.    Plaintiff is informed and believes and thereon alleges that these  
26 Defendants, and each of them, acted with oppression, fraud, malice and in  
27 conscious disregard of the rights of Plaintiff.  Plaintiff prays this court award

1 punitive damages by way of example against these Defendants to be determined by  
2 the Court at time of trial within the jurisdictional limits of this court.

3 **FOR A SIXTH CAUSE OF**  
4 **ACTION AGAINST ALL DEFENDANTS EXCEPT RTG**  
5 **(Negligent Misrepresentation)**

6 24. Plaintiff realleges and incorporates herein by reference each and  
7 every allegation contained within ¶¶ 1 through 23 above, as though fully set  
8 forth.

9 25. When Defendants made the representations to Plaintiff as set forth in  
10 particular in the previously alleged paragraphs herein incorporated, they had no  
11 reasonable ground for believing these representations to be true and made the  
12 representations with the intent to induce Plaintiff into providing Defendants the  
13 merchandise previously alleged.

14 26. As a result of these negligent misrepresentations, Plaintiff has been  
15 damaged in the principal sum of \$7,581.13, together with interest at the proper  
16 legal rate from July 28, 1998.

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

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

- 21 1. For the principal sum of \$7,581.13;
- 22 2. For interest at the proper legal rate on said principal sum from and  
23 after July 28, 1998; and
- 24 3. For reasonable attorneys' fees pursuant to Civil Code § 1717.5.

25 **AS TO ALL DEFENDANTS ON THE**  
26 **FOURTH CAUSE OF ACTION**

- 27 1. For the principal sum of \$7,581.13;
- 28 2. For interest at 18% per annum on said principal sum from and after  
July 28, 1998; and
3. For reasonable attorneys' fees.

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**AS TO ALL DEFENDANTS EXCEPT RTG ON THE  
FIFTH CAUSE OF ACTION**

- 1. For the principal sum of \$7,581.13;
- 2. For interest at the proper legal rate on said principal sum from and after July 28, 1998; and
- 3. For punitive damages in an amount to be determined at time of trial within the jurisdictional limits of this court.

**AS TO ALL DEFENDANTS EXCEPT RTG ON THE  
SIXTH CAUSE OF ACTION**

- 1. For the principal sum of \$7,581.13; and
- 2. For interest at the proper legal rate on said principal sum from and after July 28, 1998.

**AS TO ALL CAUSES OF ACTION**

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Mark P. Krones, Esq., Attorney for  
Plaintiff COMPUTER GRAPHICS, INC.

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 COMPUTER GRAPHICS, INC., a California corporation. If called as a witness, I could and would competently testify to the facts stated below.

2. The Municipal Court of the North County Judicial District is the proper Court to commence and try this action for the reasons stated below.

2.1 The site for venue per the attached credit application is in this judicial district.

2.2 Defendants were and are doing business in this Judicial District. The principal place of business of Defendant GROPER HOWARD GREENHOUSE, INC. is in this judicial district. Defendants JOHN GROPER and PETER W. HOWARD reside in this judicial district.

2.3 The obligation sued upon was and is payable within this Judicial District.

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

3. The causes of action sued upon are not subject to the provisions of Civil Code §§ 1812.10 or 2984.4; 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