

1989

# Quantum Associates v. Ogden and Cargo Link International : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paul S. Felt and Mark O. Morris; Ray, Quinney & Nebeker; Attorneys for Defendants.

Arnold A. Gaub; pro se.

---

## Recommended Citation

Reply Brief, *Quantum Associates v. Ogden and Cargo Link International*, No. 890559 (Utah Court of Appeals, 1989).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/2182](https://digitalcommons.law.byu.edu/byu_ca1/2182)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT OF APPEALS  
**BRIEF**

UTAH  
DOCUMENT

K F U

50

A10

DOCKET NO.

89-0559

IN THE UTAH COURT OF APPEALS

---ooOoo---

QUANTUM ASSOCIATES, INC.,  
a corporation, and  
ARNOLD A. GAUB,  
Plaintiff/Appellant,

v.

SCOTT D. OGDEN, a/k/a S. D. OGDEN,  
d/b/a CARGO LINK INTERNATIONAL, and  
S. D. OGDEN AND ASSOCIATES, CARGO LINK  
INTERNATIONAL, INC., d/b/a CARGO LINK  
INTERNATIONAL, a corporation, and  
GREAT AMERICAN INSURANCE COMPANIES,  
a corporation, a/k/a GREAT AMERICAN  
WEST, INC.

Defendants/Respondants

)  
(  
)  
(  
)  
( Case No. 890559-CA  
)  
( Priority No.

---

REPLY BRIEF OF THE APPELLANT

---

Appeal from order of the Third Judicial Court  
Granting Summary Judgment to Defendants,  
on March 2, 1989  
The Honorable Judge Homer F. Wilkinson, presiding

---

PAUL S. FELT and MARK O. MORRIS  
RAY, QUINNEY AND NEBEKER,  
Attorneys for Defendants  
400 Deseret Building  
79 South Main Street  
P. O. Box 45385  
Salt Lake City, Utah 84145  
(801) 532-1500

ARNOLD A. GAUB, pro se  
P.O. Box 21  
Alpine, Wyoming 83128  
(307) 654-7500

DEPOSITED BY THE  
STATE OF UTAH  
AUG 20 1990

**FILED**

DEC 28 1989

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

---ooOoo---

|                                        |   |                    |
|----------------------------------------|---|--------------------|
| QUANTUM ASSOCIATES, INC.,              | ) |                    |
| a corporation, and                     | ( |                    |
| ARNOLD A. GAUB,                        | ) |                    |
| Plaintiff/Appellant,                   | ( |                    |
|                                        | ) |                    |
|                                        | ( | Case No. 890559-CA |
| v.                                     | ) |                    |
|                                        | ( | Priority No.       |
| SCOTT D. OGDEN, a/k/a S. D. OGDEN,     | ) |                    |
| d/b/a CARGO LINK INTERNATIONAL, and    | ( |                    |
| S. D. OGDEN AND ASSOCIATES, CARGO LINK | ) |                    |
| INTERNATIONAL, INC., d/b/a CARGO LINK  | ( |                    |
| INTERNATIONAL, a corporation, and      | ) |                    |
| GREAT AMERICAN INSURANCE COMPANIES,    | ( |                    |
| a corporation, a/k/a GREAT AMERICAN    | ) |                    |
| WEST, INC.                             | ( |                    |
| Defendants/Respondants                 | ) |                    |

---

REPLY BRIEF OF THE APPELLANT

---

Appeal from order of the Third Judicial Court  
Granting Summary Judgment to Defendants,  
on March 2, 1989  
The Honorable Judge Homer F. Wilkinson, presiding

---

PAUL S. FELT and MARK O. MORRIS  
RAY, QUINNEY AND NEBEKER,  
Attorneys for Defendants  
400 Deseret Building  
79 South Main Street  
P. O. Box 45385  
Salt Lake City, Utah 84145  
(801) 532-1500

ARNOLD A. GAUB, pro se  
P.O. Box 21  
Alpine, Wyoming 83128  
(307) 654-7500

TABLE OF CONTENTS

STATEMENT OF JURISDICTION.....page 1

STATEMENT OF ISSUES.....page 1-2

STATEMENT OF CASE.....page 2-7

    Facts.....page 3-7

SUMMARY OF ARGUMENT.....page 7-8

ARGUMENT.....page 9-12

CONCLUSION.....page 13

CERTIFICATE OF MAILING.....page 14

EXHIBITS

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court by UCA 78-2-2(3)

STATEMENT OF ISSUES

1. Is the granting of Summary judgment, when material facts are at issue, proper or does it constitute abuse of discretion by the Court?

2. When both parties admit that additional evidence will be forthcoming through a separate Court proceeding, and that evidence is necessary to decide the issue, can a Summary Judgment be granted in the absence of that evidence?

3. When an objection to summary judgment is filed, and the evidence viewed in a light most favorable to the objecting party, does the evidence in this case sustain the granting of a Summary judgment?

4. What constitutes ownership interest, and did Appellant have such an interest in second half of product in respondents Cargo Link and S. D. Ogden's care even if such an interest was conveyed in alternate ways other than the option wording of the initial contract?

5. Can a contract be modified through alternate means, even if the modifications are not reduced to writing, and was appellants contract with respondents modified in such a way?

6. Did the respondents Ogden and Cargo Link owe a fiduciary duty or duty of care to the Appellant, with respect to property which appellants had in respondents care and in which appellants had an interest and were they negligent in that duty?

7. Was appellant "buyer" or "Holder of interest" of the second half of the product as meant by UCA 70A-2-501?

8. Did Respondants Cargo Link and S. D. Ogden have a duty to inform Appellants that they could not honor appellants request not to release the product to another under UCA 70A-7-204?

9. Does a policy executed by respondent Cargo Link with respondent Great American, which names appellant as "additional insured", paid for by appellant, constitute an insurance policy for the benefit of appellant, or a third party insurance policy entitling appellant to collect on losses incurred?

10. If Appellants had an insurable interest in the property in question, did respondent Great American Insurance Company breach a contract with appellant by not paying the claim for "loss of goods"?

STATEMENT OF CASE

This is Civil Matter in which appellants Quantum Associates (hereinafter referred to as Quantum) Arnold Gaub (hereinafter referred to as Gaub) and Quantum Associates filed suit against Defendants Scott D. Ogden, a/k/a S. D. Ogden, d/b/a Cargo Link International, and S. D. Ogden and Associates, d/b/a Cargo Link International, (hereinafter referred to as Cargo Link) for damages

arising out of Cargo Link's negligent, unlawful release of goods belonging to Gaub, and Great American Insurance Companies a/k/a Great American West, Inc., (hereinafter referred to as Great American), for failure to reimburse his loss under an insurance policy naming Quantum "also insured" paid for by Quantum and Gaub. Defendants filed Motion for Summary Judgment (See Record page 39-96) Plaintiff's objected, claiming material facts at issue, (See record 99-105). Motion was argued orally before the Honorable Homer F. Wilkinson, on March 2, 1989, at which time the Motion was granted, stating no Findings of Fact or Conclusions of Law, and appellant Gaub entered notice of appeal on March 23, 1989, to the Utah Supreme Court. The Utah Supreme Court "poured over" the case to this Court.

#### FACTS

Appellant would like to reiterate and clarify the facts relevant to the decision of this case, in light of the Respondant's brief.

1. Appellant Gaub is the sole stockholder, and "alter ego" of Quantum, a corporation who were in the business of inventing, and manufacturing, under sub-contract, certain satellite television equipment. Contrary to the respondent's assertion that Gaub was not a party to the agreement of June 8, 1983, which was a modification of Gaub's purchase order contract of February 3, 1983 (Record at Gaub depo. 290, Ex. 1-3) and which attempted to deal with the defective merchandise of the original purchase order, Gaub was personally engaged in business as a dba "Quantum Associates", which business was a sole proprietorship until after the agreement between Quantum and Cargo Link had been executed. (See Exhibit A and B attached, Record

2. Gaub contracted Cargo Link and Ogden to ship, warehouse, and store products imported and provide custom's documentation for inbound product and to further, warehouse and ship outbound domestic products. The Respondant Cargo Link's agreement to warehouse for Quantum and Gaub is evidenced by a document entitled STANDARD OPERATING PROCEDURE FOR QUANTUM ASSOCIATES, by SCOTT OGDEN ASSOCIATES for the admission of imported goods into a Foreign Trade Zone and release of same in the original form, without any manipulation or change, from the Foreign Trade Zone. Additionally, there is Ogden's warehousing order book which detailed the instructions given by the parties. (Record at SOE 145-153, p. 37, Heinz depo. Ex. 7, p. 34).

3. Great American issued an insurance policy to Cargo Link and Ogden, naming Quantum "additionally named insured" covering the contents of areas where Quantum's product was stored, against loss, damage or liability. This policy was ordered, and written exclusively for Quantum's business, and product and issued jointly to Gaub and Quantum, with Cargo Link as their warehouseman. (Record at 145-153, and Brief of Appellant Ex. 1-25, and 29-38) Gaub structured and paid for the entire premium for this policy. The only reason that Star Valley State Bank was added as a loss payee was the fact that Bank had an interest in the product through the loan given to Gaub to purchase the product.

4. Gaub ordered 2,100 satellite disk drives from Richard Soong, and Co., and arranged with Cargo Link to handle the shipping arrangements and to store them in the Foreign Trade Zone, and to facilitate their passage through customs. Gaub was required to pay all freight charges and received a Bill of Lading for the Goods.

5. The equipment arrived in two packages of 1,050 units each and Gaub was to pay for the first half, (which was done) and to pay for the second half within 30 days if they were acceptable.

6. The first half of the shipment was defective and Gaub was negotiating for a settlement with Soong on the second half of the shipment. Contrary to Respondant's assertions that the entire agreement was that of June 8, 1983, negotiations had been ongoing between Gaub and Soong concerning the defective merchandise. (Record at 270, Gaub depo. p. 46-52, 271 Ogden Depo. p. 53) In fact, the June 8, agreement alludes to the option conditioned on "should they be acceptable". The defectiveness of the product was confirmed by an earlier report.

7. Cargo Link was aware of the negotiations between Gaub and Soong, but none the less released the second half without any authorization from Gaub to Soong, without any notification to Gaub that the release was requested or imminent. The fact that Cargo Link was aware of the ongoing negotiations was recorded by Margaret Heine of Cargo Link who wrote in her client instruction notebook on June 30, 1983 (after receiving instructions from both parties concerning joint storage for the second half of the shipment):

"6/30/83 1050 Units and 1050 Units. Quantum to pay half. Richard on the other haf. They will be storing half. Get second authorization for Soong. (Record at 272, Heine Depo. p. 27, 34)

It is clear from this notation that Cargo Link knew that the second

half of the shipment would be a joint storage between Gaub and Soong. Cargo Link obviously violated this contract.

8. Soong filed suit against Quantum and Gaub to require payment for the second half of the product in California Federal Court in which one of the issues was a question of ownership, which case was not yet decided when the instant case was summarily dismissed, and which both parties agreed might substantially answer the question of ownership. (See Record at 15-19, the 5th Defense found in Respondant's answer to Appellants Complaint;

"ownership is currently being disputed between the plaintiffs and Richard Soong and Company, Ltd., in litigation currently pending in the Federal Court in California. The outcome of this litigation may determine the ownership of the goods in question.")

As it turned out, that Court determined that Gaub was the owner, and therefore liable for the product.

9. Gaub filed a claim to Great American, for losses sustained through the unlawful release of his product, and to pay for litigation defenses as a direct result of the mishandling of his property by Cargo Link (case against him from Soong) which was rejected by Great American.

10. Quantum and Gaub filed the suit which is the substance of this appeal, claiming negligence and failure to exercise due care on the part of Ogden and Cargo Link, and breach of contract by Great American.

11. The Court granted Summary Judgment to the defendants over Plaintiff's objections (See record page 99-105) failing to issue any findings of fact or conclusions of law.

12. Gaub appealed, pro se from the judgment and this Court Ordered briefing.

#### SUMMARY OF ARGUMENT

Cargo Link is a business concern not only engaged in the facilitation of imported goods from out of the United States into the United States, but also in arranging and providing warehousing for clients both at the foreign trade zone warehouse located in Salt Lake City and in their own office warehouse facility located near the Trade-Zone in Salt Lake City. Great American is an Insurance company who insures clients for a payment of a premium to them and are named on an Insurance Policy, including those named as "additional named Insured". As a matter of law, both Cargo Link and Great American had very specific obligations and duties to perform for Quantum and Gaub who had a demonstrated interest in product under their control

Respondant Ogden and Cargo Link acted as warehousemen for Quantum and Gaub, which relationship existed and was understood by the parties to be an agreement before the shipment of satellite disks which are the substance of this case, and Gaub had a right to expect a reasonable amount of care be executed in his behalf over the goods in Cargo Link's care and Cargo Link was negligent in performance of that duty.

Respondant Great American issued an insurance policy naming Quantum as "additionally insured" which was paid for by Gaub, insuring him against loss and liability, and yet refused his claim thereby breaching it's contract with him.

Arnold A. Gaub personally ordered a 2100 unit shipment, under the dba of Quantum Associates, which was, as shown on his purchase order comprised of a first and second half containers arriving directly to his previously secured and insured warehouse space in the Salt Lake City Foreign Trade Zone. (also negotiated under his dba, Quantum Associates) See Record at 270, Ex. 1) It was not until five months later that Gaub transferred a portion of his assets to Quantum Associates, Inc., giving Gaub as an individual, and a sole stock holder standing in this issue. Further the California Court ruled that Gaub was the "alter ego" of Quantum Associates, Inc,. (see Exhibits C, D, E, and F attached.)

Each of the three causes of action are based upon evidence that proves thaey had an ownership interest in the product. The facts of this case are hotly disputed between the Appellant and the Respondant, even now, in this appeal, proving that the trial Court erred in granting summary judgement to the Defendants.

ARGUMENT

I. RULE 56 EVIDENCE WAS PRODUCED BY QUANTUM SUPPORTING THEIR CLAIMS.

Quantum and Gaub opposed Respondant's Rule 56 Motion with ample fact and law before the Trial Court. However, their issues of fact and law were hotly contested and when such is present, the granting of a Summary Judgement is an abuse of discretion by the trial Court. Further, since there is no record of the summary hearing, appellant was allowed a submission of Statement of Evidence of material which was available and presented in the limited time given in the hearing. Since appellant was given only a few minutes to present their entire case, which included a massive amount of evidence, including depositions, documents, and Insurance Policies, only a limited argument was allowed. Thus the evidence must include the material presented in the Statement of Evidence along with all the collected material present at the hearing.

II. QUANTUM AND GAUB ARE PROPERLY BEFORE THE COURT

Arnold A. Gaub originally filed this case in his own name as well as in the corporation name, Quantum Associates, Inc., knowing of his separate interest in the product of a proprietary nature. Attorney Molgard represented both of them in the Trial Court. The Corporation was not established until after June 1, 1983, well after Gaub began doing business with Cargo Link as a dba. The purchase Order was signed by Gaub five months before the incorporation came into effect. (Record at: 270, Gaub brief Ex. 1-6) Therefore Gaub has full standing on all of the issues presented in this appeal, and

Further, during the course of action in the California case, Soong proceeded to break the Corporate veil of Quantum Associates, Inc., and Arnold A. Gaub, with the Court finding liability against them on the Third Ammended Complaint. (Record at 15-19, Answer p. 3, and Exhibits C, D, E, F, attached) Legally speaking, therefore there is not distinction between Gaub and Quantum, and as "alter egos" of the same entity all causes of action belong to Gaub as well as to Quantum.

Repondants are remiss in identifying the modifying of the contract of of June 8, 1983, as the original agreement between the parties. The original agreement was the Purchase order of Febuary 3, 1983, but by virtue of the defective merchandise, even before the 2100 order was at hand, the modifying agreement made ofn June 8, 1983, was an attempt to deal with these defects, in the already paid for, first half of the shipment. Cargo Link agreed to hold the second half of the shipment for Quantum to draw from to make the first half useable. The respondants knew, from the documents and instructions given what their obligation was. The fact that they have tried to cover-up their mistakes through this proceedings is of no help to their cause. Gaub and Quantum are properly before this court, and Cargo Link as well as, Great American have breached their duty to both appellants.

III. APPELLANT'S BRIEF CONTAINS MATERIAL PROPERLY BEFORE THIS COURT.

Quantum and Gaub presented their Statement of Evidence to the Court to be included in the Record, as there was no recorded

transcript available. Material evidence presented in the Appeal Brief contains that information which was before the Trial Court, and was taken from the production of documents and depositions of the parties.

Specific citations were made to the record by the Appellant in the Appeal Brief, but such citations were shown as exhibits which also clearly show from where in the record they were taken. Some of the material presented in the Appeal Brief was based upon material from the Statement of Evidence, taken from the record. The California evidence was based upon the Respondant's original defense pleading that ownership rights could be determined from that case, and therefore is properly before this court.

IV. ALL THREE OF APPELLANT'S CAUSES OF ACTION ARE SUPPORTED AS A MATTER OF LAW

The evidence presented clearly shows the negligence and breach of contract by Cargo Link and Great American. The claims are supported by the evidence presented in the trial Court. However, the Respondant's attempt to rely on one point of the June 8, 1983 modifying contract, and to rest their entire case on that one point. Their claim is that the Appellant's had only an option to purchase the second half of the the shipment of the original purchase order. What respondent's neglect to point out and deal with is the clause in the contract which states that appellant's have an option "should the product be acceptable". The option clause in the contract breaks down and becomes null at that point, when the product is shown to be defective, and reverts, at that point to an agreement between the

parties regarding the defective merchandise, and the notice given to Soong to that effect, as well as the negotiations between Soong and Quantum, as to how to repair the defects in the merchandise (Record at 145-153, Brief of Appellant Ex. 27-28) Thereafter, the second half of the shipment was to be used by Appellant to repair the defective and previously paid for first half of the shipment.

Thus a duty of care was breached by Cargo Link in releasing that product against written and oral instructions by the Appellants.

Finally, since Quantum and Gaub had an insurable interest in the second half of the shipment, in all of the ways previously discussed, including payment of freight and Bill of Lading, and because the Appellants secured and paid wholly for an insurance policy to cover all 2100 units in the warehouse provided for them, and because the Insurance Certificate specifically stated that Quantum Associates is Additionally named Insured, Great American has clearly breached its Insurance contract with Quantum and Gaub. Even More, Great American's breach of contract clearly demonstrates "bad faith" dealing in their conduct with Gaub and Quantum, by refusing to defend the Appellants in the California Case filed against them and pretending to the loss of the warehouse product. The policy was issued, (exhibit 9 thru 13) and paid for at the time when all of the product was stored with Cargo Link.

CONCLUSION

WHEREFORE by reason of the law appellant prays the Court for a Judgment for damages for Breach of Contract by Great American in the maximum amount of \$650,000.00, bailee's liability, and \$500,000.00 general liability, together with interest, and further for an order requiring Cargo Link, Ogden and/or Great American to pay for certain legal fees expended by Gaub in the defense of action resultant from Cargo Link's breach of contract in the amount of \$1,000,000.00, and any other such relief as the Court may deem appropriate.

Lacking such remedy, appellant moves the Court to reverse the summary judgment and remand the case to be tried on the facts.

Dated this 21st day of December, 1989

Respectfully submitted,

  
\_\_\_\_\_

ARNOLD A. GAUB, pro se



WAIVER OF NOTICE OF FIRST MEETING OF SHAREHOLDERS

OF

QUANTUM ASSOCIATES, INC.

I, the undersigned, being the sole shareholder of the Corporation, hereby agree and consent that the first meeting of shareholders of the Corporation be held on the date and time, and at the place designated hereunder, and do hereby waive all notice whatsoever of such meeting, and of any adjournment or adjournments thereof.

I do further agree and consent that any and all lawful business may be transacted at such meeting, or at any adjournment or adjournments thereof, as may be deemed advisable by any shareholder present thereat. Any business transacted at such meeting, or at any adjournment or adjournments thereof, shall be valid and legal and of the same force and effect as if such meeting or adjourned meeting were held after notice.

Place of Meeting : 125 S. King Street  
Jackson, Wyoming 83001

Date of Meeting : June 1, 1983

Time of Meeting : 8:30 o'clock a.m.

Dated: June 1, 1983

Arnold A. Gaub  
Arnold A. Gaub, Shareholder

CORPORATE RECORD

OF

Shares Issued Under Sec. 1244 of Internal Revenue Code

1. The Plan to Offer Shares Qualifying Under Sec. 1244 of the Internal Revenue Code was adopted by the Board of Directors on the 31st day of May, 1983.
2. Upon the date of adoption of the Plan, the corporation had no equity capital.
3. The shares of common stock issued pursuant to the Plan are as follows:

| <u>Certificate<br/>No.</u> | <u>Issued<br/>to</u> | <u>Date of<br/>Issuance</u> | <u>No. of<br/>Shares</u> | <u>Consideration</u> |
|----------------------------|----------------------|-----------------------------|--------------------------|----------------------|
| 1                          | Arnold A. Gaub       |                             | 5000                     |                      |

FILED

JUN 1 1987

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY  
CASE NUMBER

CHARD SOONG & CO. (USA), INC,  
Corporation,  
Plaintiff

CV83-5726-WJR(Gx)

vs  
ANTUM & ASSOCIATES, INC, a Corp,  
NOLD GAUB, an indiv, and AL GAUB,  
indiv,  
Defendant

JUDGMENT ON THE VERDICT  
(For Plaintiff)

This cause having been tried by the Court and a Jury, before  
the Honorable WILLIAM J. REA, Judge presiding, and the  
issues having been duly tried and the Jury having duly rendered  
it's verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff(s)  
Plaintiff Richard Soong & Co. (USA), on the complaint & award damages in the total amount  
of \$0.00(zero) compensatory damages and \$0.00 (zero) punitive damages.

Counterclaimant Quantum & Associates, Inc, and Arnold Gaub, on the Counterclaim & award  
damages in the total amount of \$0.00 (zero) compensatory damages and \$0.00 (zero)  
punitive damages.

have and recover of and from the defendant(s)

ENTERED  
CLERK, U.S. DISTRICT COURT  
JUN 1 1987

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

the sum of  
Dollars

, together with costs, taxed in the sum of

Leonard A. Brosnan, Clerk  
United States District Court

Dated: 06-01-87

By [Signature]  
Deputy Clerk

1 ROBERT EZRA, A Professional Corporation  
2 17530 Ventura Boulevard, Suite 201  
3 Encino, CA 91316  
4 (818) 995-0215

4 LEWIS ANTEN, A Professional Corporation  
5 17530 Ventura Bl., #201,  
6 Encino, California 91316  
7 (818) 501-3535

6 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| 11 RICHARD SOONG & CO. (USA)     | ) | NO. 83-5726-LTL (Gx)        |
| 12 INC., a corporation,          | ) |                             |
| 13 Plaintiffs,                   | ) | THIRD AMENDED COMPLAINT FOR |
| 14 v.                            | ) | COMPENSATORY AND PUNITIVE   |
| 15 QUANTUM ASSOCIATES, INC.,     | ) | DAMAGES AND PROVISIONAL AND |
| 16 a corporation, et al.,        | ) | PERMANENT INJUNCTIVE RELIEF |
| 17 Defendants.                   | ) | FOR BREACH OF CONTRACT;     |
|                                  | ) | DEFAMATION AND TRADE LIBEL; |
|                                  | ) | INTENTIONAL INTERFERENCE    |
|                                  | ) | WITH CONTRACTUAL RELATIONS  |
|                                  | ) | AND PROSPECTIVE ADVANTAGE;  |
|                                  | ) | UNFAIR COMPETITION; FALSE   |
| 18 <u>RELATED COUNTER-CLAIM</u>  | ) | PATENT MARKING; AND         |
| <u>AND THIRD-PARTY COMPLAINT</u> | ) | INTENTIONAL AND NEGLIGENT   |
|                                  | ) | MISREPRESENTATIONS.         |

19 Plaintiff alleges:

20 FIRST COUNT  
21 (Breach of Contract - Quantum Associates)

22 1. Plaintiff is a corporation incorporated, organized and  
23 existing under the laws of the State of California with its  
24 principal place of business in Irvine, California. Plaintiff is  
25 informed and believes and thereon alleges that defendant Quantum  
26 Associates, Inc. is a corporation incorporated, organized and  
27 existing under the laws of the State of Wyoming with its  
28 principal place of business in Wyoming. Defendants Arnold Gaub

1 and Al Gaub are citizens and residents of Wyoming. This action  
2 involves an amount in controversy, exclusive of interest and  
3 costs, in excess of \$10,000.00. This court has jurisdiction over  
4 this action pursuant to 28 U.S.C. Section 1332.

5 2. Plaintiff is informed and believes and thereon alleges  
6 that at all times relevant herein Arnold Gaub and Al Gaub were  
7 and are shareholders and officers of Quantum Associates, Inc.,  
8 and there existed and exists a unity of interest and ownership  
9 between the Gaubs and Quantum Associates, Inc., such that any  
10 individual and separateness between them has ceased. Plaintiff  
11 is further informed and believes and thereon alleges that  
12 adherence to the fiction of the separate existence of Quantum  
13 Associates, Inc. distinct from Arnold Gaub and Al Gaub would  
14 constitute an abuse of the corporate privilege and would promote  
15 injustice because of the individual defendants' control and  
16 of the corporation, the failure to observe corporation  
17 formalities by the corporation, and the undercapitalization of  
18 the corporation in light of its reasonably anticipated debts and  
19 liabilities.

20 3. At all times mentioned herein, each of the defendants  
21 was acting as an agent for the other defendants and was acting  
22 within the scope of that agency.

23 4. In or about June, 1983, plaintiff and the defendants  
24 entered into a written contract, the essential terms and  
25 provisions of which were contained in written correspondence  
26 dated June 2, 1983, and June 8, 1983, true and correct copies of  
27 which are attached hereto as Exhibits "A" and "B", respectively.  
28

