

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

INDUSTRIAL QUICK SEARCH, INC., MICHAEL MEIRESONNE,
and MEIRESONNE & ASSOCIATES, INC.

(b) County of Residence of First Listed Plaintiff Kent County, MI
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew Lavoott Bluestone, 233 Broadway, Suite 2702, New York,
NY 10279 (212) 791-5600

DEFENDANTS

MILLER, ROSADO & ALGOIS, LLP, CHRIS ROSADO and
NEIL A. MILLER, Esq.

County of Residence of First Listed Defendant Nassau
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERLY <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332 28 U.S.C. 1367

Brief description of cause:
Legal Malpractice,

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/31/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ARBITRATION CERTIFICATION

I, Andrew Lavooft Blustone, counsel for Plaintiffs do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.
Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County? No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ✓

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No ✓

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: alb8964

E-MAIL Address: alb@bluestonelawfirm.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: _____



UNITED STATES DISTRICT COURT

for the

Eastern District of New York

INDUSTRIAL QUICK SEARCH, INC., MICHAEL
MEIRESONNE, MEIRESONNE & ASSOCIATES, IN

Plaintiff

v.

MILLER, ROSADO & ALGOIS, LLP, CHRIS
ROSADO and NEIL A, MILLER, Esq.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* MILLER, ROSADO & ALGOIS, LLP
200 OLD COUNTRY ROAD
SUITE 590
MINEOLA, NY 11501

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/31/2009

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

INDUSTRIAL QUICK SEARCH, INC., MICHAEL
MEIRESONNE, MEIRESONNE & ASSOCIATES, IN

Plaintiff

v.

MILLER, ROSADO & ALGOIS, LLP, CHRIS
ROSADO and NEIL A, MILLER, Esq.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* NEIL MILLER, Esq.
200 OLD COUNTRY ROAD
SUITE 590
MINEOLA, NY 11501

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/31/2009

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

INDUSTRIAL QUICK SEARCH, INC., MICHAEL
MEIRESONNE, MEIRESONNE & ASSOCIATES, IN

Plaintiff

v.

MILLER, ROSADO & ALGOIS, LLP, CHRIS
ROSADO and NEIL A. MILLER, Esq.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CHRIS RODADO, Esq>
200 OLD COUNTRY ROAD
SUITE 590
MINEOLA, NY 11501

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/31/2009

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

INDUSTRIAL QUICK SEARCH, Inc,
MICHAEL MEIRESONNE,
MEIRESONNE & ASSOCIATES, Inc.

Plaintiffs,

-against-

MILLER, ROSADO & ALGOIS, LLP,
CHRIS RODADO and
NEIL A. MILLER, Esq.

JURY TRIAL DEMANDED

Defendants.

Plaintiffs, INDUSTRIAL QUICK SEARCH, Inc, MICHAEL MEIRESONNE, and
MEIRESONNE & ASSOCIATES, Inc. by their attorney ANDREW LAVOOTT BLUESTONE,
[alb216] as and for their verified complaint against defendants MILLER, ROSADO & ALGOIS,
LLP, CHRIS RODADO and NEIL A. MILLER, Esq. complaining of the defendants allege and
show to the Court as follows:

NATURE OF THE ACTION

1. This is an action for legal malpractice in tort and contract, arising under the law of the State of New York.

SUBJECT MATTER JURISDICTION

2. The court has subject matter jurisdiction pursuant to 28 U.S.C. Sections 1332(a) (1) and 1367. More than \$ 150,000 is in dispute.
3. Venue is proper in this Court under 28 U.S.C. Section 1391(a).
4. Defendants practice law, and maintain an office for the practice of law within this district and are subject to personal jurisdiction on the basis of the location of their principal place of business.

THE PARTIES

5. Plaintiff INDUSTRIAL QUICK SEARCH, Inc, [hereinafter, "IQS"] is a Michigan corporation having its principal place of business at 1500 East Beltline, Grand Rapids, Michigan 49506, and an additional place of business at 10351 Dawsons Creek Boulevard, Fort Wayne, Indiana, 46825. It operates a web-based service, which lists industrial products, services and manufacturers for a fee to advertisers. Among other things, it seeks to provide advertisers with high rankings for their company and product listings on internet search engines.

6. Plaintiff MEIRESONNE & ASSOCIATES, Inc. [hereinafter "M & A"] is an Illinois corporation with a principal place of business at 1500 East Beltline, Grand Rapids, Michigan 49506 2096 Robinson Rd., N.E., East Grand Rapids, Kent County, Michigan 49506. M & A was engaged as an independent contractor or "senior" by Defendant PINI to, among other things, sell advertising in an industrial listing publication known as The Thomas Register [hereinafter the "Thomas Register"];

7. Plaintiff MICHAEL MEIRESONNE, [hereinafter "Meiresonne"] is an individual who resides in East Grand Rapids, Michigan and is a citizen of the State of Michigan. Meiresonne is president and controlling stockholder of Plaintiff M & A, and a principal and investor in Plaintiff IQS [collectively "Plaintiffs"].

8. Defendant MILLER, ROSADO & ALGIOS, LLP [hereinafter, "MRA"] is a law firm which maintains its office for the practice of law and does business in the State of New York, County of Nassau, at 200 Old Country Road, Suite 590, Mineola, New York, 11501, within the Eastern District of New York.

9. NEIL MILLER [hereinafter, "Miller"] is an attorney at law, duly admitted to practice before the Courts of the State of New York, an associate or a member of Defendant MRA with a principal

place of business at 200 Old Country Road, Suite 590, Mineola, New York, 11501.

10. CHRIS ROSADO [hereinafter, "Rosado"] is an attorney at law, duly admitted to practice before the Courts of the State of New York, an associate or a member of Defendant MRA with a principal place of business at 200 Old Country Road, Suite 590, Mineola, New York, 11501.

11. Defendant MRA, a law firm, consists of the named individual defendants and others [collectively "Defendants"], with a principal place of business at 767 Third Avenue, New York, New York 10017. Defendants represented Plaintiffs continuously from January 28, 2003 through October 30, 2007 when final payment for legal services was tendered by Plaintiffs to Defendants regarding the Thomas Action.

12. There is complete diversity of citizenship between Plaintiffs and Defendants pursuant to 28 U.S.C. Section 1331, *et seq.*

SUMMARY OF THE ACTION

Allegations in the Complaint

13. On or about April 30, 2002, Plaintiffs were all sued [as "Thomas defendants"] by parties including Thomas Publishing Company [hereinafter "Thomas"] and Product Information Network, Inc. [hereinafter "PINI"] [hereinafter "Thomas plaintiffs"] in an action [hereinafter the "Thomas Action"] captioned:

United States District Court
Southern District of New York

Thomas Publishing Company and
Product Information Network, Inc.
Plaintiffs,

-against-

02 CIV 3307 [RO]

Industrial Quick Search, Inc.,
Meiresonne & Associates, Inc.
Michael Meiresonne and John Does
No.1 through 5,
Defendants.

X

14 Plaintiffs' counsel, Defendants' predecessors, answered and the Thomas Action progressed through an amended and a second amended complaint.

15. Thomas plaintiffs accused Plaintiffs, or Thomas defendants, of copying nearly eighty five percent (85%) of the company profiles and product descriptive language contained on Plaintiffs' web sites, from a publication called the "Thomas Register," allegedly with knowing and willful violations of the copyright laws. It was further alleged that Plaintiffs here created a product that they intended to "pass off" as their own on a website "www.industrialquicksearch.com."

16. It was alleged by Thomas plaintiffs in that lawsuit that the copying included the "narrative texts of company profiles and product descriptions, unique product headings, the original selection, coordination and arrangement of company profiles, product descriptions and product headings," among other claims.

17. It was further alleged that Defendant M & A had a "longstanding contractual relationship with plaintiff PINI to solicit and secure advertising for 'Thomas Register,' which M & A and Meiresonne allegedly terminated.

18. It was further alleged that one Christopher M. Terryn, an individual who was employed as an intern with IQS and M & A, whose employment lasted a total of 100 hours in April and May of 2001, engaged in the alleged acts of copying. In fact, Terryn indicated that he provided ninety percent (90%) of the IQS web site content during the period of the alleged infringement. However, Terryn's comments made in discovery were inconsistent, and Plaintiffs were never afforded an opportunity to cross-examine him in court or to present opposing witnesses to prove that Terryn acted unilaterally. After his employment terminated, Terryn allegedly contacted Thomas Register with information claiming that he was engaged, on the behalf of IQS, in copying and taking proprietary information from the Thomas Register books and website, and appropriating and copying the material for IQS to use.

19. It was further alleged that customers, or "seniors" of PINI and other prospective representatives were receiving solicitations from IQS, seeking to take business away from the Thomas Register and PINI and that the addresses and names could only have come from the March 2002 *Who's Who* directory, which if true would have been an improper use of confidential and proprietary information, thus competing unfairly with the Thomas Register and PINI.

20. Just prior to the filing of the Thomas defendants' Answer to the Second Amended Complaint, on or about January 28, 2003, Plaintiffs retained Defendants as their attorney in the Thomas Action. Defendants had no significant role in the drafting of the Plaintiffs' Answers.

Plaintiffs' Retention of Defendants

21. During the time period January 2003 through at least September 2007, the Defendants represented Plaintiffs as their attorney.

22. Plaintiffs retained the services of Defendants to represent them in the above captioned action

through the execution of a Retainer Agreement and payment of a twenty five thousand dollar (\$25,000) retainer.

23. Defendants accepted said retainer and undertook to appear for Plaintiffs in the Thomas Action, to zealously defend the action to conclusion, and to do so in a skillful, proper and diligent manner as attorneys for the Plaintiffs herein, with Rosado designated as having "primary responsibility" for the representation.

24. Legal fees were agreed to by Plaintiffs and the Defendants for their professional services, and all properly due and owing legal fees have been paid.

Facts Associated with the Underlying Case

25. By 2000, print sales in Thomas Register were declining, as competition increased and users and advertisers alike started to utilize the internet, internet search engines, and other electronic means, such as CD-ROMs, to find industrial companies and products. Thomas did have a web site, but at that time, because of how it was structured, it could not be found and was not searchable on search engines such as Google.

26. Thomas advertisers complained about the inability to search the Thomas Register online through the use of search engine technology. They turned to the independent contractor/seniors, such as Meiresonne, expressing concern and requesting something be done. Thomas' independent contractors/seniors then conveyed these concerns to top Thomas management.

27. Recognizing its own shortcomings, Thomas management indicated that was there nothing inconsistent about its independent contractors/seniors selling advertisements for Thomas and seeking to have advertisers create searchable content on the web. In fact, Tom Knudsen (one of Thomas'

principals) reportedly approved of seniors helping Thomas advertisers to “optimize” their web content (by placing certain “keywords” on web sites that were then searchable by search engines). Don MacPherson, Thomas’ Vice-President of Finance, saw nothing inconsistent between a senior helping an advertiser with search engine rankings, and getting an advertiser to advertise in the Thomas Register.

28. In 2000, at the behest of his advertisers, Meiresonne formed IQS to provide the online services that Thomas elected not to provide, including providing advertisers with favorable search engine rankings. IQS went online in 2001, sharing offices with independent contractor M & A. Rather than utilizing a single large web site, populated by a comprehensive or “dynamic” database, like Thomas, IQS utilized a series of “vertical” web sites (such as www.industrialpartswashers.com), linked to a central “home page” or web site (www.industrialquicksearch.com). IQS’ web sites were “static,” which meant a two step process in which “editors” drafted the text to go onto the web pages and then “coders” hand typed the content onto each web page on each of the IQS web sites. Any changes required that each web page be manually retyped onto each web page. While this process was laborious and the structure cumbersome, it allowed the users of search engines, such as Google, to identify advertisers and advertiser’s products via search engine queries. “Dynamic” web sites such as Thomas, *i.e.*, web sites populated and updated by databases, were easily updated, populated and revised in one simple action, but were not searchable at the time on search engines such as Google. Thus, in 2001 while IQS advertisers and their products could be found on the internet via search engine searches, Thomas advertisers and their product listings on the Thomas web site could not be found through search engine searches.

29. In early 2001, IQS consisted of Meiresonne and two part time employees. At that time, Meiresonne decided to seek part-time help from summer interns. One of the first interns hired by

IQS was Chris Terryn.

30. Upon his hire in March 2001, and without Plaintiffs' knowledge or consent, Terryn commenced unauthorized infringing activities by copying company listings and product descriptive language. In an effort to cover his actions, which he knew were improper, he copied outdated information from an expired 1999 hard copy of the Thomas Register, which he discovered in IQS' offices. While this allowed Terryn to appear to be productive with little or no effort, by "completing" many company listings and product descriptions in a very short period of time, it was expressly contrary to IQS company policy.

31. Since the text contained in Thomas print ads and web site did not contain targeted "keywords," which are necessary to assure high rankings for IQS advertisers on search engines, such as Google, Terryn had received explicit instructions *not* to copy the Thomas Register language.. Further, the data contained in the 1999 edition of the Thomas Register was out of date, containing numerous inaccuracies as a result. As such, IQS would never had requested that Terryn copy the outdated Thomas Register.

32. Rather than going to IQS's advertiser's web sites to glean relevant information for use on the IQS web site, as instructed, for the reasons stated above is clear that Terryn unilaterally decided to copy the outdated material from Thomas. Further, Terryn actively took measures to ensure that his wrongful acts were not discovered during his tenure at IQS. Such actions included copying from an outdated source, which was years old (when current information was critical to user and advertisers alike), and not informing his superiors of his actions.

33. Only after Terryn left IQS, received his final grades for the internship and graduated from college, and apparently became worried that he might be held responsible for his wrongful acts, did he fabricate his story that he was instructed to copy and elect to inform Thomas of his wrongful acts.

Now anxious to eliminate any potential rival, Thomas even provided Terryn with an indemnification for those wrongful acts. Terryn's fabricated story changed over time (to suit Thomas) and the number of falsehoods ballooned. But it became evident during discovery that Terryn's account of the copying events was not only internally inconsistent, but it conflicted with every other sworn account of the 2001 events (including accounts from witnesses otherwise hostile to Plaintiffs). For example, Terryn claimed that Mr. Meiresonne instructed him, as a summer intern with no experience or working knowledge of the industry, to draft "company policy," which purportedly required that all text be copied from outdated Thomas Registers. Yet, for the reasons stated above, and others, such copying would have omitted critical "keywords" and would have had a very negative impact on IQS's central goal of providing its advertisers with high search engine rankings. Given this and other negative impacts, such a "policy" would never have been "approved" by Mr. Meiresonne or anyone else in his office. Further knowing that IQS retained electronic documents, Terryn indicated that his "policy" was drafted on his home computer (which allegedly later "broke" resulting in the loss of his electronic copy of the "policy") and that he left the original hard copy of this "policy" with IQS upon his departure, keeping a paper copy for himself for protection against future legal actions. Incredibly, he then claimed to have destroyed the paper copy of the "policy," which he admitted was his protection, *after* informing Thomas of his copying and just as the Thomas Action commenced. Had such a "policy" existed, it would have certainly constituted the core of the Thomas plaintiffs' evidence in the Thomas Action, and would have been mentioned in the pleadings. Instead, no mention was ever made of the "policy" in the Thomas complaint, in Terryn's 2002 Affidavit in support thereof, or in Thomas' 2003 deposition of Mr. Meiresonne. In fact, Terryn did not mention the existence of the copying policy until 2004, over *two years* after notifying Thomas of his unilateral copying efforts. Not surprisingly, not a scintilla of evidence exists to substantiate his false claims,

which in fact were contradicted by at least one witness hostile to IQS (*see*, Nicole Korthals, policy specifically forbade copying, to assure “keyword” optimization).

34. Upon Terryn’s departure, Plaintiffs quickly discovered that search engine rankings were suffering, since the company listings and product descriptive matter improperly and surreptitiously copied by Terryn lacked both accuracy and the critical “keywords.” Without accurate “keywords”, IQS advertisers were not readily found via search engines such as Google. To fix the search engine ranking problems posed by Terryn’s improper actions, an all out effort was commenced by Mr. Meiresonne and IQS in August 2001 to re-write all company listings and product descriptive matter so as to include “keywords”. By November 2001, the majority of all company listings and product descriptive matter was re-written, and all but one of the approximate 80 IQS websites was re-written by December 31, 2001. That final web site was re-written by early-January 2002.

35. IQS routinely kept printouts of web sites of its client advertisers, and other sources, used by IQS employees in drafting the company listings and product descriptive language that was used on IQS web sites. These printouts were kept for each company until such time as the company or product listing was updated or re-written, at which time they were routinely thrown out and replaced by the printouts used for the re-write. Thus, any original printouts, assuming Terryn had bothered to make them (which is unlikely), were discarded in the normal course of business *long before* the filing of the Thomas Action.

36. In addition to paid advertisers, IQS would also populate its web site listings with a certain number of unpaid trial listings for prospective advertisers. IQS salespersons would then contact these companies, notifying them of their free trial “Page 1” listing, with the hope that they would become IQS advertisers. At the end of the free trial period, Page 1 listings on the various IQS sites would be “re-ranked,” removing companies who elected not to sign up for a paid listing, and adding other

companies to enjoy a trial ranking in their place. IQS utilized a number of sources, including Thomas Register, Globalspec and Google, to obtain basic unprotected information regarding potential advertisers, such as names, phone numbers addresses, and basic descriptions of the products or services that those potential advertisers were selling. Common sense indicates that those at the top of competitors' lists, such as Thomas, had paid the most as advertisers, and were therefore good prospects as IQS customers. This is common practice in the industry, and is not improper or illegal. It is equivalent to targeting companies with the biggest yellow pages ads, hoping that they have the largest advertising budgets. A record of "re-ranks" was kept electronically, so that IQS had a record of those potential advertisers who had already been given a trial listing, so that free listings were not offered multiple times to the same prospective advertiser. Any competitor web sites whose unprotected information (*e.g.*, names, addresses or listing order on those competitors' sites) was viewed for re-ranking purposes, is available on archival web sites such as www.archive.org. Thus, electronic records of the information relied on by IQS during the IQS re-ranking process remain intact to this date. Given the frequency of "re-writes" and "re-ranks", keeping all historical printouts of IQS rankings and any competitors' web sites would have had no business purpose and would have resulted in an unmanageably huge volume of documents. Instead, these documents were routinely discarded or recycled.

37. In an effort to conserve costs as a start up company, in late-2002 IQS office staff started to recycle paper by printing internal copies and advertiser web site printouts on discarded paper. Since most printed documents were used for a short time and discarded, this practice was both economical and environmentally friendly. However, occasionally documents that should have been discarded ended up on the back of internal IQS documents.

38. In November 2001, acting on Terryn's admissions that he had copied and misstatements as

to why, Thomas and PINI's attorneys sent IQS a cease and desist letter [the "Letter"]. The Letter instructed IQS that "continued use of Thomas's original and copyrighted product heading and descriptive texts would constitute a willful copyright infringement and unfair competition."

39. It was further alleged by Thomas plaintiffs that *after* IQS received the Letter, it made changes to significant portions of the descriptive text on its websites. This is not true. As indicated above, by the time IQS received the Letter, the majority of the infringing language had already been changed to correct outdated data and insert the "keywords" not included by Terryn during his unauthorized copying of old Thomas Registers in order to secure high search engine rankings. By the time the Letter was sent, and any documentation related to the completed "re-writes," including the sources used had been used by Terryn to originally create the web sites, if any, had been discarded in the normal course of business. Since any improper copying of outdated Thomas material ceased upon Terryn's departure, re-written company listings and IQS descriptive text was clearly already different than the *Thomas Register* text for the majority of IQS sites by the time the Letter was received.

40. By the time the Thomas Action was filed in May of 2002, any printouts of company web sites used by Terryn during the process of creating IQS company listings and product descriptions had already been discarded in the normal course of business. The documents utilized to re-write the IQS web sites in 2001 and early 2002 were kept, and are still available. Thomas plaintiffs made much of the fact that the documents used by Terryn to draft the company listings and the product descriptive language (initially in 2001 and later after the re-write) had been discarded. However, contrary to the Thomas plaintiffs' claims, these documents are *not necessary* to determine whether IQS had infringed on copyrighted materials. Independent archival websites, such as www.archive.org, routinely and frequently record take "snapshots" of every website on the web and maintain archival copies of all web sites, including IQS. Thus, to prove that Terryn had copied, in addition to Terryn's

own admission that he had done so, Thomas only needed to go to an archive website to obtain and compare IQS's 2001 websites, as "written" by Terryn, to compare the IQS content to the outdated Thomas texts improperly used by Terryn. In fact, even as it filed the Thomas Action, Thomas plaintiffs used such archival websites to demonstrate that Terryn's copied text appeared on IQS's web sites in 2001. Therefore, the documents used by Terryn to "create" his descriptions, if he even created or kept any, were not necessary to the Thomas plaintiffs' case.

Facts Relevant to the Present Action

41. Discovery commenced in the Thomas Action in late-2003, with requests for document production being served on Plaintiffs.

42. On or about July 25, 2003, a visit by lawyers for Thomas Register and PINI were scheduled for August 4, 2003 to defendant's offices to the IQS offices to review documents and information from their files.

43. This pivotal document discovery visit required that Plaintiffs produce and hold for inspection, in excess of ten thousand pages of materials, which were located in the IQS offices in Grand Rapids, Michigan.

44. As indicated above, it had been the practice at Plaintiff's office to use both original and scrap paper in order to print documents, which were to be used and then discarded. Scrap paper was saved to use on the second side, as a cost savings mechanism, since so much paper was used and then discarded. Mr. Meiresonne was not initially aware of this practice.

45. Some of the recycled scrap paper was printed on one side with Mr. Meiresonne's personal financial information and other confidential information. Highly confidential bank account

information, and other personal and confidential information, was not in any way responsive or relevant to the Thomas plaintiffs' discovery request.

46. During this entire period prior to the discovery and inspection visit, and during the visit, Plaintiffs had repeatedly asked Defendant attorneys for legal advice as to how to prepare for and respond to the Thomas plaintiffs' broad discovery request. Such guidance was especially critical given the sheer number of documents and the legal complexity of the Thomas plaintiffs' discovery request. More specifically, Plaintiffs asked the Defendants for legal advice on the retention, storage, production of, or permissible discarding of non-responsive information, of non-responsive protected documents, and proper handling of financial documents, which were non-responsive or not relevant to the litigation.

47. Numerous e-mails and faxes traveled between Plaintiffs and their attorneys [Defendants herein] on the issue, but no advice was *ever* given to Plaintiffs by Defendant attorneys on document retention, document production, document segregation, privileged documents, irrelevant documents or discarding of documents, nor on behavior at the document production during this critical period.

48. No attorney from Defendant's office ever traveled to Plaintiff's office for this pivotal document production. In spite of *repeated* Plaintiff requests, Defendants failed or otherwise refused to provide advice, legal advice, direction, answers to questions on proper procedure, refused to provide attorney presence, or to appear in person for the document production. Further, Defendants failed to institute even the most basic of document production protocols, including any review for privilege, creation of a privilege log, Bates stamping, inventory or other means of tracking documents, nor were Plaintiffs or Plaintiffs' local counsel directed to do so. No controls were ever provided by Defendants during the review, and Thomas plaintiffs actually removed large quantities of documents from Plaintiffs' offices for copying and/or other purposes over a three-week period in

August 2003. Given the lack of direction from Defendant counsel and even the most basic of document production control protocols, Plaintiffs had no way of knowing if such removal was permissible or whether documents were *ever* returned, including documents which might have assisted Plaintiffs in defense of the claims against them or their counterclaims asserted against Thomas plaintiffs.

49. Defendants failed or otherwise refused to provide *any* guidelines for proper document handling, document retention, document production, document storage, document reduction, handling of privileged documents, handling of irrelevant documents, directions on discarding documents, advice on what documents could be discarded, preparation of privilege logs, separation of proper and improper documents for production or in any fashion engaging in the document production.

50. In December 2003, only *after* the Thomas plaintiffs raised a concern regarding document destruction and five months *after* the document production, Defendants indicated for the first time that Plaintiffs should throw nothing out. It was not until long after the document review, on January 18, 2007 that Defendants even mentioned the issue of creating a formal document retention policy in writing, and then only in an e-mail which alerted Plaintiffs, some years after the issue of spoliation first came up, and after the document production which led to a spoliation hearing, that there should be a "document retention policy" or that "steps to preserve all paper and electronic documents" should be undertaken. This advice came only after Plaintiffs' multiple prior requests for guidance on such a policy had been completely ignored by Defendants.

51. In the days immediately before the August 4, 2003 document production, with the production date rapidly approaching and after requesting direction from Defendant counsel on repeated occasions and hearing nothing, Plaintiffs did, as laypersons, take actions to remove files that

they believed were *not* responsive to Thomas plaintiffs' discovery requests for document production.

Specifically, Plaintiffs removed and discarded: (a) documents printed on recycled scrap paper, with sensitive and non-responsive financial and other data printed on the scrap side (making a copy of the relevant side, returning the copy to the file, and discarding the original); (b) documents relating to Plaintiffs' "re-rank" efforts (since the re-rank documentation was stored and remains available electronically, either on CD-ROM or archival web sites); and (c) documents relating to Plaintiffs company listing and product descriptive matter "re-writes" that occurred *after* the alleged infringement had ceased (recall that any documents used by Terryn to draft the infringing language had been discarded in the ordinary course of business in 2001, well before the first suit was filed in 2002 and, as such, any "re-write" documentation after the suit was filed would not have contained any evidence of copying from Thomas, since such copying after 2001 verifiably did not occur).

52. After Plaintiffs had removed and discarded documents that Plaintiffs believed were non-responsive or redundant, but before the documents were taken away for permanent disposal by the Plaintiffs trash service (and therefore were still recoverable), Plaintiffs sent yet one final inquiry to Defendant counsel which indicated what they had done and once again requested direction as to whether or not such actions were proper. Plaintiffs, once again, received *no response* from Defendant counsel. Up until that point, up to and including the day of the Thomas plaintiffs' document review, had Defendants properly directed Plaintiffs not to throw out *any* documents, unless or until directed by Defendant counsel, the documents could have been recovered and claims of spoliation would have been prevented.

53. Thomas plaintiffs conducted their document review by removing approximately 30,000 uninventoried documents from the offices of IQS and Mr. Meiresonne and, upon information and belief, at outside locations copied over 10,000 pages of documents provided during a two week

period in the month of August 2003. However, many if not most of the documents were not returned until September of 2003 and, given the complete lack of any ordinary and reasonable document control mechanisms, Plaintiffs have no way of knowing how many of the 30,000 documents removed by the Thomas plaintiffs were returned.

54. On or about November 24, 2003 Thomas plaintiffs moved by order to show cause pursuant to Fed. Rule Civ. Proc. 37 and the Court's inherent powers for sanctions to strike defendant's answer, third party claims, counterclaims and reply to counterclaims for withholding and intentionally destroying relevant discovery and for spoliation of evidence, along with a request to impose monetary sanctions for attorneys' fees and costs.

55. The basis for this motion was a discussion between Thomas plaintiff's local Michigan counsel and Lisa Dokter, a former disgruntled employee of IQS, in which it was alleged that she and other IQS employees removed "relevant" documents and information from IQS files to destroy them.

56. These acts were alleged to have taken place during July, 2003, just days before the document production and inspection. The document inspection commenced on August 4, 2003 and continued for most of the month of August, however many documents removed from the IQS premises by Thomas plaintiffs were not returned until September 2003, if at all.

57. Opposition was made to the Order to Show Cause, and a hearing was held before the Hon. Richard Owens, of District Court, Southern District of New York commencing on February 14, 2006 and concluding on February 16, 2006. The hearing was intended to determine whether spoliation occurred and, if so, what would be the appropriate remedy. At this hearing:

- a. Defendant counsel failed to identify and explain to Judge Owen that archival web sites were and are a readily available means of proof of infringement (although such archival web sites were repeatedly utilized by Thomas plaintiffs to indicate that outdated Thomas text was utilized by Terryn to populate the IQS web sites in 2001, and were also utilized by IQS to indicate that such text had been removed by 2002), and that such archival websites existed then and now as a superior evidentiary alternative to the allegedly discarded documents,

leading Judge Owen to wrongly conclude that IQS destroyed evidentiary proof both necessary and “critical” to Thomas plaintiff to prove the central allegations in the Thomas action;

b. Defendant counsel failed to explain why Plaintiff Meiresonne changed his story regarding historical copying, when such explanation was readily available (copying from the Thomas Register was not initially evident when Mr. Meiresonne compared the 2001 IQS website text to examples provided by Thomas in their complaint, and found that the text on IQS’s website was either originally drafted by Mr. Meiresonne or other seniors/independent contractors [none of whom granted Thomas rights to their work] or was the same as found on the advertiser’s website [which advertiser website Thomas had *also* copied in the example provided] and, as such Mr. Meiresonne initially denied significant copying had taken place. Only after Defendants instructed Mr. Meiresonne to conduct a comprehensive study whereby all 2001 IQS website text was compared to historical Thomas Register text, did Mr. Terryn’s copying from the 1999 Thomas Register become fully evident), thus changing Mr. Meiresonne’s position and leading Judge Owen to wrongfully conclude that Mr. Meiresonne lacked credibility and that Mr. Terryn’s testimony should be given undue credence;

c. Defendant counsel instructed Plaintiff to prepare a study comparing the text prepared by Mr. Terryn in 2001 to the text contained in various editions of the Thomas Register, to determine the extent of Terryn’s unauthorized copying. While this study constituted confidential attorney work product prejudicial to Plaintiffs, Defendants nevertheless deliberately and improperly produced it to Thomas plaintiffs to the detriment of Plaintiffs, leaving Judge Owen to indicate that Mr. Meiresonne’s admission regarding copying, made in his post-study 2003 deposition, was evidence that Mr. Meiresonne was not telling the truth in his 2002 affidavit (drafted *before* the completion of the study);

d. Defendant counsel failed to establish the irrelevancy of “Project Ajax,” which opposing counsel successfully but erroneously argued was an attempt to purge or “cleanse” evidence, when it had nothing to do with evidence but was instead an effort in the Spring of 2003 (long after the infringing language had been removed) to remove non-paying companies from product directories, when those companies products were not relevant to that product directory;

e. Defendant counsel failed to establish via existing evidence that Mr. Meiresonne resigned effective April 1, 2002, *not* because his association with IQS had been discovered by Thomas, but because Thomas had previously constructively terminated the contract with PINI by unilaterally and improperly imposing an oppressive and punitive commission structure (which would have required Mr. Meiresonne and IQS to actually *pay* Thomas and PINI, rather than receiving any commissions) and Mr. Meiresonne had at that time exhausted his attempts to contest and reverse that wrongfully imposed structure and resigned as a result, leading Judge Owen to wrongfully conclude that Mr. Meiresonne resigned only because his association with IQS, “consistent with” his alleged intentional misconduct;

f. Defendant counsel failed to establish that most, if not all, of any IQS documents

which would have indicated copying had already been discarded in the normal course of business, long *before* any litigation commenced, and most even before receipt of the initial cease and desist Letter (*if* such documents ever existed at all, given that Terryn copied directly from the Thomas Register, as opposed to properly drafting descriptions for IQS based on the advertiser website printouts that would normally have been placed in the IQS file folders), and thus that the documents discarded in August 2003 were not critical to Thomas plaintiffs' case, leading Judge Owen to wrongly conclude that Terryn-related documents were "destroyed" in 2003 by Thomas defendants to "cover their tracks," when in fact no such documents likely ever existed, and that IQS destroyed evidentiary proof both necessary and "critical" to Thomas plaintiff to prove the central allegations in the Thomas action in 2003;

g. Defendant counsel failed to utilize available evidence to establish that the alleged wrongful acts of Thomas defendants had ceased by February 2002, well before commencement of the Thomas action, leaving the Judge Owen with the impression that text copied by Terryn may have existed on IQS websites after the conclusion of the comprehensive re-write project in early-January 2002, and that the documents destroyed in 2003 might have related to such "ongoing" infringement;

h. Defendant counsel failed to provide a possible explanation for IQS summer intern Terryn to copy from Thomas Register, when such explanations were clearly available, and in the absence of such explanations, Judge Owen wrongfully elected to give undue credence to Mr. Terryn's testimony, even in light of substantial conflicting evidence;

i. Defendant counsel failed to utilize available evidence to establish that Terryn's creation of IQS "policy" mandating copying was false and that, for business reasons, Mr. Meiresonne would never have "ordered" Mr. Terryn in 2001 to copy outdated information from the 1999 Thomas Register (which outdated Thomas text lacked the critical "keywords" necessary to achieve high search engine rankings and contained inaccurate advertiser addresses, phone numbers and product descriptions), that such copying would have, and in fact did, cause adverse business impacts that threatened the business viability of IQS (separate and apart from the Thomas Action), and solely for lack of such explanations, and "but for" such explanations Judge Owen wrongfully elected to give undue credence to Mr. Terryn's testimony and wrongfully concluded that Terryn was "hired to copy" from the Thomas Register;

j. Defendant counsel failed to refute, through available evidence, that "other employees" were never "ordered" to copy, and that existing evidence indicated that employees were specifically instructed to draft the text on IQS web sites to include "keywords," which the Thomas text did not contain, and that Terryn's belated and false testimony (that he drafted a copying "policy" signed by Mr. Meiresonne) regarding a copying "policy" was inherently false and contradicted by available evidence.

k. Defendant counsel stipulated to his own clients' alleged acts without first consulting Plaintiff clients, so as to limit his own liability; and

l. Defendant counsel acted in such a way so as to waive privilege, to the detriment of

Plaintiff clients.

In the face of these failures, Judge Owen was left with an inaccurate view of the facts, upon which he reached conclusions of law not warranted by the actual facts.

58. The Court issued a Findings of Fact and Conclusions of Law, dated August 2, 2006, in which it:

- a. Struck the IQS answer, third-party claims, counterclaims and Reply to the Counterclaims of Third-Party Defendants;
- b. Entered a default judgment on liability on *every* allegation set forth in Thomas plaintiffs' complaint; and
- c. Set a hearing for damages and monetary sanctions.

59. Based on the brief hearing before the Court in February 2006, without an opportunity to cross-examine material witnesses, and the briefs filed the Court made the following findings of fact:

- a. Based solely on the assertions of Christopher Terryn (which testimony was contradicted by Mciresonne and at least one witness hostile to IQS), that IQS hired interns, including Terryn and others to copy materials from the print and online versions of the *Thomas Register* and include them in IQS websites without permission;
- b. Other employees were directed to consult Thomas's confidential and proprietary program ThomAds to obtain information, and that information was thus gained.
- c. Printouts were made from ThomAds and kept in IQS files.
- d. Terryn (an intern with IQS for a total of 50 hours) drafted company policy, which included methods of copying from *Thomas Register* and ThomAds. This set of instructions was given to Mr. Meiresonne, who reportedly signed them and kept them in files (which Terryn admittedly destroyed the only copy).
- e. Terryn later sent an unsolicited e-mail message to Thomas alerting them of these acts.
- f. On November 6, 2001 IQS was sent a "cease and desist" letter which instructed IQS that "continued use of Thomas's original and copyrighted product heading and descriptive text [would] constitute knowing and willful copyright infringement and

unfair competition."

g. IQS then re-wrote its descriptive text so that it was no longer similar to that of Thomas (when in fact that re-write process had commenced for the above-stated business purposes long before the letter was received, and that process was nearly complete).

h. As the material was re-written, materials which related to the earlier creation were discarded.

i. IQS was alerted that the Thomas lawyers were to appear on August 4, 2003 for a document review and production, and at that time IQS directed Lisa Dockter that she was "required" to remove any documents concerning the *Thomas Register*.

j. Lisa Dokter and Lindsay Babcock spent July 25, 2003 and July 28-31, 2003 reviewing and removing documents from IQS files.

k. The documents were placed in plastic bags and removed from the site.

l. According to Ms. Dokter, the documents related to creation of the IQS vertical websites in 2001-2003 including copying of the *Thomas Register* and unauthorized use of ThomAds."

m. The Thomas attorneys reviewed documents on August 4, 5, and 6, 2003 and found no documents relating to the initial creation of the IQS vertical sites (consistent with the fact that the documents had been discarded in 2001 in the ordinary course of business, as opposed to spoliation).

n. Relevant documents were printed on one the backs of other documents to which they were unrelated pursuant to a practice of re-using discarded waste paper.

o. Some inadvertently produced documents were given to the attorneys.

p. Some re-prints of confidential Thomas documents were similarly produced on the backs of IQS documents.

60. The court made the following conclusions of law:

a. "Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation."

b. "In determining an appropriate sanction for spoliation, the court must consider whether the party having control over the evidence had an obligation to preserve it at the time it was destroyed, and whether the documents were destroyed with a culpable state of mind."

c. IQS should reasonably have known that the documents were relevant to the litigation, especially after suit was filed in 2002.

d. IQS intentionally destroyed documents relating to the creation of IQS vertical websites (although these documents were unresponsive, given that the documents discarded related to re-writes that occurred after infringement has ceased).

61. Critical to the Court's determination that draconian steps were required to address spoliation was the erroneous conclusion that Thomas plaintiffs "would need the destroyed documents to prove their central allegations in this case." In fact, such documents would have shown only that Thomas defendants had looked at and printed Thomas plaintiff web pages, not how much of the subject text was copied to IQS websites or when. *Only* the use of archival web sites could have definitively indicated what had been copied and placed into the public domain, and exactly when such copied ceased.

62. Defendant counsel failed to argue before the Court that archival web services, such as www.archive.org, would have definitively proven whether infringement had occurred and, importantly, when it ceased. Thomas plaintiffs, in fact, used www.archive.org to prove that language from the 1999 Thomas Register appeared on IQS web sites in 2001. However, Thomas plaintiffs refused to conduct such an analysis on IQS' 2002 web sites, since such an analysis would have clearly indicated that infringement had ceased by early January 2002. Instead, Thomas plaintiffs successfully alleged, in the absence of Defendant arguments to the contrary, that, due to spoliation, they had been left with no means by which to prove their central allegations of infringement. As indicated herein, not only was alternative evidence readily and publically available, but that alternative evidence (archival records, e.g. www.archive.org) was already utilized by Thomas plaintiffs.

63. Defendants neither analyzed these issues, nor opposed the motion by demonstrating

the lack of injury or the alternative sources of this information. This failure was not a strategic decision, not a reasonable strategic decision, nor was it a question of judgment, as it was unreasonable and failed to raise a viable defense

64. Defendants transmitted the court's decision, setting forth the Court's August 2, 2006 Findings of Fact and Conclusions of law to Plaintiffs on August 3, 2006.

65. The Court determined that a monetary damages and sanctions were due Thomas from Plaintiffs, and scheduled a hearing on September 11, 2006 to determine the amount of same. Thomas alleged damages in excess of twenty million dollars (\$20,000,000).

66. Just prior to that hearing, Thomas plaintiffs and Thomas defendants settled. The settlement amounted to two million five hundred thousand dollars (\$2,500,000), with the possible need to pay an additional five hundred and twenty thousand dollars (\$520,000) to be determined in arbitration at JAMS Endispute in Manhattan. Two million five hundred thousand dollars (\$2,500,000) was paid by Plaintiffs to Thomas and other Thomas plaintiffs in four installments, from October 2006 through February 2007.

67. In September 2007, the arbitrator ruled in favor of Thomas defendants/Plaintiffs, indicating that no damages in excess of the two million five hundred thousand dollars (\$2,500,000) already paid were either necessary or warranted.

68. With the arbitrator's decision, Defendants' representation of Plaintiffs terminated.

69. Plaintiffs were effectively compelled to settle the entire matter, solely as result of the acts and inactions of Defendants in connection with the alleged spoliation and failure to effectively represent Plaintiffs regarding alternative means of proof, which led to the striking of their answer and their counterclaims, reply to counterclaims, and other pleadings. Posting of a bond on appeal could have had a significant adverse impact on Plaintiffs' financial viability.

70. Plaintiffs' stricken counterclaims, including valid claims for intellectual property infringement and tortious interference with business, would have exceeded the sum of two million five hundred thousand dollars (\$2,500,000) paid in settlement of the case.

71. On or about January 27, 2009, Patent No. 7483872 ["the Patent"] was issued to Mciresonne regarding the supplier identification and locator system and method.

72. The subject matter of the Patent covers the same subject matter that arose in the dispute between IQS and Thomas.

73. The Patent gives Meiresonne certain intellectual property rights.

74. Among those rights is the exclusive right to utilize an approach that simplifies the search process used by industrial buyers to identify industrial manufactures on the internet.

75. In the settlement agreement with Thomas, IQS and Meiresonne were required to cede or give up rights to the same intellectual property, as regards to the Thomas plaintiffs improper use of such property.

76. As a result of the events set forth above, Plaintiffs were required to participate in arbitration at a significant cost, both in arbitration fees and disbursements, as well as in attorney fees attendant to that arbitration.

77. As a further result of the events set forth above, plaintiffs have lost valuable and negotiable intellectual property rights which would otherwise have been theirs, both pursuant to the common law, and pursuant to patents as set forth above.

78. As a further result of the events set forth above, plaintiffs have lost business, and will continue to lose business based upon the perception that plaintiffs were dishonest in their business, were dishonest in their use of intellectual property, and dishonest in relation to their participation in the underlying law suit. Plaintiffs have been denied business contracts, have lost business with previous

clients, have been closed out of business negotiations and have been ostracized in the business community based solely upon the findings and decision of Judge Owen as more fully set forth above.

FIRST CAUSE OF ACTION

79. Defendants negligently failed to render competent legal service, when it failed to advise, direct, engage in, supervise, participate in or otherwise guide Plaintiff in a document retention policy, document retention, document production, document review, document discarding, or otherwise become engaged in any fashion in Plaintiff's document production in the underlying case. Nor did Defendants conduct even minimally acceptable activities in association with the document production, including: 1) Bates stamping documents as a basic method for inventory control; 2) a basic review of the documents for privilege; 3) the creation of a privilege log identifying any privileged documents and the basis of the privilege; or 4) provision of instruction as to whether the documents might be removed from the Plaintiffs' offices with no control mechanisms in place.

80. But for the negligence and omissions of Defendants, Plaintiff would:

- (a) have correctly handled and inventoried documents;
- (b) have presented correct and responsive documents;
- (c) not have culled responsive documents;
- (d) have saved and earlier presented responsive documents;
- (e) have kept on file documents;
- (f) have retained earlier documents;
- (g) have re-produced earlier documents which were available electronically or digitally, but not on paper,
- (h) have organized only relevant documents for production;

- (i) have correctly culled other documents;
- (j) have participated in a meaningful way in the document production;
- (k) have not allowed uninventoried documents to be removed from the premises, with no way to ensure they had been returned;
- (l) not have removed what appeared to be irrelevant or non-responsive documents from plaintiff's files; and
- (m) have had a more transparent document production.

All of these steps would have been appropriate, correct and in compliance with the generally accepted litigation practices of the Southern District, United States District Court and in compliance with both the underlying discovery demands, business retention practices and the generally accepted practice in litigation discovery.

81. But for the negligence of Defendants, there would have been no spoliation issue, no order to show cause, no hearings, no determinations by the court that spoliation had taken place, no striking of pleadings, including striking of valuable counter-claims, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff, all of which would have led to a different and better financial outcome of the case for Plaintiff.

82. In spite of repeated requests by Plaintiffs, Defendants did not conduct, engage or instruct Plaintiffs in adequate discovery, or supervise, participate in or otherwise guide Plaintiff in a document retention policy, document retention, document production, document review, or otherwise become engaged in any fashion in Plaintiff's document production in the Thomas Action, in any generally accepted manner.

83. In spite of repeated Plaintiff requests, and despite their obligation as attorney for Plaintiffs even in the absence of such Plaintiff requests, Defendants did not give Plaintiffs any document advice,

did not give any advice on spoliation issues, did not give any advice on discovery, adequate discovery, supervise, participate in or otherwise guide plaintiff in a document retention policy, document retention, document production, document review, document discarding, or otherwise become engaged in any fashion in Plaintiff's document production in the underlying case

84. As a proximate result of these shortcomings, and but for these shortcomings, there would have been no spoliation issue, no order to show cause, no hearings, no determinations by the Court that spoliation had taken place, no striking of pleadings, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff all of which would have led to a different and better financial outcome of the case for Plaintiff.

85. As a proximate result of these shortcomings Plaintiffs were damaged.

86. As a result Plaintiffs were proximately damaged in an amount to be determined by the court and jury.

SECOND CAUSE OF ACTION

87. Plaintiff repeats and re-alleges the preceding paragraphs the same force and effect as if fully set forth herein.

88. Defendants represented Plaintiffs at the spoliation hearing.

89. Defendants prepared the response to spoliation claims, and to demands for sanctions and attorney fees against Plaintiffs.

90. Defendants failed to educate themselves on potential defenses, on alternative sources of the same information demanded by the Thomas plaintiffs, and failed to learn of other factual and legal defenses to the spoliation claim.

91. Defendants failed to offer defenses, which were available to Plaintiffs, and which would have both defused the spoliation claims, and would have ruled out the necessity for the determinations by

the trial court against Plaintiffs.

92. But for the negligence of Defendants, there would have been no order to show cause, no determinations by the court that spoliation had taken place, no striking of pleadings, including striking of valuable counter-claims, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff, all of which would have led to a different and better financial outcome of the case for Plaintiff.

93. In spite of repeated requests by Plaintiffs, Defendants did not educate themselves on alternate sources for the information said to have been spoiled or lost, and did not advance arguments that the information had not been lost at all.

94. In spite of repeated Plaintiff requests and despite their obligation as attorney for Plaintiffs Defendants did not learn the subject matter of the litigation, did not understand the issues at the spoliation hearing, did not learn of alternative sources for the “spoiled” information and did not offer arguments in support of plaintiff’s position in a document retention hearing on spoliation.

95. As a proximate result of these shortcomings, and but for these shortcomings, there would have been no determinations by the Court that spoliation had taken place, no striking of pleadings, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff all of which would have led to a different and better financial outcome of the case for Plaintiff.

96. As a proximate result of these shortcomings Plaintiffs were damaged.

97. As a result Plaintiffs were proximately damaged in an amount to be determined by the court and jury. As a proximate result of these shortcomings Plaintiffs were damaged.

THIRD CAUSE OF ACTION

98. Plaintiff repeats and re-alleges the preceding paragraphs the same force and effect as if fully set forth herein.

99. Defendants represented Plaintiffs at the Spoliation hearing, and on the Thomas Order to Show Cause.

100. As a direct and proximate result of the hearing, plaintiff's lost the right to successfully assert valid affirmative Defenses to Thomas plaintiffs' claims pursuant to Judge Owen's order, as follows:

- a. Material Breach of Contract by Thomas plaintiff PINI by Unilaterally Changing Contract Terms - PINI had improperly acquiesced to a third-party's (Thomas plaintiff Thomas) attempt to unilaterally alter terms of the agreement between PINI and M&A ("PINI Agreement"), which would have barred PINI's enforcement of remaining contractual provisions against Thomas defendant Meiresonne & Associates.
- b. Thomas Plaintiff PINI Breached the PINI Agreement by Failing to Pay M & A its Earned Commissions - and was therefore barred from enforcing other provisions of the PINI Agreement.
- c. Thomas Plaintiff PINI Breached the PINI Agreement by Requiring M & A to Collect and Investigate Accounts - thus PINI should have been barred from enforcing the PINI Agreement provisions.
- d. Thomas plaintiffs Failed to Mitigate Claims - although it was denied that any damages actually occurred.
- e. Thomas plaintiffs Engaged in Inequitable Conduct - including tortious interference with Thomas defendants' business interests and in violation of the Michigan Uniform Trade Secrets Act.

provided for payment of \$3,500 for each retained selling aid and not less than \$1,000 per file for each retained client file. Approximately 1800 such files were wrongfully retained, amounting to claims of \$1,800,000. In addition, the number of sales aids retained by third party defendants in the Thomas actions is equal to or exceeds seven.

c. Failure to Return Confidential Information - Failure by Third Party Defendants to return Confidential M&A Information, as required in their contracts.

d. Tortious Interference with Business Relationships - Thomas and PINI both induced independent sales representatives to break and breach their contracts with Plaintiffs.

e. Breach of Contract - by other Third Parties, identified as M&A associates.

f. Violation of Uniform Trade Secrets Act - all Thomas plaintiffs and third party defendants engaged in the actual or threatened misappropriation of the confidential and proprietary information owned by Plaintiffs, in violation of the Michigan Uniform Trade Secrets Act, MCL 445.1901 *et seq.*

g. Breach of Contract - by PINI for failing to properly pay commissions earned, due and owing to Plaintiff M&A.

h. Breach of Contract and Unjust Enrichment - certain third party defendants were paid unearned commissions and advances by Plaintiffs, which were not returned.

i. Breach of Contract and Unjust Enrichment - Thomas plaintiffs failed to pay Plaintiffs for certain work already performed, in an amount not less than \$40,000.

j. False Advertising Against Thomas Plaintiff Thomas - Thomas circulated information to its advertisers, and potential advertisers, regarding its circulation which overstated circulation, to the detriment of Plaintiffs.

In sum, these affirmative defenses and counter claims would likely have resulted in net damages payable to Plaintiffs, but for the negligent actions and inaction of Defendant counsel.

102. Defendants failed to offer evidence and defenses, which were available to Plaintiffs, and would have both defused the spoliation claims, would have ruled out the necessity for the determinations by the trial court against Plaintiffs, and which would have succeeded at the spoliation hearing in avoiding dismissal of counterclaims and striking of affirmative defenses.

103. But for the negligent and willful actions of Defendants, there would have been no determinations by the court that spoliation had taken place, no striking of pleadings, including striking

of valuable counter-claims, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff, all of which would have led to a different and better financial outcome of the case for Plaintiff, and no dismissal of counterclaims and striking of affirmative defenses.

104. In spite of repeated requests by Plaintiffs, Defendants did not educate themselves on alternate sources for the information said to have been spoiled or lost, and did not advance arguments that the information had not been lost at all and would have avoided dismissal of counterclaims and striking of affirmative defenses.

105. In spite of repeated Plaintiff requests and despite their obligation as attorney for plaintiffs Defendants did not learn the subject matter of the litigation, did not understand the issues at the spoliation hearing, did not learn of alternative sources for the “spoiled” information and did not offer arguments in support of plaintiff’s position in a document retention hearing on spoliation and failed to avoid striking of counterclaims and dismissal of affirmative defenses.

106. As a proximate result of these shortcomings, and but for these shortcomings there would have been no determinations by the Court that spoliation had taken place, no striking of pleadings, no sanctions, no attorney fees on these issues, and no settlement of the underlying action in a manner unfavorable to Plaintiff all of which would have led to a different and better financial outcome of the case for Plaintiff.

107. As a proximate result of these shortcomings Plaintiffs were damaged.

108. As a result Plaintiffs were proximately damaged in an amount to be determined by the court and jury. As a proximate result of these shortcomings Plaintiffs were damaged.

109. Each and every claim, counterclaim or affirmative defense were collectible within the meaning of common legal malpractice idiom, as they were set-off, offsets, or collectible from

Michael Meiresonne states that the following is true under the penalties of perjury.

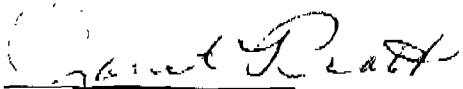
Deponent is a PLAINTIFF, as well as President of Meiresonne & Associates as well as President of IQS Quick Search, Inc., and has read the foregoing COMPLAINT and knows the contents thereof, that the same is true to deponent's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

Deponent further says that the grounds of his belief as to all matters in the said complaint are based upon deponent's general investigation of the facts herein.



Michael Meiresonne, Individually
and as President

Sworn to before me this
31st day of March, 2009



Notary Public

Expires 8/23/2010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
INDUSTRIAL QUICK SEARCH, Inc,
MICHAEL MEIRESONNE,
MEIRESONNE & ASSOCIATES, Inc.
Plaintiffs,

-against-

MILLER, ROSADO & ALGOIS, LLP,
CHRIS RODADO and
NEIL A. MILLER, Esq.

Defendants.

-----X
ANDREW LAVOOTT BLUESTONE
alb8964
ATTORNEY FOR PLAINTIFF
233 BROADWAY, 27th FLOOR
NEW YORK, NEW YORK 10279
(212 791-5600)

Please take notice:

Notice of entry that the within is a certified or true copy of
duly entered in the office of the clerk of the within named court on.

Notice of settlement that an order of which the within is a true copy will be presented for
settlement to the Hon. Judge one of the judges of the within named Court on .
Dated: March 31, 2009

Yours, Etc.

ANDREW LAVOOTT BLUESTONE