

1992

William J. Searles v. Dayna Communications, INC. : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: 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.

Patricia M. Leith; Attorney for Appellee.

D. Kendall Perkins; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Searles v. Dayna Communications*, No. 920285 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3227

This Brief of Appellant 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH STATE COURT OF APPEALS

WILLIAM J. SEARLES,

:

Plaintiff-Appellant,

:

vs.

:

92-0285-CA

DAYNA COMMUNICATIONS, INC.
a Utah Corporation,

:

Case No. ~~900215-CA~~

Defendant-Appellee.

:

Priority No. (4)

BRIEF OF APPELLANT

This is an appeal from a decision of the Third District Court at a bench trial, which granted a motion for a "directed verdict" in favor of Defendant-Appellee made at the end of Plaintiff-Appellant's case wherein the Court found the Plaintiff-Appellant to have not made a prima facie case of breach of contract or breach of the covenant of good faith and fair dealing by Defendant-Appellee.

The Honorable Michael R. Murphy, Presiding.

D. KENDALL PERKINS
124 South 600 East, Suite 300
Salt Lake City, Utah 84102
Attorney for Plaintiff/Appellant

PATRICIA M. LEITH
Defendant/Appellee
P. O. Box 45340
50 South Main Street, Suite 1600
Salt Lake City, Utah 84145
Attorney for Defendant/Appellee

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

50

.ATC

DOCKET NO. 920285

1

FILED

SEP 14 1992

Mary T. Noonan
Clerk of Court
Utah Court of Appeals

IN THE UTAH STATE COURT OF APPEALS

WILLIAM J. SEARLES, :
Plaintiff-Appellant, :
vs. :
DAYNA COMMUNICATIONS, INC. :
a Utah Corporation, : Case No. 900215-CA
Defendant-Appellee. : Priority No. (4)

BRIEF OF APPELLANT

This is an appeal from a decision of the Third District Court at a bench trial, which granted a motion for a "directed verdict" in favor of Defendant-Appellee made at the end of Plaintiff-Appellant's case wherein the Court found the Plaintiff-Appellant to have not made a prima facie case of breach of contract or breach of the covenant of good faith and fair dealing by Defendant-Appellee.

The Honorable Michael R. Murphy, Presiding.

D. KENDALL PERKINS
124 South 600 East, Suite 300
Salt Lake City, Utah 84102
Attorney for Plaintiff/Appellant

PATRICIA M. LEITH
Defendant/Appellee
P. O. Box 45340
50 South Main Street, Suite 1600
Salt Lake City, Utah 84145
Attorney for Defendant/Appellee

TABLE OF CONTENTS

	PAGE
JURISDICTION OF THE COURT.....	5
TABLE OF AUTHORITIES.....	3/4
STATEMENT OF ISSUES ON APPEAL.....	5
CONSTITUTIONAL PROVISIONS.....	7
STATEMENT OF THE CASE.....	7
STATEMENT OF FACTS	8
SUMMARY OF ARGUMENT.....	14
ARGUMENT.....	15
POINT I	15
POINT II	16
POINT III	19
POINT IV	20
POINT V	23
POINT VI	25
POINT VII	26
CONCLUSION.....	27
ADDENDUM.....	29

AUTHORITIES CITED

	PAGE
UTAH CASES CITED	
<u>Anderson & Nafziger v. G.T. Newcom, Inc.</u> , 100 Idaho 175, 595 P.2d 709 (Idaho 1979)	22
<u>Berube v. Fashion Center, Ltd.</u> , 771 P.2d 1033 (Utah 1989)	18
<u>Boals v. Boals</u> , 664 P.2d 1191 (Utah 1983)	6
<u>Brehany v. Nordstrom, Inc.</u> , 812 P.2d 49 (Utah 1991)	18
<u>Davis v. Payne & Day, Inc.</u> , 10 Utah 2d 53, 348 P.2d 337 (1960)	5/13
<u>Eie v. St. Benedicts Hospital</u> , 638 P.2d 1194	17
<u>FMA Financial Corp. v. Hansen Dairy, Inc.</u> , 617 P.2d 327 (Utah 1980)	16
<u>Frank v. Golden Valley Elec. Assoc., Inc.</u> , 784 P.2d 752 (Alaska 1988)	13
<u>Gapler v. Kocjancic</u> , 703 P.2d 660 (Colo App. 1985)	13
<u>J&J Construction Co., Inc. v. Mayernik</u> , 241 Or. 537, 407 P.2d 625 (1965)	16
<u>Lewis v. Roper</u> , 579 P.2d 434 (Wyo 1978)	16
<u>Osborne v. Comanche Cattle Industries, Inc.</u> , 545 P.2d 827 (Okla. App. 1975)	23
<u>Resource Management Co. v. Weston Ranch</u> , 706 P.2d 1028 (Utah 1985)	21
<u>Rio Algom Corp. v. Jimco, Ltd.</u> , 618 P.2d 293 (Utah 1982)	21
<u>Smith, Batchelder & Rugg v. Foster</u> , 119 NH 679, 406 A.2d 1310 (1979)	19
<u>Stanger v. Sentinel Sec. Life Ins. Co.</u> 669 P.2d 1201 (Utah 1983)	5
<u>Union Bank v. Swenson</u> , 707 P.2d 663 (Utah 1985)	17

STATUTES CITED

78-2a-3(J)

Page
4

RULES CITED

41(b) Utah Rules of Civil Procedure

13

52(a) Utah Rules of Civil Procedure

13

IN THE UTAH STATE COURT OF APPEALS

WILLIAM J. SEARLES :
Plaintiff-Appellant, :
vs. : Case No. 920285-CA
DAYNA COMMUNICATIONS, INC., :
a Utah Corporation, :
Defendant-Appellee, :

BRIEF OF APPELLANT

JURISDICTION OF THE COURT

Pursuant to the provisions of Section 78-2a-3(j) Utah Code Ann, the Court of Appeals has jurisdiction of any case transferred to it from the Utah Supreme Court.

STATEMENT OF ISSUES ON APPEAL

1. The first issue is whether the Court erred in granting Dayna's motion for "directed verdict" for failure to establish a prima facie case. This case was not tried to a jury and therefore the motion although called a motion for a "directed verdict" was in reality, properly, a motion to dismiss under Rule 41 (b), Utah Rules of Civil Procedure, for failure to establish that upon the facts and the law, Searles was entitled to relief. The Trial Court also erred in finding Seales had not established a prima facia case of breach of contract. The Court further erred by

not making findings of fact and conclusions of law as required by said rule.

The standard of judicial review with regard to what constitutes a showing of a right to relief where no findings of fact are made is set forth in Davis v. Payne & Day, Inc. 10 Utah 2d 53, 348 P.2d 337 (1960) which states that the question on appeal is whether the Plaintiff's evidence, when considered in the light most favorable to him, showed that he was entitled to relief.

2. The second issue is whether or not the contract was a partial integration which requires parole evidence to show what the complete agreement in fact was. In the instant case, the quotas set forth in the contract anticipated that Dayna would provide in a timely manner, the new products from which increased revenues were to be derived, financial support for marketing and sales would be available when needed, and additional personnel to assist the sales effort would be provided as set forth in Dayna's budget. The projections which led to the quotas were based on such assumptions.

The standard of appellate review is set forth in Stanger v. Sentinel Sec. Life Ins. Co. 669 P.2d 1201 (Utah 1983) which holds at P. 1205,"

The doctrine of partial integration is that where a written contract is obviously not, or is shown not to be, the complete contract, parole evidence not inconsistent with the writing is admissible to show what the entire contract really was, by supplementing, as distinguished from contradicting, the writing. In such a case parole evidence to prove the part not reduced to writing is admissible, although it is not admissible as to the part reduced to writing.

3. The third issue is, if Searles established a prima facie case, can this court make and enter its own findings and award him the relief to which he is entitled.

The Court, in matters of equity, may review questions of both law and facts and can make findings of its own. Boals v. Boals 664 P.2d 1191 (Utah 1983).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, ETC.

There are no Constitutional provisions, statutes, ordinances, rules and/or regulations which are determinative of the issues in this case.

STATEMENT OF THE CASE

This is an appeal from ruling of the trial court against the Plaintiff-Appellant William J. Searles (hereinafter Searles) and in favor of the Defendant-Appellee Dayna Communications, Inc. (hereinafter Dayna) which ruling granted Dayna's motion for a "directed verdict" made at the end of presentation of Searles evidence. Searles had entered into a written employment agreement with Dayna whereby he was employed as an Area Director of Sales. The agreement was for a term of one fiscal year, from October 1, 1988 to September 30, 1989. The agreement provided, inter alia, for the right of Dayna to terminate the agreement upon 90 days written notice to Searles or "for cause". Dayna terminated Searles employment effective February 28, 1989 by notice dated January 1,

1989 which notice did not state the reason for termination. Searles filed suit against Dayna claiming breach of the contract of employment by failure to give 90 days written notice, breach of the duty of good faith and fair dealing and alternatively that since notice was not properly given, that Searles was entitled to compensation until the end of the term of the agreement. Dayna answered the complaint claiming that Searles had been terminated for cause, for failure to meet the alleged quotas referred to in the agreement. After Searles had presented his case Dayna made a "motion for directed verdict" to the Court, which motion the court granted finding that Searles had not set forth a prima facie case of breach of the contract of employment.

Statement of Facts

1. Searles initially became employed by Dayna on or about August 12, 1988 as an Area Director of Sales (Tr. p. 77, L. 20). This employment was pursuant to a written employment agreement dated July 6, 1988. (Trial exhibit P-1; Brief ex. 1 attached hereto). This agreement included in paragraph 6 thereof a statement that the AD (Area Director) was assigned a quota for the remainder of Fiscal 1988 of \$550,000 to be derived from the AD's assigned territory. This sales volume was not reached. (Tr. P. 81, L.4 - 13) No employee of Dayna made his or her quota for fiscal 1988. (Tr. P. 81, L. 21-23)

2. The parties entered into a second written employment agreement, which agreement was not dated but was signed by both parties and was for a term of one year from October 1, 1988 to September 30, 1989, which term is coincident with Dayna's fiscal year (Tr. P. 80, L 6&7). (Trial ex. P-2; Brief ex. 2) One of Seales primary concerns in having a written agreement was to have the protection of a definite term of employment. (Tr. P. 80, L.1-7) Paragraph 6 of this agreement states:

6. QUOTA.

The Quota assigned to AD shall be as set forth for the term of this agreement:

Quarter 1, Fiscal 1989	\$1,000,000
Quarter 2, Fiscal 1989	<u>\$1,400,000</u>
First Six Months Quota	\$2,400,000

Quarter 3, Fiscal 1989	\$2,600,000
Quarter 4, Fiscal 1989	<u>\$3,800,000</u>
Annual Quota Fiscal 1989	\$8,800,000

The Quota is to be derived from the assigned Area.

Paragraph 7 thereof, states in part:

7. RESPONSIBILITIES OF AREA DIRECTOR.

. . .
D. To fulfill the Quota requirements established pursuant to this Agreement.

3. These quota numbers were created from projections stated as goals during and prior to September 1988. These numbers are contained in the Dayna fiscal 1989 Budget dated September 20, 1988. (Trial ex. 3 - P; Brief ex.3) (Tr. P. 98, L11 - 21; P. 102, L.6 - L.12)

4. During Dayna's fourth quarter fiscal 1988, the primary product it had available to sell was a product known as

Daynafile. (Tr. P.21, L.12-25; Tr. P.82, L.14-25) The sales revenue from Daynafile averaged approximately \$500,000 per month during the relevant time period. (Tr. P.41, L.9-22)

5. Dayna had three new products in development line that it anticipated being able to sell: Daynanet, Daynatalk and Daynamail. (Tr. P.23, L.2-21) Dayna was not able to deliver these products until later than forecast in the budget. (Tr. P.94, L.14 - P.95, L.23; Tr. P.29, L.13 - P.30, L.9; P.99, L.5 - P.100, L.23; P. 111, L.113 - P. 112, L. 5) (See also second page of January daily report, which is 5th page of Brief ex. 6)

6. Anticipated revenues from these new products, which were six months or so late, were used to establish the quota requirements that were to be goals for the sales force to meet. (Tr. P.26, L.24 - P.27, L.2; P.70, L.22 - P.71, L.8)

7. The budget also relied on anticipated revenue from new and additional employees to be hired in the future, which employees were not hired. (Tr. P.27, L.3 - P.28, L.2; P.65, L.12-22; P.71, L.9-20; P.100, L.24 - P.102, L.21; P.88, L.12 - P.89, L.3; P. 112, L. 11 - P. 113, L. 10) (See also the third and fifteenth page of Trial Ex. 7, which two pages for convenience are attached hereto as Brief ex. 7)

8. The budget and therefore the projected revenues from anticipated product sales, anticipated there to be sufficient additional funding to enable Dayna to hire additional employees and fund additional advertising and marketing effort, which additional

funding was not provided as anticipated. (Tr. P.87, L.24 - P.89, L.4; P.94, L.3 - L.8)

9. Searles did not achieve the quota stated in his second employment agreement with Dayna. (Tr. P.68, L.17-20) Dayna, as a whole, did not come within 50 percent of the quotas stated in the budget. (Tr. P.69, L.18-22; P.74, L.11-17)

10. Although the quota figures were never achieved, Dayna's business was, on average, growing. (Tr. 44, L.10-15; P.45, L.16-17)

11. Dayna had published a company policy manual, (Trial Ex. 4-P; Brief ex.4) intended to govern the company's relationship with its employees. (Tr. P.50, L.1-3) Page GN109 states that a performance review will be given on each team member at the end of the 90 day probationary period and then yearly. Page GN114 states the company policy with regard to termination and in its second paragraph states:

"In the event of improper behavior or neglect of duties, the manager will counsel and work with the team member to improve the situation. Continued failure to meet company standards may be the cause of immediate suspension or termination."

(For economy, only page GN109 and GN114 of the policy manual are attached as Brief Exhibit 4) Dayna's Executive Vice-President, Brad Romney, testified that he did not know if anyone at Dayna "counseled" Searles with regard to his performance or if anyone "counseled" Searles in the context of improvement of performance to avoid termination. (Tr. P.54, L.9-23) Searles testified that he

never received a performance review or was counseled or contacted about unsatisfactory job performance. (Tr. P.104, L.2-18)

12. Searles was given a letter from Jim Waltz, Dayna's Vice President of Sales, entitled "Memo of Understanding re: Termination" under date of January 31, 1989. (Trial Exhibit 5-P; Brief Exhibit 5) The letter stated, inter alia, that Searles' last working day was January 27, 1989; that he would be paid through February 10, 1989; and that Waltz would give a favorable reference with regard to Searles past performance. There was no statement explaining the reason for the termination. Mr. Romney's testimony about the termination letter does not state any reason for the termination, he merely states that he knew and approved of the termination. (Tr. P.55, L.2 - P.55, L.15) Searles testified that at the time he was terminated, six to eight other Dayna employees in sales, engineering and software, were likewise terminated as a part of a layoff. Searles also stated that he listed "Layoff" as the reason for termination when he applied for unemployment compensation and that Dayna did not contest that statement. (Tr. P. 104, L. 19 - P. 107, L. 21)

13. Searles testified that he was paid commission on those amounts reported on the January daily report page of Brief Ex. 6 (attached hereto) in the "West - Searles section" and the "Softsell" section. (Tr. P. 107, L. 12 - P. 111, L. 5) He also testified pursuant thereto that his areas of responsibility accounted for 52.56% of the units of product sold and 46.13% of the

revenue derived therefrom for the month of January, 1989, the month in which he was terminated.

14. Searles testified that he and others knew that in the first quarter of fiscal 1989 it would be difficult to meet the quota numbers because sales of Dayna file had leveled off, but felt that with the new products, sales could be made that could make up the difference. He didn't get a chance to do so because he was terminated before the products were available for delivery. (Tr. P. 114, L. 1 - L. 18)

15. Searles was putting forth his best efforts while at Dayna but was limited by the one product nature of the company while he was there. (Tr. P. 115, L. 8 - 23)

16. Searles testified that during 1988, he earned \$22,891.00 in gross wages from Dayna. (Trial Ex. 8-P; Brief ex. 8) (Tr. P. 120, L. 14 - 20) He received gross pay of \$10,312.95, which included vacation pay of \$253.95 from Dayna in 1989. (Trial Ex. 9-P and 10-P; Brief ex. 9 and 10) (Tr. P. 120, L. 22 - P. 122, L. 25)

17. Before resting his case, Searles pointed out to the Court that testimony from both witnesses had raised a question as to whether the contract in question was a complete integration and that there were conditions precedent that both Dayna and Searles would expect to occur before it would be reasonable to expect the performance quotas to be met. Searles made a motion to amend the pleadings to conform to the evidence and cited cases in support thereof. The Court denied the motion, finding the contract to be

clear and unambiguous and that it contained an integration clause.
(Tr. P. 126, L. 17 - P. 131, L. 10)

18. Dayna then made a motion for a directed verdict, which was argued and granted. (Tr. P. 131, L. 17 - P. 141, L. 8) The Courts reasons for granting said motion were that: there was a failure to produce evidence that Dayna violated any term of the contract; that the quotas were not met and that failure to meet quota was reason for summary termination of employment for cause; and that there was no good faith requirement for Dayna to provide product. (Tr. P. 141, L. 7 - P. 144, L. 5)

SUMMARY OF ARGUMENTS

POINT I THE TRIAL COURT ERRED IN GRANTING A MOTION FOR "DIRECTED VERDICT" FOR THE PLAINTIFF'S FAILURE TO ESTABLISH A PRIMA FACIA CASE.

POINT II SEARLES ESTABLISHED A PRIMA FACIA CASE OF BREACH OF CONTRACT BY ESTABLISHING THAT A WRITTEN AGREEMENT WAS ENTERED INTO BETWEEN HIMSELF AND DAYNA, HIS DILIGENT PERFORMANCE OF HIS DUTIES UNDER SAID AGREEMENT, THE EXISTENCE OF CONDITIONS PRECEDENT BEFORE MEETING QUOTA GOALS WAS A REASONABLE EXPECTATION AND BREACH OF THE TERMINATION PROVISION CONTAINED IN SAID AGREEMENT.

POINT III THE EVIDENCE SHOWED THE WRITTEN AGREEMENT BETWEEN THE PARTIES TO BE A PARTIAL INTEGRATION AND THE COURT SHOULD HAVE FOUND THE EVIDENCE ADDUCED BY SEARLES AS PROVING THERE TO HAVE BEEN CONDITIONS PRECEDENT TO AN EXPECTATION THAT THE SALES DEPARTMENT WOULD MEET THE QUOTAS SUCH AS WERE STATED IN SEARLES' EMPLOYMENT AGREEMENT.

POINT IV THE EMPLOYMENT AGREEMENT IN QUESTION DOES NOT CONTAIN A CLEAR AND UNAMBIGUOUS RIGHT FOR THE EMPLOYER TO TERMINATE SEARLES FOR FAILURE TO FULFILL THE QUOTA REQUIREMENTS SET FORTH THEREIN.

POINT V DAYNA DID NOT DEAL WITH SEARLES IN GOOD FAITH IN ATTEMPTING TO CLAIM A TERMINATION FOR CAUSE.

POINT VI A CASE BROUGHT BY ROBERT BARRETT, ANOTHER DAYNA EMPLOYEE AND HEARD BEFORE THE THIRD DISTRICT COURT, THE HONORABLE DAVID S. YOUNG, PRESIDING, FOUND IN FAVOR OF BARRETT AS A DAYNA EMPLOYEE AND ESTABLISHING THE LAW OF THE CASE.

POINT VII WHERE NOTICE REQUIRED TO BE GIVEN BY AN AGREEMENT IS NOT GIVEN AS STATED, EFFECTIVELY NO NOTICE HAS BEEN GIVEN AND SEARLES HAVING NEVER BEEN GIVEN AN APPROPRIATE NOTICE OF TERMINATION UNDER HIS EMPLOYMENT AGREEMENT IS ENTITLED TO COMPENSATION FOR THE REMAINDER OF HIS TERM OF EMPLOYMENT.

ARGUMENT

POINT I THE TRIAL COURT ERRED IN GRANTING A MOTION FOR "DIRECTED VERDICT" FOR THE PLAINTIFF'S FAILURE TO ESTABLISH A PRIMA FACIA CASE.

This case was tried to the Court in a bench trial and did not involve a jury, therefore, a motion for a "directed verdict" was not proper. The appropriate motion would have been motion to dismiss under Rule 41(b), Utah Rules of Civil Procedure for failure to establish that upon the facts and the law set forth, Searles was entitled to relief. The rule goes on to state that unless the Court in its order for dismissal otherwise specifies, a dismissal under the subdivision operates as an adjudication on the merits and in such event the Court is required to make findings as provided in Rule 52(a). These findings were not made and by reason thereof, Searles is entitled to have the evidence considered in the light most favorable to him. Davis v. Payne & Day, Inc., 10 Utah 2d 53, 348 P 2d 337 (1960) Cases from several other jurisdictions have held that where matters are tried to the Court, appropriate prejudgement motions are for dismissal rather than for a directed verdict. Frank v. Golden Valley Elec. Assoc., Inc. 784 P 2d 752

(Alaska 1988); Gapler v. Kocjancic 703 P 2d 660 (Colo App. 1985).

Utah does not appear to have issued an identical holding on the question.

POINT II SEARLES ESTABLISHED A PRIMA FACIA CASE OF BREACH OF CONTRACT BY ESTABLISHING THAT A WRITTEN AGREEMENT WAS ENTERED INTO BETWEEN HIMSELF AND DAYNA, HIS DILIGENT PERFORMANCE OF HIS DUTIES UNDER SAID AGREEMENT, THE EXISTENCE OF CONDITIONS PRECEDENT BEFORE MEETING QUOTA GOALS WAS A REASONABLE EXPECTATION AND BREACH OF THE TERMINATION PROVISION CONTAINED IN SAID AGREEMENT.

1. As stated in the foregoing recitation of facts, Dayna, at the time Searles became employed thereby, was a company which had, primarily, one product to sell, to wit, Daynafile, which product had been sold by Dayna for a year or two prior to his hiring on. This product had experienced relatively constant sales, yielding income to Dayna in the approximate amount of \$500,000.00 per month. At the time Searles became employed, Dayna was in the process of bringing three additional products to market, to wit, Daynanet, Daynafile, and Daynamail. None of these products was deliverable at the time Searles signed his second employment agreement which became effective October 1, 1988. Unchallenged testimony establishes that Dayna management had prepared a budget for fiscal year 1989 which projected revenues to be obtained from the sale of the new products and which contained projected revenues to be obtained from additional sales personnel. These projections were used to establish quotas that were goals for the company's sales department to shoot for and were in fact, nothing more than

goals. The employment agreement signed by Searles and Dayna when he initially came to work, which covered approximately the last six weeks of fiscal 1988, contained a quota provision. Paragraph six thereof, stated a quota of \$550,000., which quota, admittedly Searles did not make. There was no adverse comment amount his failure to make that quota. The second agreement contained in its paragraph six quotas assigned to the AD totaling \$8,800,000. for the term broken down by quarter, stating the quota for first quarter of \$1,000,000, second quarter of 1.4 million dollars for a first six months quota of 2.4 million dollars, a third quarter quota of 2.6 million, fourth quarter quota of 3.8 million, for an annual quota in the amount of 8.8 million dollars. As stated in uncontradicted testimony, it was anticipated that Dayna would make available to its sales department, additional personnel, and additional funding to be able to hire said personnel, as well as to be able to appropriately advertise and promote the new products. It was additionally anticipated that the new products that were in the development stage would be saleable and ready for delivery in a timely manner. In fact, said new products were delayed for various reasons for up to six months beyond the anticipated date that said products could be delivered to purchasers thereof. The company experienced a cash crunch and did not provide the funds with which to hire additional sales force personnel or with which to do additional and anticipated advertising and promotion of the new products.

2. Throughout the trial and during presentation of Searle's case, Dayna objected to the Court considering any evidence that might be used to contradict or vary the terms of the written agreement between the parties. The standard parol evidence rule does state that extraneous evidence may not be used to contradict or vary the terms of a written instrument. It has been said that the rule should not be applied with any such unreasoning rigidity as to defeat what may be shown to be the actual purpose and intent of the parties, but should be applied in the light of reason to serve the ends of justice. FMA Financial Corp. v. Hansen Dairy, Inc. 617 P 2d 327 (Utah 1980). This case goes on to state that the parol evidence rule does not prevent proof that a party did not perform an obligation which it was understood and agreed by the parties was a condition precedent to the contract becoming effective, citing

J & J Construction Co., Inc. v. Mayernik 241 Or. 537, 407 P 2d 625 (1965); Lewis v. Roper, 579 P 2d 434 (Wyo. 1978) and two other cases. The facts of this case make it clear that the sales department could not reasonably be expected to increase the company's sales volume by a factor of five without having new products to sell and a larger sales force to help sell them, all of which involved additional funding to pay for an increased sales force and appropriate advertising and promotion needed to successfully market the products.

**POINT III THE EVIDENCE SHOWED THE WRITTEN AGREEMENT
BETWEEN THE PARTIES TO BE A PARTIAL
INTEGRATION AND THE COURT SHOULD
HAVE FOUND THE EVIDENCE ADDUCED BY SEARLES
AS PROVING THERE TO HAVE BEEN CONDITIONS
PRECEDENT TO AN EXPECTATION THAT THE
SALES DEPARTMENT WOULD MEET THE QUOTAS
SUCH AS WERE STATED IN SEARLES'
EMPLOYMENT AGREEMENT.**

When Searles moved the Court to amend the pleadings to conform to the evidence with regard to the question of partial integration, the Court looked at the written agreement as set forth in exhibit 2 and found there to be an integration clause which the Court then used to find the contract to be an integration. The existence of an integration clause is not the determining factor in deciding whether or not a contract is an integration or partial integration. In fact, the Court must resort to parole evidence or indeed any relevant evidence to determine whether a writing was intended by the parties to be an integration. Utah Supreme Court stated such proposition in Union Bank v. Swenson, 707 P 2d 663 (Utah 1985) and cited the case of Eie v. St. Benedicts Hospital, 638 P 2d at 1194 (Utah 1981) as precedent therefore. The Court in Union Bank goes on to say that "protection against judicial enforcement of writings that appear to be binding integrations, but in fact are not, lies in the provision that all relevant evidence is admissible on the threshold issue of whether the writing was adopted by the parties as an integration of their agreement. This appears to be so even if the writing clearly states it to be a complete and final statement of the parties' agreement. Therefore,

the existence of the paragraph in a writing stating the agreement to be the entire agreement such as is found in paragraph 11 of the contract in question, does not automatically determine such document to be an integration and if facts are adduced showing such not to be the case, the Court should so find.

POINT IV THE EMPLOYMENT AGREEMENT IN QUESTION DOES NOT CONTAIN A CLEAR AND UNAMBIGUOUS RIGHT FOR THE EMPLOYER TO TERMINATE SEARLES FOR FAILURE TO FULFILL THE QUOTA REQUIREMENTS SET FORTH THEREIN.

This agreement which was prepared by Dayna contains in paragraph 10, the termination provision, which states:

This agreement shall terminate automatically at the end of its term. this agreement shall terminate prior to the end of its term (i) at the death of AD, or (ii) at Dayna's option and upon the giving of ninety days written notice of termination to AD or (iii) "for cause" which shall include, but not be limited to, conviction of a felony, dishonesty, breach of confidentiality, any material breach of AD's obligations, covenants, agreements or warranties hereunder, or a failure by AD to perform the duties assigned to AD in an acceptable manner....

There was no statement given to Searles at the time of his termination by Dayna that informed him of the reason for said termination. The letter of January 31, 1989 from Jim Waltz to Searles (exhibit 5) was devoid of any statement as to the reason for said termination. Searles had testified and his testimony was uncontroverted, that he not received any warning, counseling, or comment from Dayna's management indicating that Dayna found his job performance to be unacceptable. The Dayna company policy manual, at page GM114 (Ex.-4) recites that in the event of improper behavior or neglect of duties, the manager would counsel the team

member to improve the situation and that continued failure to meet company standards could be the cause of immediate suspension or termination. The case of Berube v. Fashion Center, Ltd 771 P 2d 1033 (Utah 1989) held that terms in an employment manual could modify an implied in fact employment contract. Although the Berube and the more recent case of Brehany v. Nordstrom, Inc. 812 P 2d 49 (Utah 1991) both involved implied contracts of employment, it is submitted that a company policy manual and provisions contained therein can have impact on written employment agreements where procedures set forth in the manual are not complied with as regards termination of an employee. There has been no comment by Dayna that suggests it was dissatisfied with Searles' performance. It is uncontroverted that no employee of Dayna was meeting the quota goals set forth in the fiscal 1989 budget and in fact it is clear from the record that Dayna's sales performance was behind the quota goals by more than 50 percent. It is uncontroverted that Searles was terminated in the context of a company wide layoff of six to eight employees which involved the termination of employment of Robert Barrett who was the direct sales area director and other employees involved in other departments of the company. It is uncontroverted that when Searles was terminated and applied for unemployment compensation listing his reason for termination as a layoff, that Dayna raised no question about such statement. It was only after Searles sought counsel and counsel contacted Dayna, that Dayna then began to claim the termination was "for cause". Searles

has testified that one of his goals in seeing his agreement with Dayna reduced to writing was to obtain a specified term of employment and that he did not anticipate working for Dayna for a short period of time. (TR. P. 79, L. 21 - P. 81, L. 2) In other words, Searles did not intend to be employed at will. The Court's action in this case dismisses the obvious intent of Searles in entering into a written agreement and in attempting to obtain some sort of limited job security whereby he could not be terminated without good cause upon less than 90 days notice. If an employer is allowed to terminate a written employment agreement in circumstances such as these, the employee relying on such an agreement is in fact nothing more than an employee at will. The case of Smith Botchelder & Rugg v. Foster 119 NH 679, 406 A 2d 1310 (1979) involved an employment contract whereby the employer had a right to terminate its employee upon 30 days notice if dissatisfied with the employee's performance. The Court held that such a provision did not render the employer's promise to employ illusory because there is an implied requirement that an employer, in good faith, be dissatisfied with the employee's work when he exercises his power to terminate the employment, citing Corbin on Contracts, Sec. 647 at 105 (1960). Therefore, in the instant case, a right of an employer to terminate employees' contracts on the basis of "nonachievement" is tempered by the duty of good faith and fair dealing which requires the employer to have performed its obligation to provide product, additional personnel and promotional

funds to allow the employee a reasonable opportunity to achieve the quota.

**POINT V DAYNA DID NOT DEAL WITH SEARLES IN GOOD FAITH
IN ATTEMPTING TO CLAIM A TERMINATION FOR
CAUSE.**

At trial, in argument in support of Dayna's motion, Dayna's counsel in enumerating her perception of duties under good faith and fair dealing requirements included a duty not to interfere with the other's performance. (TR. P. 134, L. 20-21) Dayna interfered with Searles' performance by failing to supply the products anticipated, the additional sales personnel anticipated and the anticipated additional funding for marketing and advertising. The Trial Court in its ruminations about its ruling, asks a rhetorical question "what this case is really about is what are contracts about?...it could well have been that provision is in there because the industry tends to over estimate the market capacity or the inability of research and development to place the product on the market at or before the time anticipated." The Court goes on to say the Plaintiff's remedy is "to not enter into contracts that will allow the Defendant to terminate for failure to meet quotas when the product is not available. Such provision is not in this contract, and thus, that remedy is unavailable...it is a guarantee of employment only if all conditions from the employee's side are met,..." (Tr. P. 143, L. 1-23) The Trial Court then is stating that to find in Searles' favor there would have to be such a specific provision in his employment agreement. Yet the

Court relies on the contract language dealing with termination which does not clearly and unequivocally state that the employee Searles may be terminated for cause if he fails to meet the quota assignments contained in paragraph 6 thereof. There have been numerous statements and decisions in other matters with regard to requirements of an implied covenant of good faith. The Supreme Court has said "It is fundamental that, whether expressed or not, every contract includes a covenant of good faith with respect to dealing between the parties. The parties to a contract must deal fairly and honest with each other. Rio Algom Corp. v. Jimco, Ltd. 618 P 2d 497 (Utah 1980) See also Leigh Furniture and Carpet Co. v. Isom 467 P 2d 293 (Utah 1982) It is also recognized by the Utah Supreme Court that Courts should endeavor to construe contracts so as not to grant one of the parties an absolute and arbitrary right to terminate a contract. Resource Management Co. v. Weston Ranch 706 P 2d 1028 (Utah 1985) Each case cited, cites many additional cases for the same basic proposition with regard to requirements of good faith and fair dealing. Courts also recognize that it is not fair for one party to attempt to contractually absolve itself from duties and liabilities under the contract and Courts have held that such provisions will be construed strictly against the person relying on them especially when such person is the preparer of the document. Anderson & Nafziger v. G.T. Newcom, Inc. 100 Idaho 175, 595 P 2d 709 (Idaho 1979) There are many such cases and although these cases usually deal with language that is specifically

exculpatory and frequently in a context different than employment agreements, it is submitted that the principal requiring such provision to be construed strictly against the person relying on it, especially when they have prepared the documents, is sound when applied to employment agreements.

POINT VI A CASE BROUGHT BY ROBERT BARRETT, ANOTHER DAYNA EMPLOYEE AND HEARD BEFORE THE THIRD DISTRICT COURT, THE HONORABLE DAVID S. YOUNG, PRESIDING, FOUND IN FAVOR OF BARRETT AS A DAYNA EMPLOYEE AND ESTABLISHES THE LAW OF THE CASE.

1. Robert P. Barrett, was an area director for telemarketing for Dayna and was employed pursuant to an employment agreement for a like term and with identical termination provisions and similar quota provisions as contained in Dayna's agreement with Searles.

2. Rule 4-508 of the Utah Rules of Judicial Administration states that unpublished opinions, orders and judgements have no precedential value and shall not be cited or used in Courts of this state, except for purposes of applying the doctrine of the law of the case, res adjudicata or collateral estoppel. In the Barrett case, pursuant to Judge Young's ruling in favor of the Plaintiff, and after said ruling had been entered by the Court before preparation and entry of formal findings of fact, conclusions of law and judgement, settled with Mr. Barrett and agreed to pay him the amount of the Court's award. A copy of the Judge's ruling is attached hereto as exhibit 11. It is submitted that the Judge's ruling in that case properly establishes the law

of the case which should apply to Searles v. Dayna and additionally constitutes an acknowledgement of the debt owed by Dayna to its employee under the employment agreement and should constitute a collateral estoppel to their refusal to pay Searles his due in this matter.

POINT VII WHERE NOTICE REQUIRED TO BE GIVEN BY AN AGREEMENT IS NOT GIVEN AS STATED, EFFECTIVELY NO NOTICE HAS BEEN GIVEN AND SEARLES HAVING NEVER BEEN GIVEN AN APPROPRIATE NOTICE OF TERMINATION UNDER HIS EMPLOYMENT AGREEMENT IS ENTITLED TO COMPENSATION FOR THE REMAINDER OF HIS TERM OF EMPLOYMENT.

1. The case of Osborn v. Comanche Cattle Industries, Inc. 545 P 2d 827 (Okla. App. 1975) holds that a notice of terminating a written contract must be in accordance with the contract's express terms. That Court says that the weight of authority is clearly to the effect that notice to terminate a contract must be in accordance with the contract's express terms and where the stated type of notice which is required under the agreement is not given, then no notice has been given and Searles should be entitled to recover what he would have earned to the end of the contract term.

2. Searles submits that under the facts of this case, Dayna is not defending this case in good faith and by reason thereof Searles is entitled to recover attorney's fees under the provisions of Sec. 78-27-56 of the Utah Code Annotated.

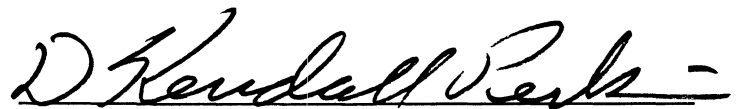
CONCLUSION

1. As has been set forth in the foregoing Statement of Facts and Argument, Searles was terminated by Dayna some four months into the term of his written employment agreement therewith and the termination was in fact a reduction in force and was not for cause. It was only after Searles began threatening Dayna with legal action for improper termination that Dayna then fabricated the termination for cause excuse. Searles testified that his average monthly income while employed by Dayna was \$5,534.00 per month and that is the appropriate measure of damaged he should receive. (Tr., P. 122, L. 17 - L. 25) The Trial Court's ruling in this matter gives a written employment agreement no weight whatsoever and would in fact have Searles working for Dayna as an employee at will which was definitely not the intent of the parties. It is submitted the Judge Young's ruling in the Barrett case establishes the law of the case and is correct in recognizing that the quotas were in fact goals primarily designed to "incentivize" Dayna employees. They were clearly not, according to the terms of the written agreement, minimum performance figures that would result in termination of the employee for failure to reach. This was clearly not the case in the initial employment agreement which contained the \$550,000 quota for a period of six weeks as shown in exhibit 1. Here, as in the Barrett case, Mr. Romney has testified that the financial performance of Dayna was on a gradual increase even during the difficult financial times and

other than Barrett, no other employees of those terminated were terminated for failure to meet quotas. There was no complaint about the performance of either Barrett or Searles.

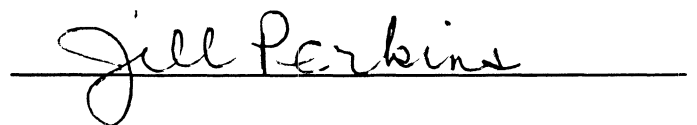
Therefore, Searles respectfully requests this Court to reverse the lower Court's ruling and allow him to seek the relief to which his is entitled, or in the alternative, to exercise its equitable powers and enter its own findings as to the liability of Dayna for breach of the employment agreement and to award him the relief to which he is entitled which should be measured by the average monthly earnings above set forth for either a three month period of notice which should have been given or alternatively, where the contract was not terminated according to its specific provisions, that he be awarded such amount from the date of termination to the 30th of September, 1989 and for his costs and attorney's fees incurred herein.

Respectfully submitted this 11th day of September, 1992.


D. Kendall Perkins
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that I hand mailed, postage pre-paid a copy of the foregoing to Patricia M. Leith, Attorney for Defendant/Appellee, P.O. Box 45340, Salt Lake City, Utah 84145 this 11th day of September, 1992.



ADDENDUM

	Page
Exhibit 1	1
Exhibit 2	6
Exhibit 3	12
Exhibit 4	21
Exhibit 5	24
Exhibit 6	25
Exhibit 7	32
Exhibit 8	35
Exhibit 9	36
Exhibit 10	37
Exhibit 11	44

Sales *Q.*

AREA DIRECTOR AGREEMENT

THIS AREA DIRECTOR AGREEMENT (the "Agreement") made and entered into on the date set out below, by and between WILLIAM J. SEARLES ("AD") and DAYNA COMMUNICATIONS, INC. ("Dayna"), each of whom acknowledges and agrees to abide by these covenants.

RECITALS

- 1- Dayna desires to secure the services of AD to promote sales of Dayna Products, pursuant to the terms and conditions herein contained.
- 2- AD desires to enter into this Agreement in order to receive compensation for efforts to be expended by AD pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1- Term.

The term of this Agreement shall begin on the date hereof and shall continue to September 30, 1988,, subject to prior termination as hereinafter provided. It is the intention of the parties that this Agreement shall be reviewed, and a new and similar Agreement shall be entered into to cover Dayna's fiscal year 1989, based on performance under this Agreement.

2- Salary.

The salary to be paid to AD by Dayna shall be Forty-four Thousand and no/100 Dollars (\$44,000) computed on an annual basis, payable on a biweekly basis, pursuant to Dayna's usual and customary payroll practices, and subject to termination as hereinafter provided. A commission of Fifteen hundred Dollars per month shall be guaranteed for the remainder of calendar 1988, recoverable from commissions earned in that period, only.

3- Commission and Incentive Bonus.

The Commission to be paid to AD by Dayna for net sales dollars to Dayna shall be one percent (1%) of all net dollars to Dayna as a result of sales into the AD's Territory (see Paragraph 5, Territory) by the AD or agents under his control. Commission on Major National Store Chains shall be paid at a rate of seventy-five percent (75%) to the Area into which the goods are shipped, twenty-five percent to the Area handling the Corporate offices.

- A. The Commission shall be paid on net dollars received by Dayna. Service, spares or accessories ordered through Customer Support are not commissionable. Component parts that are not normally sold by Dayna are not commissionable. In the event extraordinary discounts are authorized and offered in order to obtain a specific



100000

contract, the Commission rate, if any, may be negotiated by Dayna's Vice President of Sales, or other authorized Dayna officer.

- B.** In order to earn the Commission the AD (or Sales Reps under his direction) must obtain a purchase order against which product may be properly shipped and invoiced, and the customer must honor the invoice with payment. **UNTIL THE PAYMENT IS COMPLETE, THE COMMISSION HAS NOT BEEN EARNED.** Notwithstanding this fact, Dayna may elect to pay the Commission in anticipation of payment being completed. In that event, should payment not be completed, the AD may be charged back an amount equal to the Commission paid.
- C-** The Commission shall be paid on the last paycheck of each month for the previous monthly period. (i.e., April's Commission paid on last paycheck of May)
- D-** The Commission paid for sales over Quota (see Section 6- Quota) shall be double the Commission Rate specified in the Paragraph above.

4- Expenses.

Dayna shall reimburse AD for the reasonable amount of hotel, travel, entertainment and other expenses wholly, exclusively, and necessarily incurred by AD in the discharge of AD's duties hereunder, in accordance with the normal practice for such reimbursements to Dayna to its other employees. AD shall submit to Dayna substantiation of the expenses incurred, as reflected in a credit card statement or other documentation, together with record of (1) the amount of the expenditure, (2) the time, place and nature of the expenditure, (3) the business reason for the expenditure and expected benefit, (4) the names, positions and other information concerning individuals entertained sufficient to establish their business relationship to Dayna, and (5) any and all other information specifically required by Dayna, from time to time. The foregoing information shall be submitted in such form as Dayna may, from time to time, determine. Reimbursement of expenses shall be contingent upon the approval of Dayna's Vice President of Sales or other authorized Dayna officer.

5- Territory.

The Territory assigned to AD shall be as follows:

The Area shown on the attached map as the Western Area, including the states of California, Oregon, Washington, Idaho, Montana, North and South Dakota, Nebraska, Kansas, Oklahoma, Arkansas, Louisiana, Texas, New Mexico, Colorado, Utah, Nevada, Arizona, Wyoming, Alaska, and Hawaii, with the exception of accounts named in Exhibit "A", which are House Accounts or are accounts to be handled by other persons than the AM or any of the Sales Reps under his direction.

The foregoing Territory assignment shall be subject to change at Dayna's sole discretion.

6- Quota.

The Quota assigned to AD shall be as set forth below for the Term of this Agreement:

Total remainder Fiscal 1988, until September 30, 1988_____ \$ 550,000
The Quota is to be derived from the assigned Territory through the efforts of the AD or Sales Reps under his control.

7- Responsibilities of Area Director.

The AD shall have the following responsibilities:

- A- To obtain or direct the Sales Reps under his control to obtain orders for Dayna Products which can be shipped and invoiced with complete expectation that the customer will honor the invoice with payment at prices specified in Dayna's published pricing schedules, or pursuant to specific contracts with such customer.
- B- To represent Dayna, its products, personnel and business in a manner which Dayna shall prescribe as appropriate for its sales personnel.
- C- To refrain from making any misleading, inaccurate or other improper statement, or from giving such indication to any third party relative to Dayna's business, products or relationships.
- D- To fulfill the Quota requirements established pursuant to this Agreement.

8- Time Devoted by Area Director.

AD agrees to devote his or her full business time, attention, efforts and abilities exclusively to the business of Dayna and to use his or her utmost endeavors to promote the interests of Dayna.

9- Chargebacks.

In the event of payment of the Commission or Incentive Bonus in advance of receipt by Dayna of all monies from the customers on orders covered by such payment, or in the event a draw against Commission or Incentive Bonus is outstanding, a "chargeback" in the amount of the Commission or Incentive Bonus shall be paid to Dayna by AD should the employment of AD be terminated.

10- Termination.

This Agreement shall terminate automatically at the end of its Term. This Agreement shall terminate prior to the end of its Term (i) at the death of AD, or (ii) at Dayna's option and upon the giving of ninety (90) days' written notice of termination to AD, or (iii) "for cause" which shall include, but not be limited to, conviction of a felony, dishonesty, breach of confidentiality, any material breach of AD's obligations, covenants, agreements or warranties hereunder, or a failure by AD to perform the duties assigned to AD in an acceptable manner. If employment is terminated pursuant to this paragraph, all compensation shall cease and no additional amounts will be payable to AD by Dayna, or to AD's heirs, executors, administrators or legal representatives, other than that portion of any

Commission or Incentive Bonus which was earned by AD pursuant to the terms hereof, prior to such termination, net of any chargeback.

11- Entire Agreement.

This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof. This Agreement shall be subject to, and construed in accordance with, the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have set their hands this 20 day of August, 1988.

AREA SALES DIRECTOR



DAYNA COMMUNICATIONS, INC.

By  _____

Its. Vice President, Sales _____

EXHIBIT "A"

ACCOUNTS EXCLUDED FROM SALES TERRITORIES

THIS EXHIBIT DESCRIBES CERTAIN ACCOUNTS excluded from all sales territories and reserved by DAYNA COMMUNICATIONS as "House Accounts".

Sales Representatives are specifically prohibited from calling on these accounts with the intent of selling to the account without the express permission of the Vice President Sales. The accounts are :

ACCOUNT	LOCATION
Apple Computer	Cupertino, CA with sales offices world-wide.
PRC (for the FAA contract only)	Washington, DC
Softsel	Inglewood, CA with nation-wide distribution centers.
Any Apple-certified Third Party Developers	World-wide

Sales Representatives are also specifically directed to avoid calling on Distributors. If a Distributor shows an interest in discussion with Dayna, that Distributor should be referred to the Vice President, Sales.

Regardless of the area in which these accounts reside there will be no commissions paid on these accounts.

Dayna reserves the right to modify this list from time to time at Dayna's sole discretion.

11-22-87 Sep 16

b.

AREA DIRECTOR AGREEMENT

THIS AREA DIRECTOR AGREEMENT (the "Agreement") made and entered into on the date set out below, by and between WILLIAM SEARLES ("AD") and DAYNA COMMUNICATIONS, INC. ("Dayna"), each of whom acknowledges and agrees to abide by these covenants.

RECITALS

1- Dayna desires to secure the services of AD to promote sales of Dayna Products, pursuant to the terms and conditions herein contained.

2- AD desires to enter into this Agreement in order to receive compensation for efforts to be expended by AD pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1- Term.

The term of this Agreement shall begin on October 1, 1988 and shall continue to September 30, 1989, subject to prior termination as hereinafter provided. It is the intention of the parties that this Agreement shall be reviewed, and a new and similar Agreement shall be entered into to cover Dayna's fiscal year 1990, based on performance under this Agreement.

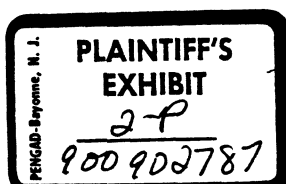
2- Salary.

The salary to be paid to AD by Dayna shall be Forty-four Thousand and no/100 Dollars (\$44,000) computed on an annual basis, payable on a biweekly basis, pursuant to Dayna's usual and customary payroll practices, and subject to termination as hereinafter provided.

3- Commission and Incentive Bonus.

The Override to be paid to AD for net dollars revenue to Dayna from the assigned Territory (see Paragraph 5, Territory) in the first six months of the Term of the Agreement shall be one percent (1%) of all net dollars to Dayna as a result of sales to all Buyers other than Distributors. Revenue dollars from sales to Distributors in the first six months of the Term of the Agreement shall earn Override of six-tenths of one percent (0.6%). The Override to be paid to AD in the second six months of the Term of the Agreement for all Buyers other than Distributors shall be eight-tenths of one percent (0.8%). Revenue dollars from sales to Distributors shall continue to earn Override of six-tenths of one percent (0.6%). Commission and Override on all Major National Store Chains shall be paid at the rate of seventy-five percent (75%) to the Area into which the goods are shipped, twenty-five percent (25%) to the Area handling the Corporate offices.

A- Neither Commission nor Override shall be paid on service revenues, spare parts or accessories ordered from Customer Support, or on component parts of any Dayna product that may be ordered as a



100021

result of negotiations conducted by persons employed by Dayna other than the AD or Agents under his control.

- B- The Commission and Override shall be paid on net dollars received by Dayna. In the event substantial or extraordinary discounts are offered in order to obtain a specific contract, the Commission or Override rate, if any, may be negotiated by Dayna's Vice President of Sales, or other authorized Dayna officer.
- D- Incentive Commission shall be paid for performance in excess of Quota (see Paragraph 6, Quota). In the first six months of the Term of the Agreement, Quota shall have been met when the Quota for First Six Months has been shipped and invoiced by the Company. Incentive Commissions shall be paid on all dollars in excess of Quota that have been shipped and invoiced during that six month period. In the second six months of the Term of the Agreement, Quota shall have been met when the Annual Quota has been shipped and invoiced by the Company, and Incentive Commission shall be paid on all dollars in excess of that Quota that have been shipped and invoiced during the Fiscal Year. Incentive Commission shall consist of two times the Commission Rate.
- F- In order to earn the Override the AD or agents under his control must obtain a purchase order against which product may be properly shipped and invoiced, and the customer must honor the invoice with payment. **UNTIL THE PAYMENT IS COMPLETE, THE COMMISSION HAS NOT BEEN EARNED.** Notwithstanding this fact, Dayna may elect to pay the Commission in anticipation of payment being completed. In that event, should payment not be completed, the AD may be charged back an amount equal to the Commission paid.
- G- The Commission shall be paid on the last paycheck of each month, for the previous monthly period. (i.e., April's Commission paid on last paycheck of May).

4- Expenses.

Dayna shall reimburse AD for the reasonable amount of hotel, traveling, entertainment and other expenses wholly, exclusively, and necessarily incurred by AD in the discharge of AD's duties hereunder, in accordance with the normal practice for such reimbursements by Dayna to its other employees. AD shall submit to Dayna substantiation of the expenses incurred, as reflected in a credit card statement or other documentation, together with a record of (1) the amount of the expenditure, (2) the time, place and nature of the expenditure, (3) the business reason for the expenditure and expected benefit, (4) the names, positions and other information concerning individuals entertained sufficient to establish their business relationship to Dayna, and (5) any and all other information specifically required by Dayna, from time to time. The foregoing information shall be submitted in such form as Dayna may, from time to time, determine. Reimbursement of expenses shall be contingent upon the approval of Dayna's Vice President of Sales, or other authorized Dayna officer.

5- Territory.

The AD shall have as his Area of Management the States West of the Mississippi River, and the States of Alaska and Hawaii, except for the States of Minnesota, Iowa, and Missouri.

The foregoing Territory assignment shall be subject to change at Dayna's sole discretion.

6- Quota.

The Quota assigned to AD shall be as set forth below for the Term of this Agreement:

Quarter 1, Fiscal 1989	\$1,000,000	
Quarter 2, Fiscal 1989	<u>\$1,400,000</u>	
First Six Months Quota		\$2,400,000
Quarter 3, Fiscal 1989	\$2,600,000	
Quarter 4, Fiscal 1989	<u>\$3,800,000</u>	
Annual Quota Fiscal 1989		\$8,800,000

The Quota is to be derived from the assigned Area.

7- Responsibilities of Area Director.

The AD shall have the following responsibilities:

A- To obtain, or direct agents under his control to obtain, orders for Dayna Products which can be shipped and invoiced with complete expectation that the customer will honor the invoice with payment at prices specified in Dayna's published pricing schedules, or pursuant to specific contracts with such customer.

B- To represent Dayna, its products, personnel and business in a manner which Dayna shall prescribe as appropriate for its sales personnel.

C- To refrain from making any misleading, inaccurate or other improper statement, or from giving such indication to any third party relative to Dayna's business, products or relationships.

D- To fulfill the Quota requirements established pursuant to this Agreement.

8- Time Devoted by Area Director.

AD agrees to devote his or her full business time, attention, efforts and abilities exclusively to the business of Dayna and to use his or her utmost endeavors to promote the interests of Dayna.

9- Chargebacks.

In the event of payment of the Commission in advance of receipt by Dayna of all monies from the customers on orders covered by such payment, or in the event a

draw against Commission is outstanding, a "chargeback" in the amount of the Commission shall be paid to Dayna by AD should the employment of AD be terminated.

10- Termination.

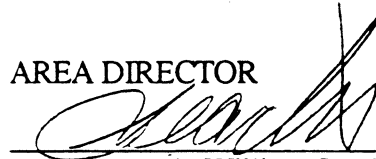
This Agreement shall terminate automatically at the end of its Term. This Agreement shall terminate prior to the end of its Term (i) at the death of AD, or (ii) at Dayna's option and upon the giving of ninety (90) days' written notice of termination to AD, or (iii) "for cause" which shall include, but not be limited to, conviction of a felony, dishonesty, breach of confidentiality, any material breach of AD's obligations, covenants, agreements or warranties hereunder, or a failure by AD to perform the duties assigned to AD in an acceptable manner. If employment is terminated pursuant to this paragraph, all compensation shall cease and no additional amounts will be payable to AD by Dayna, or to AD's heirs, executors, administrators or legal representatives, other than that portion of any Commission which was earned by AD, pursuant to the terms hereof, prior to such termination, net of any chargeback.

11- Entire Agreement.

This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof. This Agreement shall be subject to, and construed in accordance with, the laws of the State of Utah. This Agreement shall supercede any and all prior agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands this ____ day of _____, 1988.

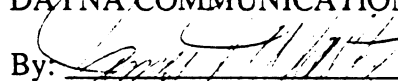
AREA DIRECTOR



William Searles

DAYNA COMMUNICATIONS, INC.

By:



James F. Waltz

Its: VICE PRESIDENT, SALES

EXHIBIT "A"

ACCOUNTS EXCLUDED FROM SALES TERRITORIES

THIS EXHIBIT DESCRIBES CERTAIN ACCOUNTS excluded from all sales territories and reserved by DAYNA COMMUNICATIONS as "House Accounts".

Sales Representatives are specifically prohibited from calling on these accounts with the intent of selling to the account without the express permission of the Vice President, Sales. The accounts are :

ACCOUNT	LOCATION
Apple Computer	Cupertino, CA with sales offices world-wide.
PRC (for the FAA contract only)	Washington, DC
Softsel	Inglewood, CA with nation-wide distribution centers.
Any Apple-certified Third Party Developers	World-wide

Sales Representatives are also specifically directed to avoid calling on Distributors. If a Distributor shows an interest in discussion with Dayna, that Distributor should be referred to the Vice President, Sales.

Regardless of the area in which these accounts reside there will be no commissions paid on these accounts.

Dayna reserves the right to modify this list from time to time at Dayna's sole discretion.

W. SEARLES

EXHIBIT "B"

THIS EXHIBIT DESCRIBES CERTAIN ACCOUNTS assigned the District Sales Manager or the Area Sales Manager. These accounts are the Territory of the designated Field Sales Representative. The support of these accounts does remain the duty of the Dealer Support Sales Rep responsible for the geographical territory.

CERTAIN SPECIFIC ACCOUNTS ARE EXCEPTED from the Territories of all Field Sales Representatives. These accounts are:

Apple Computer	Cupertino, CA and all ordering offices, world-wide.
PRC (FAA contract only)	Washington, DC area
Apple Third Party Developers	Domestic U.S.

TERRITORIAL ACCOUNTS

EDS Technical Products	Richardson, TX
Resource Dynamics	Dallas, TX
Alphagraphics	Tucson, AZ
Big Three Industries	Houston, TX
Diamond Shamrock Corporation	Dallas, TX
E-Systems, Inc.	Dallas, TX
Fleming Companies	Oklahoma City, OK
Lomas and Nettleton Financial Corp	Dallas, TX
NASA Space Center	Houston,
TXSchlumberger, Ltd.	Dallas, TX
Shell Oil Company	Houston, TX
Alpha-Beta	Scaggs
University of Utah	Salt Lake City, UT
	Salt Lake City, UT

Continued on Page 2
W. Searles

9/20/1988 REV "B"

JFW

FISCAL 1989 BUDGET

SALES BY COMPONENT BY MONTH, UNITS

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
DAYNAFILE	1700	1800	1900	2000	2000	2000	2000	2000	1900	1600	1600	2000	22500
DAYNAMAIL				50	200	400	600	800	1000	1000	1000	1000	6050
DAYNATALKmac						1000	3000	5000	7000	7000	7000	9000	39000
DAYNATALKpc					100	300	1000	1500	2000	2500	2500	3500	13400
DAYNANET					100	300	500	1000	1200	1500	2000	2500	9100

SALES BY COMPONENT BY MONTH, \$ X 1000

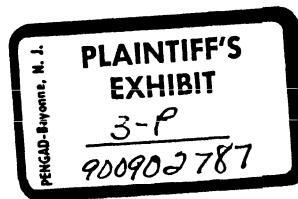
COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
DAYNAFILE	\$893	\$945	\$998	\$1,050	\$1,050	\$1,050	\$1,050	\$1,050	\$998	\$840	\$840	\$1,050	\$11,813
DAYNAMAIL	\$0	\$0	\$0	\$5	\$20	\$40	\$60	\$80	\$100	\$100	\$100	\$100	\$605
DAYNATALKmac	\$0	\$0	\$0	\$0	\$0	\$100	\$300	\$500	\$700	\$700	\$700	\$900	\$3,900
DAYNATALKpc	\$0	\$0	\$0	\$0	\$16	\$48	\$160	\$240	\$320	\$400	\$400	\$560	\$2,144
DAYNANET	\$0	\$0	\$0	\$0	\$50	\$150	\$250	\$500	\$600	\$750	\$1,000	\$1,250	\$4,550
TOTAL	\$893	\$945	\$998	\$1,055	\$1,136	\$1,388	\$1,820	\$2,370	\$2,718	\$2,790	\$3,040	\$3,860	\$23,012

SALES BY DISTRIBUTION CHANNEL, BY MONTH, \$ X 1000

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
U.S. DISTR.	\$268	\$284	\$299	\$317	\$341	\$416	\$546	\$711	\$815	\$837	\$912	\$1,158	\$6,903
U.S. DEALER	\$312	\$331	\$349	\$369	\$398	\$486	\$637	\$830	\$951	\$977	\$1,064	\$1,351	\$8,054
U.S. DIRECT	\$89	\$95	\$100	\$106	\$114	\$139	\$182	\$237	\$272	\$279	\$304	\$386	\$2,301
OEM SALES							\$18	\$47	\$82	\$112	\$152	\$232	\$642
TOTAL U.S.	\$669	\$709	\$748	\$791	\$852	\$1,041	\$1,383	\$1,825	\$2,120	\$2,204	\$2,432	\$3,127	\$17,901
INT'L DISTR.	\$223	\$236	\$249	\$264	\$284	\$347	\$455	\$593	\$679	\$698	\$760	\$965	\$5,753
TOTAL	\$893	\$945	\$998	\$1,055	\$1,136	\$1,388	\$1,838	\$2,417	\$2,799	\$2,902	\$3,192	\$4,092	\$23,654

GROSS MARGIN CALCULATIONS BY PRODUCT LINE, \$ X 1000

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
DAYNAFILE	\$384	\$406	\$429	\$452	\$452	\$452	\$452	\$452	\$429	\$361	\$361	\$452	\$5,079
DAYNAMAIL	\$0	\$0	\$0	\$5	\$20	\$40	\$60	\$80	\$100	\$100	\$100	\$100	\$605



FISCAL 1989 BUDGET
QUOTA BY AREA, \$ X 1000

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
EASTERN AREA:													
DISTR. SALES	\$70	\$74	\$78	\$82	\$89	\$108	\$142	\$185	\$212	\$218	\$237	\$301	\$1,795
DEALER SALES	\$109	\$116	\$122	\$129	\$139	\$170	\$223	\$290	\$333	\$342	\$372	\$473	\$2,819
DIRECT SALES	\$31	\$33	\$35	\$37	\$40	\$49	\$64	\$83	\$95	\$98	\$106	\$135	\$805
OEM SALES	\$0	\$0	\$0	\$0	\$0	\$0	\$5	\$12	\$20	\$28	\$38	\$58	\$161
TOTAL	\$210	\$223	\$235	\$248	\$268	\$327	\$433	\$570	\$660	\$685	\$754	\$967	\$5,580
CENTRAL AREA:													
DISTR. SALES	\$70	\$74	\$78	\$82	\$89	\$108	\$142	\$185	\$212	\$218	\$237	\$301	\$1,795
DEALER SALES	\$109	\$116	\$122	\$129	\$139	\$170	\$223	\$290	\$333	\$342	\$372	\$473	\$2,819
DIRECT SALES	\$31	\$33	\$35	\$37	\$40	\$49	\$64	\$83	\$95	\$98	\$106	\$135	\$805
OEM SALES	\$0	\$0	\$0	\$0	\$0	\$0	\$5	\$12	\$20	\$28	\$38	\$58	\$161
TOTAL	\$210	\$223	\$235	\$248	\$268	\$327	\$433	\$570	\$660	\$685	\$754	\$967	\$5,580
WESTERN AREA:													
DISTR. SALES	\$137	\$145	\$153	\$161	\$174	\$212	\$278	\$363	\$416	\$427	\$465	\$591	\$3,521
DEALER SALES	\$109	\$116	\$122	\$129	\$139	\$170	\$223	\$290	\$333	\$342	\$372	\$473	\$2,819
DIRECT SALES	\$31	\$33	\$35	\$37	\$40	\$49	\$64	\$83	\$95	\$98	\$106	\$135	\$805
OEM SALES	\$0	\$0	\$0	\$0	\$0	\$0	\$9	\$24	\$41	\$56	\$76	\$116	\$321
TOTAL	\$277	\$293	\$310	\$328	\$353	\$431	\$574	\$760	\$885	\$922	\$1,020	\$1,314	\$7,466
TOTAL U.S.	\$697	\$739	\$780	\$824	\$888	\$1,085	\$1,441	\$1,900	\$2,205	\$2,292	\$2,528	\$3,248	\$18,626
INT'L SALES	\$223	\$236	\$249	\$264	\$284	\$347	\$455	\$593	\$679	\$698	\$760	\$965	\$5,753
GRAND TOTAL	\$921	\$975	\$1,029	\$1,088	\$1,172	\$1,432	\$1,896	\$2,492	\$2,885	\$2,989	\$3,288	\$4,213	\$24,379

QUOTA BY DISTRIBUTION CHANNEL, \$ X 1000

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
U.S. SALES:													
DISTR. SALES	\$276	\$292	\$308	\$326	\$351	\$429	\$562	\$732	\$840	\$862	\$939	\$1,193	\$7,111
DEALER SALES	\$328	\$347	\$367	\$388	\$417	\$510	\$666	\$871	\$999	\$1,011	\$1,117	\$1,410	\$8,407

SALES BY MONTH, \$ X 1000													
COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
REVENUES	\$893	\$945	\$998	\$1,055	\$1,136	\$1,388	\$1,820	\$2,370	\$2,718	\$2,790	\$3,040	\$3,860	\$23,012

COMPANY BUDGET AS A PERCENT OF REVENUES, IN %													
COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
REVENUES	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
GROSS MARGINS	43.0%	43.0%	43.0%	43.1%	43.1%	45.0%	47.8%	48.8%	50.1%	49.9%	48.9%	49.0%	

P.O.E.:

GENERAL ADMIN	6.0%	6.0%	5.5%	5.5%	5.0%	4.5%	4.0%	3.0%	3.0%	3.0%	3.0%	2.5%	
SALES & SVC	13.5%	13.5%	13.5%	13.0%	12.5%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	
MARKETING	6.0%	6.0%	5.5%	5.5%	5.5%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	
ADVERTISING	6.0%	6.0%	6.0%	5.5%	5.5%	5.0%	4.0%	3.0%	3.0%	3.0%	3.0%	2.5%	
ENGINEERING	9.0%	9.0%	9.5%	10.0%	10.5%	11.0%	11.5%	12.0%	12.0%	12.0%	12.0%	12.0%	
MANUFACTURING	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	
TOTAL P.O.E.	42.5%	42.5%	42.0%	41.5%	41.0%	39.5%	38.5%	37.0%	37.0%	37.0%	37.0%	36.0%	
OPER. PBT	0.5%	0.5%	1.0%	1.6%	2.1%	5.5%	9.3%	11.8%	13.1%	12.9%	11.9%	13.0%	

COMPANY BUDGET AS A PERCENT OF REVENUES, IN %													
COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
TOTAL REVENUES	\$893	\$945	\$998	\$1,055	\$1,136	\$1,388	\$1,820	\$2,370	\$2,718	\$2,790	\$3,040	\$3,860	\$23,012
GROSS MARGINS	\$384	\$406	\$429	\$454	\$490	\$625	\$870	\$1,156	\$1,362	\$1,391	\$1,486	\$1,892	\$10,943

PERIOD EXPENSES:

GENERAL ADMIN	\$54	\$57	\$55	\$58	\$57	\$62	\$73	\$71	\$82	\$84	\$91	\$97	\$839
SALES & SERVICE	\$120	\$128	\$135	\$137	\$142	\$167	\$218	\$284	\$326	\$335	\$365	\$463	\$2,820
MARKETING	\$54	\$57	\$55	\$58	\$62	\$69	\$91	\$119	\$136	\$140	\$152	\$193	\$1,185
ADV & PROMO	\$54	\$57	\$60	\$58	\$62	\$69	\$73	\$71	\$82	\$84	\$91	\$97	\$857
ENGINEERING	\$80	\$85	\$95	\$106	\$119	\$153	\$209	\$284	\$326	\$335	\$365	\$463	\$2,620
MANUFACTURING	\$8	\$19	\$20	\$21	\$25	\$28	\$30	\$47	\$54	\$56	\$61	\$77	\$460
TOTAL P.O.E.	\$425	\$425	\$420	\$415	\$410	\$395	\$385	\$370	\$370	\$370	\$370	\$360	

[illegible]

SALES SALARIES BY EMPLOYEE, BY MONTH, \$X 1000													
COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
CENTRAL AREA:													
R. ZACHARY	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$44,000
D. QUICK	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$36,000
DIST. MGR.					\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$24,000
SALES SUPPORT		\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$22,000
SALES SUPPORT						\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$14,000
SALES SUPPORT								\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$10,000
TOTAL	\$6,667	\$8,667	\$8,667	\$8,667	\$11,667	\$13,667	\$13,667	\$15,667	\$15,667	\$15,667	\$15,667	\$15,667	\$150,000
WESTERN AREA:													
W. SEARLES	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$44,000
P. SUN	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$36,000
DIST. MGR.					\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$24,000
SALES SUPPORT		\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$22,000
SALES SUPPORT						\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$14,000
SALES SUPPORT								\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$10,000
TOTAL	\$6,667	\$8,667	\$8,667	\$8,667	\$11,667	\$13,667	\$13,667	\$15,667	\$15,667	\$15,667	\$15,667	\$15,667	\$150,000
SALARIES BY AREA:													
SALES ADMIN	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$126,000
INSIDE SALES	\$9,583	\$9,583	\$10,917	\$10,917	\$14,667	\$14,667	\$15,917	\$15,917	\$15,917	\$19,667	\$19,667	\$19,667	\$177,083
EASTERN AREA	\$6,500	\$8,500	\$8,500	\$8,500	\$8,500	\$10,500	\$10,500	\$12,500	\$12,500	\$12,500	\$12,500	\$12,500	\$124,000
CENTRAL AREA	\$6,667	\$8,667	\$8,667	\$8,667	\$11,667	\$13,667	\$13,667	\$15,667	\$15,667	\$15,667	\$15,667	\$15,667	\$150,000
WESTERN AREA	\$6,667	\$8,667	\$8,667	\$8,667	\$11,667	\$13,667	\$13,667	\$15,667	\$15,667	\$15,667	\$15,667	\$15,667	\$150,000
TOTAL	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$66,667	\$666,667

EMPLOYEES BY CATEGORY, BY MONTH

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
VP SALES	1	1	1	1	1	1	1	1	1	1	1	1	1
AREA DIRECTOR	5	5	5	5	5	5	5	5	5	5	5	5	5
FIELD REPS	3	6	6	6	9	12	15	15	15	15	15	15	15
DLR SUP. REPS	3	3	3	3	3	3	3	3	3	3	3	3	3
TELEMARKETERS	3	3	3	3	6	6	6	6	6	9	9	9	9
CLERICAL	2	2	2	2	2	2	3	3	3	3	3	3	3
TOTAL	17	20	20	20	26	29	33	33	33	36	36	36	36
TRAVELING EMP.	9	12	12	12	15	18	21	21	21	21	21	21	21

SALES EXPENSES, BY MONTH, \$X 1000

[illegible]

CUSTOMER SERVICE SALARIES, BY EMPLOYEE, BY MONTH, \$ X 1000

COMPONENT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
R. BRYANT	\$2.6	\$2.6	\$2.6	\$2.6	\$2.6	\$2.6	\$2.9	\$2.9	\$2.9	\$2.9	\$2.9	\$2.9	\$32.9
D. CHRISTIE	\$1.9	\$1.9	\$1.9										\$5.8
SUPPORT REP	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$23.8
SUPPORT REP			\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$2.1	\$2.1	\$2.1	\$19.6
SUPPORT REP						\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$2.1	\$13.6
SUPPORT REP							\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	\$11.5
SUPPORT REP								\$1.9	\$1.9	\$1.9	\$1.9	\$1.9	
TOTAL	\$6.4	\$6.4	\$8.3	\$6.4	\$6.4	\$8.3	\$10.5	\$12.6	\$12.6	\$12.8	\$12.8	\$13.0	\$116.7
# EMPLOYEES	3	3	4	3	3	4	5	6	6	6	6	6	6
TRAVELING EMP	1	1	1	1	2	2	2	2	3	3	3	3	3

CUSTOMER SERVICE BUDGET, BY MONTH, \$ X 1000

[illegible]

9/21/88
JFW

ANNUAL QUOTA, ANNUAL PACKAGE BY SALES PARTICIPANT, FOR FISCAL 1989

SALES CHANNEL	ANNUAL QUOTA \$ X 1000	D'FILE UNITS REQ'D/ DAY*	D'FILE UNITS REQ'D/ MONTH	% COMM	ANNUAL \$ COMM	ANNUAL \$ SALARY	ANNUAL \$ PACKAGE	\$ COST/ \$ REV BY CHANNEL
DIRECTOR, DEALER SUPPORT AND TMKTG (1)								
DISTRIBUTOR/DEALER SALES	\$15,600							
TMKTG DIRECT SALES	\$2,300							
TOTAL	\$17,900			0.20%	\$35,800	\$36,000	\$71,800	\$0.004
TELEMARKETER (9)	\$450	2.5	48	3.00%	\$13,500	\$15,000	\$28,500	\$0.063
DEALER SUPPORT SALES REP (3)								
OVERRIDE ON D/D SALES	\$5,300			0.50%	\$26,500	\$16,000	\$42,500	\$0.008
AREA SALES DIRECTOR (3)								
OVERRIDE ON AREA SALES	\$6,000			1.00%	\$60,000	\$44,000	\$104,000	\$0.017
FIELD SALES REP								
DAYNAFILE SALES	\$1,219	10.0	192	1.75%	\$21,333			
OTHER PRODUCT SALES	\$1,281			1.75%	\$22,418			
TOTAL	\$2,500				\$43,750	\$36,000	\$79,750	\$0.032
DIRECTOR, INT'L SALES (1)								
DAYNAFILE	\$3,000	26.1	574					
OTHER PRODUCTS	\$2,800							
TOTAL	\$5,800			1.00%	\$58,000	\$36,000	\$94,000	\$0.016
TOTAL U. S. SALES	\$18,000				\$595,050			\$0.033
TOTAL INT'L SALES	\$5,800				\$58,000			\$0.010
TOTAL WORLD-WIDE SALES	\$23,800				\$653,050			\$0.027
TOTAL U.S. SALES	\$18,000							

9/16/88
JFW

COMMISSION BUILD - UP
BY CHANNELS, BY PARTICIPANT

TYPE SALE	T'M'	S.R.	F.S.R.	COMMISSION D.S.R.	PARTICIPANT A.S.D.	I.S.D.	D, INT'L VP	SAL
END-USER, SMALL	3.00%				1.00%	0.20%		0.10%
END-USER, CONTRACT			1.75%		1.00%			0.10%
DEALER, SMALL				0.50%	1.00%	0.20%		0.10%
DEALER, CONTRACT			1.75%	0.50%	1.00%	0.20%		0.10%
AUTH. DEALER			1.75%	0.50%	1.00%	0.20%		0.10%
DISTRIBUTOR, US				0.50%	1.00%	0.20%		0.10%
DISTRIBUTOR, INT'L							1.00%	0.10%

T'M'S.R. = TELEMARKETER SALES REP

F.S.R. = FIELD SALES REP

D.S.R. = DEALER SUPPORT REP

A.S.D. = AREA SALES DIRECTOR

DTM S.D. = DEALER SUPPORT AND TELEMARKETING DIRECTOR

D, INT'L = DIRECTOR, INTERNATIONAL SALES

REMAIN G.M. = GROSS MARGIN AFTER COMMISSIONS

Dayna

WELCOME TO DAYNA COMMUNICATIONS

Dayna Communications, Inc. is a rapidly-growing leader in high technology computer products. We are proud of our reputation for high quality, innovative solutions to computing needs and are committed to the highest levels of customer service and satisfaction in our industry.

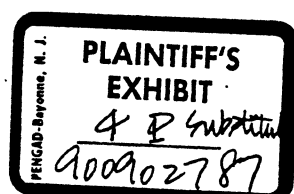
We at Dayna firmly believe the key to our past and future success lies in our ability to attract and maintain a dedicated, professional group of people who are eager to see the company grow, while at the same time realizing their own personal goals for achievement and performance. Because of this commitment to people, we have carefully established policies, procedures and benefits which are intended to build corporate and individual morale, provide a meaningful work environment, and enhance individual productivity.

Please study this Team Manual carefully, and keep it for future updates and ready reference. As a Team Member of Dayna Communications, the concepts contained in this manual will be important for you to fully understand. If you have questions or comments on any of the topics addressed in this manual, or if you have suggestions for additional policies or benefits, please feel free to discuss them with your manager.

Very truly yours,



Brad Romney
Executive Vice President



000070

DAYNA COMMUNICATIONS, INC.
Company Policy

Subject: **PERFORMANCE REVIEW**
Number: GN109
Page: 1 of 1

Performance reviews will be given to each Team Member at the end of the 90 day probationary period and then not less than yearly on or about the anniversary date.

Additional reviews can be given at the discretion of the manager.

DAYNA COMMUNICATIONS, INC.
Company Policy

Subject: **TERMINATION**
Number: GN114
Page: 1 of 1

Team Members who plan to leave their job at Dayna should give their manager at least two weeks' notice. An exit interview will then be scheduled to set their file in order and issue a final paycheck. All company property including keys, parking cards, prescription cards, etc. must be returned before the final paycheck will be issued.

In the event of improper behavior or neglect of duties, the manager will counsel and work with the Team Member to improve the situation. Continued failure to meet company standards may be the cause of immediate suspension or termination.

1 2

**INTEROFFICE MEMO
CONFIDENTIAL**

To: w. Searles

1/31/89

From: Jim Waltz

Subject: Memo of Understanding re: Termination

Bill, this memo is to state concisely those conditions of the termination of your employment with Dayna Communications, Inc.

Your notice of termination has been given you on Friday, January 27, 1989. That day was to be your last day worked.

You are to be paid to the end of the first pay period in February, that date being February 10, 1989. All benefits are to be continued until the end of the month of February.

Your final payment is to include all earned commissions in the month of January, with pre-payment for all orders booked in that month, but not shipped (for reasons of late booking, or any other reasons except for reasons of credit clearance).

You may have access to the facilities that you require for the preparation of resumes, or the secretarial services, within reason.

If I am called for reference on your past performance I will give good reference.

I'm sure that the rest of the employees at Dayna join me in wishing you well in the future.

Regards,



Jim Waltz

Vice President, Sales

Dayna Communications, Inc.

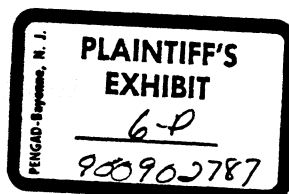


xc: B. Romney, R. Young, M. Seethaler

6. 5 24

APRIL Daily Report

4/13/89	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	0	122	34.17%	\$565.74	\$0.00	\$69,020.00	34.28%
MICRO D	0	45	12.61%	\$604.56	\$0.00	\$27,205.00	13.51%
TOTAL	0	167	46.78%	\$576.20	\$0.00	\$96,225.00	47.79%
HOUSE ACCOUNTS							
BUSINESSLAND	0	2	0.56%	\$607.75	\$0.00	\$1,215.50	0.60%
CLINTON COMPUTER	0	1	0.28%	\$701.00	\$0.00	\$701.00	0.35%
COMPUTER FACTORY	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
COMPUTER TOWN	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
COMPUTERLAND	1	7	1.96%	\$719.11	\$552.75	\$5,033.75	2.50%
COMPUTERWARE	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
COMPUTER WARE (CA)	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
FALCON MICROSYSTEMS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
HEATH ZENITH	0	4	1.12%	\$587.25	\$0.00	\$2,349.00	1.17%
INACOMP	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
NEECO	0	4	1.12%	\$534.75	\$0.00	\$2,139.00	1.06%
NYNEX	0	40	11.20%	\$551.36	\$0.00	\$22,054.50	10.95%
TOTAL	1	58	16.25%	\$577.46	\$552.75	\$33,492.75	16.63%
EAST - ZACHARY							
BARTA	5	7	1.96%	\$600.11	\$2,924.75	\$4,200.75	2.09%
MURPHY	0	7	1.96%	\$599.19	\$0.00	\$4,194.30	2.08%
QUICK	0	40	11.20%	\$551.36	\$0.00	\$22,054.50	10.95%
TOTAL	5	58	16.25%	\$565.49	\$2,924.75	\$32,798.55	16.29%
WEST							
ANTON	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
SUN	0	9	2.52%	\$654.67	\$0.00	\$5,892.00	2.93%
TOTAL	0	9	2.52%	\$654.67	\$0.00	\$5,892.00	2.93%
TELEMARKETERS							
BOWCUTT	0	5	1.40%	\$865.50	\$0.00	\$4,327.50	2.15%
BAILEY	0	5	1.40%	\$956.70	\$284.00	\$4,783.50	2.38%
TOTAL	0	10	2.80%	\$911.10	\$284.00	\$9,111.00	4.52%
U.S. TOTAL	5	244	68.35%	\$590.27	\$3,208.75	\$144,026.55	71.53%
INT'L							
DISTRIBUTORS	45	113	31.65%	\$504.81	\$22,029.00	\$57,044.00	28.33%
DEALERS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
OTHER	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
TOTAL	45	113	31.65%	\$504.81	\$22,029.00	\$57,044.00	28.33%
OTHER	0	0	0.00%	\$0.00	\$291.00	\$291.00	0.14%
TODAY'S TOTAL	50				\$25,528.75		
WEEK TO DATE	183				\$107,389.55		
MONTH TO DATE		357		\$564.04		\$201,361.55	



5.1.15

MARCH Daily Report

3/31/89	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	135	440	36.12%	\$514.59	\$77,355.00	\$226,421.00	34.11%
MICRO D	0	110	9.03%	\$566.55	\$0.00	\$62,320.00	9.39%
TOTAL	135	550	45.16%	\$524.98	\$77,355.00	\$288,741.00	43.50%
HOUSE ACCOUNTS							
BUSINESSLAND	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
CLINTON COMPUTER	4	35	2.87%	\$529.29	\$1,926.00	\$18,525.00	2.79%
COMPUTER FACTORY	0	26	2.13%	\$480.69	\$0.00	\$12,498.00	1.88%
COMPUTER TOWN	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
COMPUTERLAND	0	10	0.82%	\$672.64	\$0.00	\$6,726.35	1.01%
COMPUTERWARE	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
FALCON MICROSYSTEMS	0	16	1.31%	\$508.69	\$0.00	\$8,139.00	1.23%
HEATH ZENITH	0	22	1.81%	\$540.55	\$0.00	\$11,892.00	1.79%
INACOMP	0	1	0.08%	\$390.00	\$0.00	\$390.00	0.06%
NEECO	0	2	0.16%	\$0.00	\$0.00	\$960.00	0.14%
NYNEX	0	31	2.55%	\$545.35	\$0.00	\$16,906.00	2.55%
TOTAL	4	143	11.74%	\$531.72	\$1,926.00	\$76,036.35	11.46%
EAST - ZACHARY							
BARTA	0	23	1.89%	\$549.58	\$0.00	\$12,640.30	1.90%
MURPHY	0	39	3.20%	\$573.99	\$0.00	\$22,385.50	3.37%
QUICK	4	81	6.65%	\$509.86	\$1,926.00	\$41,298.35	6.22%
TOTAL	4	33	2.71%	\$550.86	\$0.00	\$18,178.50	2.74%
TOTAL	4	176	14.45%	\$536.95	\$1,926.00	\$94,502.65	14.24%
WEST							
ANTON	0	10	0.82%	\$769.60	\$0.00	\$7,696.00	1.16%
SUN	4	31	2.55%	\$602.33	\$2,247.00	\$18,672.30	2.81%
TOTAL	4	41	3.37%	\$643.13	\$2,247.00	\$26,368.30	3.97%
TELEMARKETERS							
BOWCUTT	1	21.5	1.77%	\$874.56	\$1,143.00	\$18,803.00	2.83%
BAILEY	1	19.5	1.60%	\$958.62	\$1,105.00	\$18,693.00	2.82%
TOTAL	2	41	3.37%	\$914.54	\$2,248.00	\$37,496.00	5.65%
U.S. TOTAL	145	808	66.34%	\$553.35	\$83,776.00	\$447,107.95	67.36%
INT'L							
DISTRIBUTORS	0	395	32.43%	\$500.20	\$0.00	\$197,580.30	29.77%
DEALERS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
OTHER	0	2	0.16%	\$872.00	\$0.00	\$1,744.00	0.26%
TOTAL	0	397	32.59%	\$502.08	\$0.00	\$199,324.30	30.03%
OTHER	0	13	1.07%	\$1,332.46	\$90.00	\$17,322.00	2.61%
TODAY'S TOTAL	145				\$83,866.00		
WEEK TO DATE	347				\$194,025.30		
MONTH TO DATE		1218		\$544.95		\$663,754.25	

FEBRUARY Daily Report

2/28/89	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	130	460	22.81%	\$493.78	\$65,451.00	\$227,137.50	21.56%
MICRO D	0	235	11.65%	\$469.98	\$0.00	\$110,445.00	10.48%
TOTAL	130	695	34.46%	\$485.73	\$65,451.00	\$337,582.50	32.04%
HOUSE ACCOUNTS							
BUSINESSLAND	1	569	28.21%	\$497.34	\$607.75	\$282,989.00	26.86%
CLINTON COMPUTER	0	5	0.25%	\$510.20	\$0.00	\$2,551.00	0.24%
COMPUTER FACTORY	0	30	1.49%	\$397.10	\$0.00	\$11,913.00	1.13%
COMPUTER TOWN	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
COMPUTERLAND	0	12	0.59%	\$659.50	\$0.00	\$7,914.00	0.75%
COMPUTERWARE	0	5	0.25%	\$538.00	\$0.00	\$2,690.00	0.26%
FALCON MICROSYSTEMS	0	17	0.84%	\$629.24	\$0.00	\$10,697.00	1.02%
HEATH ZENITH	0	9	0.45%	\$498.44	\$0.00	\$4,486.00	0.43%
INACOMP	0	1	0.05%	\$390.00	\$0.00	\$390.00	0.04%
NEECO	0	4	0.20%	\$480.00	\$0.00	\$1,920.00	0.18%
NYNEX	0	53	2.63%	\$569.04	\$0.00	\$30,159.00	2.86%
TOTAL	1	705	34.95%	\$504.55	\$607.75	\$355,709.00	33.76%
EAST - ZACHARY							
BARTA	0	10	0.50%	\$523.43	\$0.00	\$5,234.30	0.50%
MURPHY	0	32	1.59%	\$581.66	\$0.00	\$18,613.00	1.77%
QUICK	0	65	3.22%	\$508.90	\$267.50	\$33,078.70	3.14%
TOTAL	0	57	2.83%	\$567.84	\$0.00	\$32,367.00	3.07%
TOTAL	0	164	8.13%	\$544.47	\$267.50	\$89,293.00	8.47%
WEST							
ANTON	0	26	1.29%	\$633.81	\$0.00	\$16,479.00	1.56%
SUN	2	593	29.40%	\$499.35	\$1,240.75	\$296,112.00	28.10%
TOTAL	2	619	30.69%	\$504.99	\$1,240.75	\$312,591.00	29.67%
TELEMARKETERS							
BOWCUTT	1	22	1.09%	\$933.64	\$1,205.00	\$20,540.00	1.95%
BAILEY	1	23	1.14%	\$924.10	\$788.00	\$21,254.25	2.02%
TOTAL	2	45	2.23%	\$928.76	\$1,993.00	\$41,794.25	3.97%
U.S. TOTAL	134	1523	75.51%	\$512.97	\$68,952.25	\$781,260.75	74.15%
INT'L							
DISTRIBUTORS	0	481	23.85%	\$525.91	\$21.00	\$252,963.20	24.01%
DEALERS	0	4	0.20%	\$535.00	\$0.00	\$2,140.00	0.20%
PEAT MARWICK MAIN	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
OTHER	0	0	0.00%	\$0.00	\$0.00	\$100.00	0.01%
TOTAL	0	485	24.05%	\$526.19	\$21.00	\$255,203.20	24.22%
OTHER	0	9	0.45%	\$1,904.62	\$375.00	\$17,141.55	1.63%
TODAY'S TOTAL	134				\$69,348.25		
WEEK TO DATE	677				\$341,632.25		
MONTH TO DATE		2017		\$522.36		\$1,053,605.50	

Micro D - Seale didn't bring to Dayne?

JANUARY Daily Report

1/31/89	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	8	291	33.53%	\$488.42	\$3,424.00	\$142,131.40	29.70%
HOUSE ACCOUNTS							
ARTHUR YOUNG	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
BUSINESSLAND	0	80	9.22%	\$453.13	\$0.00	\$36,250.25	7.58%
COMPUTER FACTORY	0	0	0.00%	\$0.00	\$0.00	\$39.00	0.01%
HEATH ZENITH	3	33	3.80%	\$548.98	\$1,594.50	\$18,116.25	3.79%
NEECO	0	1	0.12%	\$1,163.25	\$0.00	\$1,163.25	0.24%
NYNEX	0	25	2.88%	\$541.07	\$0.00	\$13,526.84	2.83%
PEAT MARWICK MAIN	0	4	0.46%	\$686.55	\$0.00	\$2,746.20	0.57%
TOTAL	3	143	16.47%	\$502.39	\$1,594.50	\$71,841.79	15.01%
EAST - ZACHARY							
BARTA	11	83	9.56%	\$601.07	\$5,895.00	\$49,889.00	10.43%
MURPHY	0	21	2.42%	\$535.25	\$0.00	\$11,240.15	2.35%
QUICK	0	26	3.00%	\$545.30	\$0.00	\$14,177.84	2.96%
TOTAL	14	164	18.89%	\$573.62	\$7,489.50	\$94,073.54	19.66%
WEST - SEARLES							
ANTON	2	74	8.53%	\$541.74	\$1,580.00	\$40,089.00	8.38%
SUN	2	92	10.60%	\$470.97	\$923.00	\$43,329.25	9.05%
TOTAL	4	166	19.12%	\$502.52	\$2,503.00	\$83,418.25	17.43%
TELEMARKETERS							
BOWCUTT	1	16	1.84%	\$866.94	\$810.00	\$13,871.00	2.90%
BAILEY	1	24	2.76%	\$917.99	\$984.00	\$22,031.80	4.60%
BLISS	0	10	1.15%	\$898.48	\$0.00	\$8,984.75	1.88%
TOTAL	2	50	5.76%	\$897.75	\$1,794.00	\$44,887.55	9.38%
U.S. TOTAL							
	28	671	77.30%	\$543.24	\$15,210.50	\$364,510.74	76.17%
INT'L							
DISTRIBUTORS	65	188	21.66%	\$524.57	\$27,044.00	\$98,619.00	20.61%
DEALERS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
PEAT MARWICK MAIN	0	0	0.00%	\$0.00	\$0.00	\$67.20	0.01%
OTHER	0	1	0.12%	\$1,250.00	\$0.00	\$1,250.00	0.26%
TOTAL	65	189	21.77%	\$528.76	\$27,044.00	\$99,936.20	20.88%
OTHER							
	0	8	0.92%	\$1,761.59	\$230.00	\$14,092.70	2.94%
TODAY'S TOTAL							
	93				\$42,484.50		
WEEK TO DATE							
	427				\$214,991.59		
MONTH TO DATE							
		868		\$551.31		\$478,539.64	

35.53
19.12
52.65
2.94
17.4
76.1

Need Bill to test re 2 results

JANUARY Daily Report

	#UNIT	\$	MTD UNITS	MTD \$	MTD AVG	YTD UNITS	YTD \$	YTD AVG
DAYNAMAIL								
PC	0	\$0.00	0	\$0.00	\$0.00	19	\$2,771.00	\$145.84
MAC	0	\$0.00	1	\$295.00	\$0.00	45	\$7,591.00	\$168.69
TOTAL	0	\$0.00	1	\$295.00	\$0.00	64	\$10,362.00	\$161.91
DAYNATALK								
PC	0	\$0.00	-1	(\$289.00)	\$289.00	145	\$25,252.00	\$174.15
MAC	1	\$189.00	146	\$25,324.80	\$173.46	2805	\$333,194.00	\$118.79
TOTAL	1	\$189.00	145	\$25,035.80	\$172.66	2950	\$358,446.00	\$292.94

↑
Couldn't be shipped

DECEMBER Daily Report

12/30/88	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	0	283	24.11%	\$497.55	\$0.00	\$140,807.60	22.34%
HOUSE ACCOUNTS							
ARTHUR YOUNG	0	1	0.09%	\$455.00	\$0.00	\$455.00	0.07%
BUSINESSLAND	0	110	9.37%	\$542.18	\$0.00	\$59,639.25	9.46%
COMPUTER FACTORY	0	52	4.43%	\$390.38	\$0.00	\$20,300.00	3.22%
HEATH ZENITH	0	30	2.56%	\$534.59	\$0.00	\$16,037.60	2.54%
NEECO	0	56	4.77%	\$507.17	\$0.00	\$28,401.75	4.51%
NYNEX	0	3	0.26%	\$445.67	\$0.00	\$1,337.00	0.21%
PEAT MARWICK MAIN	1	10	0.85%	\$667.82	\$650.30	\$6,678.20	1.06%
TOTAL	1	262	22.32%	\$507.06	\$650.30	\$132,848.80	21.08%
EAST - ZACHARY	1	36	3.07%	\$554.65	\$650.30	\$19,967.40	3.17%
BARTA	1	53	4.51%	\$562.75	\$465.00	\$29,825.80	4.73%
MURPHY	0	176	14.99%	\$484.38	\$0.00	\$85,250.35	13.53%
QUICK	0	4	0.34%	\$509.25	\$0.00	\$2,037.00	0.32%
TOTAL	2	269	22.91%	\$509.59	\$1,115.30	\$137,080.55	21.75%
WEST - SEARLES	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
ANTON	0	37	3.15%	\$610.97	\$0.00	\$22,606.00	3.59%
SUN	0	139	11.84%	\$554.79	\$0.00	\$77,116.00	12.24%
TOTAL	0	176	14.99%	\$566.60	\$0.00	\$99,722.00	15.82%
TELEMARKETERS							
ANTON	0	3	0.26%	\$941.67	\$0.00	\$2,825.00	0.45%
BOWCUTT	0	16	1.36%	\$896.06	\$198.00	\$14,337.00	2.27%
BAILEY	0	15.5	1.32%	\$871.15	\$0.00	\$13,502.75	2.14%
BLISS	1	6.5	0.55%	\$1,018.62	\$1,105.00	\$6,621.00	1.05%
TOTAL	1	41	3.49%	\$909.41	\$1,303.00	\$37,285.75	5.92%
U.S. TOTAL	3	769	65.50%	\$539.53	\$2,418.30	\$414,895.90	65.83%
INT'L							
DISTRIBUTORS	0	396	33.73%	\$516.81	\$0.00	\$204,657.40	32.47%
DEALERS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
PEAT MARWICK MAIN	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
OTHER	0	1	0.09%	\$520.00	\$0.00	\$520.00	0.08%
TOTAL	0	397	33.82%	\$516.82	\$0.00	\$205,177.40	32.56%
OTHER	0	8	0.68%	\$1,267.13	\$404.00	\$10,137.00	1.61%
TODAY'S TOTAL	3				\$2,822.30		
WEEK TO DATE	121				\$76,506.60		
MONTH TO DATE		1174		\$536.81		\$630,210.30	

NOVEMBER Daily Report

11/30/88	# UNITS	MTD	%MTD	COST/UNIT	TOTAL \$	MTD	%MTD
U. S. DISTRIBUTORS							
SOFTSEL	0	202	22.03%	\$482.56	\$0.00	\$97,476.90	18.96%
HOUSE ACCOUNTS							
ALPHA GRAPHICS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
ARTHUR YOUNG	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
BUSINESSLAND	0	0	0.00%	\$0.00	\$0.00	\$195.25	0.04%
COMPUTER FACTORY	0	23	2.51%	\$420.39	\$0.00	\$9,669.00	1.88%
HEATH ZENITH	0	10	1.09%	\$480.00	\$0.00	\$4,800.00	0.93%
NYNEX	1	31	3.38%	\$556.48	\$377.00	\$17,251.00	3.35%
PAC TEL SYSTEMS	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
PEAT MARWICK MAIN	1	11	1.20%	\$532.44	\$0.00	\$5,856.80	1.14%
TOTAL	2	75	8.18%	\$503.63	\$377.00	\$37,772.05	7.35%
EAST - ZACHARY							
BARTA	0	10	1.09%	\$480.00	\$0.00	\$4,800.00	0.93%
BARTA	4	62	6.76%	\$582.89	\$2,547.30	\$36,139.20	7.03%
GLAZER	0	11	1.20%	\$643.64	\$0.00	\$7,080.00	1.38%
MURPHY	0	73	7.96%	\$513.40	\$0.00	\$37,478.30	7.29%
QUICK	1	45	4.91%	\$589.07	\$377.00	\$26,508.00	5.15%
TOTAL	5	201	21.92%	\$557.24	\$2,924.30	\$112,005.50	21.78%
WEST - SEARLES							
ANTON	0	0	0.00%	\$0.00	\$0.00	\$0.00	0.00%
ANTON	5	14	1.53%	\$551.21	\$2,565.00	\$7,717.00	1.50%
ENGLISH	0	18	1.96%	\$639.52	\$0.00	\$11,511.30	2.24%
SUN	5	52	5.67%	\$545.45	\$2,175.00	\$28,363.30	5.52%
TOTAL	10	84	9.16%	\$566.57	\$4,740.00	\$47,591.60	9.25%
TELEMARKETERS							
ANTON	0	17.5	1.91%	\$928.40	\$0.00	\$16,247.00	3.16%
BOWCUTT	0	19.5	2.13%	\$907.83	\$0.00	\$17,702.75	3.44%
BAILEY	1	14	1.53%	\$964.43	\$730.00	\$13,502.00	2.63%
BLISS	1	1	0.11%	\$0.00	\$764.00	\$889.00	0.17%
TOTAL	2	52	5.67%	\$929.63	\$1,494.00	\$48,340.75	9.40%
U.S. TOTAL	17	539	58.78%	\$566.63	\$9,158.30	\$305,414.75	59.39%
INT'L							
DISTRIBUTORS	0	359	39.15%	\$537.02	\$0.00	\$192,791.90	37.49%
DEALERS	0	1	0.11%	\$264.00	\$0.00	\$264.00	0.05%
PEAT MARWICK MAIN	0	1	0.11%	\$0.00	\$0.00	\$823.00	0.16%
OTHER	0	1	0.11%	\$1,264.00	\$0.00	\$1,264.00	0.25%
TOTAL	0	362	39.48%	\$539.07	\$0.00	\$195,142.90	37.95%
OTHER	0	16	1.74%	\$855.95	\$100.00	\$13,695.20	2.66%
TODAY'S TOTAL	17				\$9,258.30		
WEEK TO DATE	37				\$31,609.00		
MONTH TO DATE		917		\$560.80		\$514,252.85	
TOTAL QTY REVENUE							
DAYNAMAIL							
PC	2	\$362.00					
MAC	2	\$362.00					
TOTAL	4	\$724.00					
DAYNATALK							
PC	10	\$1,846.00					
MAC	338	\$47,104.00					
TOTAL	348	\$48,950.00					

Q

**INTEROFFICE MEMO
CONFIDENTIAL**

To: Bob Young/ Brad Romney

10/5/88

From: Jim Waltz

Subject: Sales Plan for Fiscal 1989

This memo introduces the Sales Plan for Fiscal 1989. I will describe by page each of the enclosures.

ORGANIZATION CHART

This chart describes the organization for the 1989 Fiscal Year.

FISCAL 1989 DISTRIBUTION PLAN

This chart shows the planned distribution channels that we will use, and shows their interaction. An important aspect of this chart is that it does describe some overlap between the Distributor channel and the Field Sales Force in the contest for "Contract Dealers". We will use every effort to provide pricing structure that will enable us to deal directly with those major Dealers that we want to capture.

MEMO: COVERAGE, QUOTA, AND COMMISSION CREDIT- FY89 (2 PAGES)

These two pages describe the way that the segmented customer base will be covered by the Distribution Channels, and the interactions between the Distribution Channels.

**COMMISSION BUILD-UP, FIRST SIX MONTHS, and
COMMISSION BUILD-UP, SECOND SIX MONTHS**

These two pages show the roll-up of commission to each of the customer categories. The commission roll-ups are inescapably higher in the first six-month period than I would like because of the need to build a selling force and provide each member with a livable cash flow in that six-month period. In the second six-month period these roll-ups are quite acceptable and provide absolutely minimal effect on the gross margins.

ANNUAL QUOTA, PACKAGE BY SALES PARTICIPANT

This page describes the compensation packages for the Fiscal Year 1989, by selling category, that would result from 100% quota achievement. Were each of the selling categories to reach 100% of their quota, the net revenues to Dayna would total in excess of twenty-six million dollars (\$26,000,000). The effect on selling costs would be about four and one-half cents (\$0.045) on the dollar. Failure to achieve quota will increase the effect on the selling costs as a percentage of the revenue dollar because of the amortization of salaries.

FISCAL 1989 BUDGET (10 PAGE)

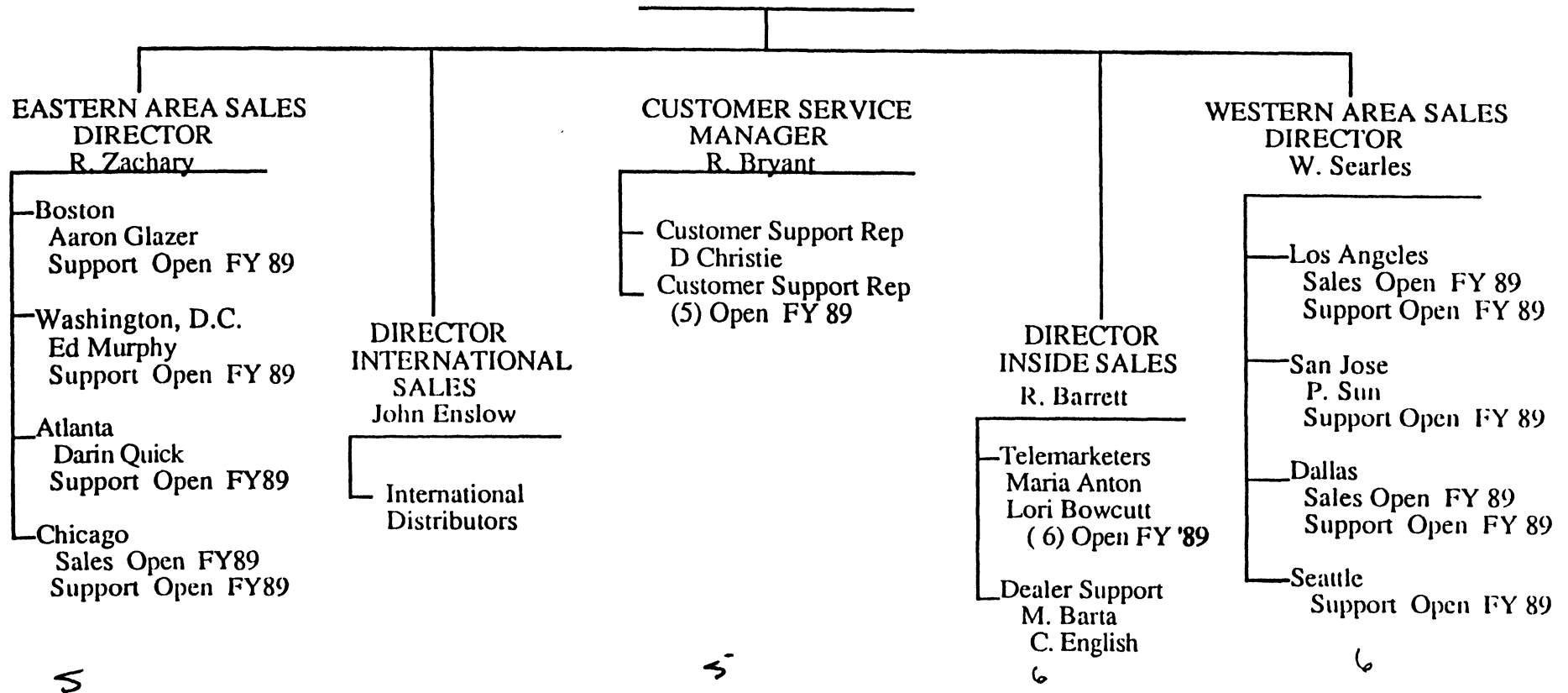
These ten pages are the numbers that result from the bottom-up budgeting of the selling and service organizations. Some notable points are: a) the selling effort for the year should have a less than ten percent of revenue effect on profits, although the front-end effect will be high because of the late release of new product and the building effort, and b) the customer service effect should be in the neighborhood of one percent. I believe that we can make the customer service effort self-sustaining, and I have Randy Bryant working on a plan to do that.



9/30/88
JW

ORGANIZATION CHART

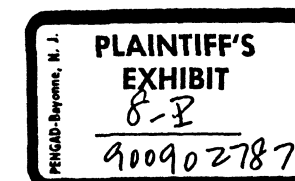
VICE PRESIDENT, SALES
Jim Waltz



15 total today
22 new people
37 total 1789

COMPONENT	SALES SALARIES BY EMPLOYEE, BY MONTH, \$X 1000												TOTAL
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
WESTERN AREA:													
W. SEARLES	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$3,667	\$44,000
P. SUN	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$36,000
DIST. MGR.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$36,000
DIST. MGR.			\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$30,000
SALES SUPPORT	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$24,000
SALES SUPPORT					\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$16,000
SALES SUPPORT						\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$12,000
SALES SUPPORT							\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$10,000
TOTAL	\$11,667	\$11,667	\$14,667	\$14,667	\$16,667	\$16,667	\$18,667	\$20,667	\$20,667	\$20,667	\$20,667	\$20,667	\$208,000

3000047	TCV	State I.D. NUMBER	Y24659	FORM 1988															
2 Employer's name, address, and ZIP code DAYNA COMMUNICATIONS			Department 940		3 Employer's identification number 87-0415549														
50 S MAIN ST STE 550 SALT LAKE CITY UT 84144			Co. TCV	Corp.	5 Statutory employee <input type="checkbox"/>	6 De minimis <input type="checkbox"/>	7 Pension plan <input type="checkbox"/>	8 Legal fee <input type="checkbox"/>	9 Self-emp. <input type="checkbox"/>	10 Sub-emp. <input type="checkbox"/>	11 Deferred compensation <input type="checkbox"/>	12 Vol. <input type="checkbox"/>	Employer's and Employer's copy completed <input type="checkbox"/>						
			File Number 143		6 Allocated tips			7 Advance EIC payment											
8 Employee's social security number 924-52-7463			9 Federal income tax withheld 727.44		10 Wages, tips, other compensation 22891.00					11 Social security tax withheld 1719.11									
12 Employee's name, address, and ZIP code WILLIAM J SEARLES 320 NORTH GROVE OR ALPINE, UT 84003					13 Social security wages 22891.00					14 Social security tips									
					15					16a Fringe benefits incl. in Box 10									
					221.59					22891.00					UT TC-49				
					17 State income tax					18 State wages, tips, etc.					19 Name of State				
					20 Local income tax					21 Local wages, tips, etc.					22 Name of locality				



847

PENGAD-Bayonne, N J
PLAINTIFF'S
EXHIBIT
9-E
900902787

1989 W-2 and Earnings Summary

89/4/049

W-2 Employee Reference Copy

Form W-2 Wage and Tax Statement 1989 One of two copies
Copy C for employer's records.
This document is the employer's record of the employee's earnings and taxes withheld for the year.

DAYNA COMMUNICATIONS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

EMPLOYER'S SOCIAL SECURITY NUMBER
000143 TCN
EMPLOYER'S STATE, TERRITORY AND ZIP CODE
940
EMPLOYEE'S SOCIAL SECURITY NUMBER
1
EMPLOYEE'S STATE, TERRITORY AND ZIP CODE
55

1. EMPLOYER'S ID NUMBER
87-0415545
2. EMPLOYER'S STATE ID NUMBER
V24659
3. EMPLOYER'S TAX IDENTIFICATION NUMBER
524-52-7463
4. EMPLOYER'S BUSINESS NAME
DAYNA COMMUNICATIONS
5. EMPLOYER'S BUSINESS ADDRESS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

6. EMPLOYER'S SOCIAL SECURITY NUMBER
000143 TCN
7. EMPLOYER'S STATE, TERRITORY AND ZIP CODE
940
8. EMPLOYER'S TAX IDENTIFICATION NUMBER
524-52-7463
9. EMPLOYER'S BUSINESS NAME
DAYNA COMMUNICATIONS
10. EMPLOYER'S BUSINESS ADDRESS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

11. EMPLOYER'S SOCIAL SECURITY NUMBER
000143 TCN
12. EMPLOYER'S STATE, TERRITORY AND ZIP CODE
940
13. EMPLOYER'S TAX IDENTIFICATION NUMBER
524-52-7463
14. EMPLOYER'S BUSINESS NAME
DAYNA COMMUNICATIONS
15. EMPLOYER'S BUSINESS ADDRESS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

16. EMPLOYER'S SOCIAL SECURITY NUMBER
000143 TCN
17. EMPLOYER'S STATE, TERRITORY AND ZIP CODE
940
18. EMPLOYER'S TAX IDENTIFICATION NUMBER
524-52-7463
19. EMPLOYER'S BUSINESS NAME
DAYNA COMMUNICATIONS
20. EMPLOYER'S BUSINESS ADDRESS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

21. EMPLOYER'S SOCIAL SECURITY NUMBER
000143 TCN
22. EMPLOYER'S STATE, TERRITORY AND ZIP CODE
940
23. EMPLOYER'S TAX IDENTIFICATION NUMBER
524-52-7463
24. EMPLOYER'S BUSINESS NAME
DAYNA COMMUNICATIONS
25. EMPLOYER'S BUSINESS ADDRESS
50 S MAIN ST STE 530
SALT LAKE CITY UT 84144

This year's W-2 is provided to you in a more convenient format. Your W-2 has been included on the reverse side of this general information that you may find helpful in understanding your W-2. The W-2 Profile Section of the Earnings Summary includes information that will be used to determine your withholding taxes for 1989. If you wish to change any of this information, you must file a new W-2 with your Payroll Department. You may obtain a W-2 form from your Payroll Department.

1. Your final 1989 Payroll showed the following full year totals that may include additional amounts:

Gross Pay	10,312.95	Social Security Tax Withheld	774.51	Local Income Tax	Box 20 of W-2
Federal Income Tax Withheld	0.00	State Income Tax	0.00	Box 17 of W-2	
Box 9 of W-2		Box 16 of W-2			

2. Your Gross Pay Wage Adjusted as follows to produce your 1989 Payroll Department:

Wages, Tips, Other	10,312.95	Local Income Tax	Box 20 of W-2
Commission	10,312.95	State Income Tax	Box 17 of W-2
Box 11 of W-2		Box 16 of W-2	

Reported W-2 Wages: 10,312.95
Employee W-2 Profile: If you want to correct or change any of the following items, you must file a new W-2 form with your Payroll Department.

Social Security Number: 000143 TCN
WILLIAM J SEARLES
320 NORTH GROVE DR
ALPINE, UT 84003

Married
0 Tax Exempt
0 Tax Exempt
0 Tax Exempt

If you are claiming exempt from Federal Withholding, you are required to file a new W-2 form by February 15, 1990.

William J. Searles

2/24/89

Final Payment for Services

1,693.00 Base Pay for the two weeks ending February 10, 1989
 253.95 Accrued Vacation Paid 1-1/2 days
 1,873.00 Commission Payment per enclosed summary
 3,819.95 Total Gross Pay
 286.88 Less: FICA computed at 7.51%
 3,533.07 Net Pay

MM	OVERRIDE	QUOTA CREDIT
	\$12.30	\$1,230.00
	\$7.92	\$792.00
	\$5.70	\$570.00
	\$13.90	\$1,390.00
	\$9.80	\$980.00
	\$26.07	\$2,607.00
	(\$12.30)	(\$1,230.00)
	\$14.76	\$1,476.00
	\$5.84	\$584.00
	\$9.68	\$968.00
	(\$0.85)	(\$284.00)
	\$3.55	\$355.00
	\$0.00	\$0.00
	(\$10.40)	(\$1,040.00)
	\$0.80	\$80.00
	\$10.05	\$1,005.00
	\$0.66	\$66.00
	\$0.20	\$20.00
	\$14.83	\$1,483.00
	\$6.00	\$600.00
	\$13.56	\$1,356.00
	\$5.20	\$520.00
	\$77.70	\$7,770.00
	\$18.30	\$1,830.00
	\$5.27	\$527.00
	\$28.92	\$2,892.00
	\$6.23	\$623.00
	\$3.16	\$316.00
	\$12.46	\$1,246.00
	\$6.23	\$623.00
	\$7.80	\$780.00
	\$6.23	\$623.00
	\$76.40	\$7,640.00
	\$23.40	\$2,340.00
	\$10.89	\$1,089.00
	\$5.84	\$584.00
	\$2.64	\$264.00
	\$9.10	\$910.00
	\$4.73	\$473.00
	\$6.49	\$649.00
	\$0.53	\$53.00
	\$1.28	\$128.00
	\$9.84	\$984.00
	\$1.00	\$100.00
	\$9.46	\$946.00
	\$16.48	\$1,648.00
	\$123.00	\$12,300.00
	\$7.92	\$792.00
	\$6.23	\$623.00
	\$0.28	\$28.00
	\$6.85	\$685.00
	\$0.28	\$28.00
	\$6.85	\$685.00
	\$0.28	\$28.00
	\$0.56	\$56.00
	\$80.60	\$8,060.00
	\$5.61	\$561.00
	\$1.03	\$103.00
	\$1.00	\$100.00
	\$1.00	\$100.00
	\$1.00	\$100.00
	\$0.00	\$0.00
	(\$10.85)	(\$1,085.00)
	\$13.10	\$1,310.00
	\$5.67	\$567.00
	\$756.00	\$7,560.00

MM	DATE	TIME	DESCRIPTION	LOCATION	STATE	DAY	WEEK	AMOUNT	DATE	TIME	DESCRIPTION	LOCATION	STATE	DAY	WEEK	AMOUNT
8158	11214	30297	1/5/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$2,892.00	1/10/89						\$2,892.00
8257	11302	51879	1/11/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	1/16/89						\$623.00
8308	11360	51894	1/16/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$316.00	1/19/89						\$316.00
8313	11341	51906	1/17/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$1,246.00	1/18/89						\$1,246.00
8390	11424	51954	1/24/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	1/25/89						\$623.00
8404	11442	30364	1/24/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$780.00	1/26/89						\$780.00
8409	11440	51978	1/25/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	1/26/89						\$623.00
6643		20268	2/2/88	COMPUTER WARE	PALO ALTO	CA	D	8	\$7,640.00							\$7,640.00
7336		51492	1/12/88	COMPUTER WARE	PALO ALTO	CA	D	8	\$2,340.00							\$2,340.00
5920	8236	3289AL	7/29/88	COMPUTERLAND	SAN DIEGO	CA	D	4	\$1,089.00							\$1,089.00
8218	11252	6803DB	1/9/89	COMPUTERLAND	DENVER	CO	D	6	\$584.00	1/11/89						\$584.00
7739		361287	12/1/88	COMPUTERLAND	SOUIX FALLS	SD	D	6	\$264.00							\$264.00
8259	11307	10455	1/11/89	COMPUTERLAND	SAN ANTONIO	TX	D	6	\$910.00	1/16/89						\$910.00
8219	11340	01101K	1/9/89	COMPUTERLAND	DIAMOND BAR	CA	D	8	\$473.00	1/11/89						\$473.00
8344	11385	564-5192	1/18/89	COMPUTERLAND	COSTA MESA	CA	D	8	\$649.00	1/20/89						\$649.00
8351	11394	9NC179	1/19/89	COMPUTERLAND	SAN DIEGO	CA	D	8	\$53.00	1/23/89						\$53.00
8347	11380	406626	1/18/89	COMPUTERLAND	HOOD RIVER	OR	D	8	\$128.00	1/20/89						\$128.00
8156	11211	2577	1/5/89	COMPUTERLAND	B WINATCHEE	WA	D	8	\$984.00	1/10/89						\$984.00
8437	11482	4667A	1/26/89	CONNECTING POINT	ALBUQUERQUE	NM	D	6	\$100.00	1/30/89						\$100.00
8482	11493	18633	1/30/89	CW ELECTRONICS	DENVER	CO	D	6	\$946.00	1/31/89						\$946.00
8164	11176	989	1/5/89	DESIGN ACCESS	SAN FRANCISCO	CA	D	6	\$1,648.00	1/9/89						\$1,648.00
7616		4318	11/22/88	DIGITAL TECHNOLOGY INTL	OREM	UT	D	6	\$12,300.00							\$12,300.00
7803		886661	12/7/88	ECLIPSE TECHNOLOGIES	TORRANCE	CA	D	6	\$792.00							\$792.00
8143	11217	KWFX01018	1/4/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$623.00	1/10/89						\$623.00
8144	11218	YK0X00722	1/4/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	1/10/89						\$28.00
8282	11323	KWFX01067	1/12/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$685.00	1/16/89						\$685.00
8307	11361	YK0X00791	1/16/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	1/19/89						\$28.00
8364	11407	KWFX01102	1/20/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$685.00	1/24/89						\$685.00
8365	11408	YAGX00828	1/20/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	1/24/89						\$28.00
8400	11436	YK0X00845	1/24/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$56.00	1/26/89						\$56.00
8447	11472	KWFX01122	1/26/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$8,060.00	1/30/89						\$8,060.00
8458	11508	KWFX01133	1/27/89	BDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$561.00	1/31/89						\$561.00
8498		CAR0002215	1/31/89	BDS TECHNICAL PRODUCTS	GOLETA	CA	D	8	\$103.00							\$103.00
8103	11153	X33534	1/3/89	BOGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	1/4/89						\$100.00
8277	11317	X33815	1/12/89	BOGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	1/16/89						\$100.00
8312	11346	X34603	1/17/89	BOGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	1/17/89						\$100.00
8013	11090		12/21/88	FIRE MAC USERS GROUP	PLASANTON	CA	U	5	\$0.00	1/11/89						\$0.00
8331	11372	ACT0046	1/17/89	FIREMAN'S FUND	SAN RAFAEL	CA	U		(\$1,085.00)							(\$1,085.00)
7678		112988AF	11/29/88	FIREMAN'S FUND INSURANCE	NOVATO	CA	U	13	\$1,310.00	1/19/89						\$1,310.00
8399			1/24/89	FIRST SECURITY	HAYWARD	CA	U	5	\$567.00							\$567.00
				GILBERT PLUMBING	MESA	AZ	U	5	\$756.00							\$756.00

SO #	INV#	P.O.#	DATE	CUSTOMER	CITY	ST	TYPE	TERR	COMM	COMM PAY	SHIPPED	BO SHIP	COMMENTS	COMM	OVERRIDE	QUOTA CREDIT
6144		3643MX	8/10/88	ABLE MICRO COMPUTER	BELMONT	CA	D	4	\$1,230.00	\$1,230.00					\$12.30	\$1,230.00
7280		4436	10/29/88	ADVANTAGE COMPUTER	POINT ROBERTS	WA	D	4	\$792.00	\$792.00			DTALK		\$7.92	\$792.00
8231	11231	6389	1/10/89	ALPHA COMPUTER	LAKESWEGO	OR	D	6	\$570.00	\$570.00	1/13/89				\$5.70	\$570.00
8278	11311	6399	1/12/89	ALPHA COMPUTER	LAKESWEGO	OR	D	6	\$1,390.00	\$1,390.00	1/16/89				\$13.90	\$1,390.00
8343	11356	6449	1/18/89	ALPHA COMPUTER	LAKESWEGO	OR	D	6	\$980.00	\$980.00	1/20/89				\$9.80	\$980.00
8366	11414	6470	1/20/89	ALPHA COMPUTER	LAKESWEGO	OR	D	6	\$2,607.00	\$2,607.00	1/24/89				\$26.07	\$2,607.00
	10897			ALPHA COMPUTER	LAKESWEGO	OR	D		(\$1,230.00)	(\$1,230.00)			RETURNED		(\$12.30)	(\$1,230.00)
8258		11189/NL	1/11/89	AMERICAN COMPUTER	SONOMA	CA	D	6	\$1,476.00	\$1,476.00			DTALK		\$14.76	\$1,476.00
8451	11503	MD3762	1/27/89	AMERICAN COMPUTERS & ENGINEER	LOS ANGELES	CA	D	6	\$584.00	\$584.00	1/31/89				\$5.84	\$584.00
8279	11324	34447	1/12/89	ARIZONA WESTERN COLLEGE	YUMA	AZ	B	5	\$968.00	\$968.00	1/16/89				\$9.68	\$968.00
	10243			ASUCLA	LOS ANGELES	CA	B		(\$284.00)	(\$284.00)			RETURNED		(\$0.85)	(\$284.00)
8300	11358		1/16/89	BECK, KENNETH C.	SPOKANE	WA	U	13	\$355.00	\$355.00	1/19/89				\$3.55	\$355.00
8106	11198		1/3/89	BEVERLY, GARY	CHINO VALLEY	AZ	U	14	\$0.00	\$0.00	1/11/89		DEMO TAPE		\$0.00	\$0.00
	10514			BPM ENERGY PRODUCTS	SANTA ANA	CA	U		(\$1,040.00)	(\$1,040.00)			RETURNED		(\$10.40)	(\$1,040.00)
8433	11439	02A-96542	1/26/89	BOEING COMPUTER SERVICES	WICHITA	KS	U	5	\$80.00	\$80.00	1/27/89				\$0.80	\$80.00
8360	11401	02A5077815006	1/20/89	BOEING COMPUTER SERVICES	WICHITA	KS	U	14	\$1,005.00	\$1,005.00	1/23/89				\$10.05	\$1,005.00
8362	11406	P23003	1/20/89	BOEING MILITARY AIRCRAFT	WICHITA	KS	U	5	\$66.00	\$66.00	1/24/89		POWER SUPPLY		\$0.66	\$66.00
8262	11272	923	1/11/89	CIRCUIT TRBB, THE	ARCADIA	CA	U	5	\$20.00	\$20.00	1/13/89				\$0.20	\$20.00
8414	11480	6780	1/25/89	CITY OF RANCHO CUCAMONCA	RANCHO CUCAMONCA	CA	U	13	\$1,483.00	\$1,483.00	1/30/89				\$14.83	\$1,483.00
5992	8238	8076	7/29/88	COMPUTER HARDWARE	KEARNEY	NE	D	4	\$600.00	\$600.00					\$6.00	\$600.00
8509		1201	1/31/89	COMPUTER PARTNERS	SANTA FE SPRINGS	CA	D	6	\$1,356.00	\$1,356.00					\$13.56	\$1,356.00
8126	11159	14-3	1/4/89	COMPUTER PRO	TEMPE	AZ	D	6	\$520.00	\$520.00	1/5/89				\$5.20	\$520.00
6951		PA23733	9/30/88	COMPUTER STORE, THE	SEATTLE	WA	D	8	\$7,770.00	\$7,770.00			DTALK		\$77.70	\$7,770.00
8405		30364	1/24/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$1,830.00	\$1,830.00			DMAIL		\$18.30	\$1,830.00
8101	11149	51810	1/3/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$527.00	\$527.00	1/4/89				\$5.27	\$527.00
8158	11214	30297	1/5/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$2,892.00	\$2,892.00	1/10/89				\$28.92	\$2,892.00
8257	11302	51879	1/11/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	\$623.00	1/16/89				\$6.23	\$623.00
8308	11360	51894	1/16/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$316.00	\$316.00	1/19/89				\$3.16	\$316.00
8313	11341	51906	1/17/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$1,246.00	\$1,246.00	1/18/89				\$12.46	\$1,246.00
8390	11424	51954	1/24/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	\$623.00	1/25/89				\$6.23	\$623.00
8404	11442	30364	1/24/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$780.00	\$780.00	1/26/89				\$7.80	\$780.00
8409	11440	51978	1/25/89	COMPUTER WARE	PALO ALTO	CA	D	8	\$623.00	\$623.00	1/26/89				\$6.23	\$623.00
6643		20268	9/9/88	COMPUTER WARE	PALO ALTO	CA	D	8	\$7,640.00	\$7,640.00			DTALK		\$76.40	\$7,640.00
7334		51492	11/2/88	COMPUTER WARE	PALO ALTO	CA	D	8	\$2,340.00	\$2,340.00			DTALK		\$23.40	\$2,340.00
5950	8236	3289AL	7/29/88	COMPUTERLAND	SAN DIEGO	CA	D	4	\$1,089.00	\$1,089.00					\$10.89	\$1,089.00
8218	11252	6803DB	1/9/89	COMPUTERLAND	DENVER	CO	D	6	\$584.00	\$584.00	1/11/89				\$5.84	\$584.00
7739		361287	12/1/88	COMPUTERLAND	SOUTH FALLS	SD	D	6	\$264.00	\$264.00					\$2.64	\$264.00
8259	11307	10453	1/11/89	COMPUTERLAND	SAN ANTONIO	TX	D	6	\$910.00	\$910.00	1/16/89				\$9.10	\$910.00
8219	11240	0110JK	1/9/89	COMPUTERLAND	DIAMOND BAR	CA	D	8	\$473.00	\$473.00	1/11/89				\$4.73	\$473.00
8344	11385	564-5192	1/18/89	COMPUTERLAND	COSTA MESA	CA	D	8	\$649.00	\$649.00	1/20/89				\$6.49	\$649.00
8351	11394	9NC179	1/19/89	COMPUTERLAND	SAN DIEGO	CA	D	8	\$53.00	\$53.00	1/23/89		PWR SPLY		\$0.53	\$53.00
8347	11380	406426	1/18/89	COMPUTERLAND	HOOD RIVER	OR	D	8	\$128.00	\$128.00	1/20/89				\$1.28	\$128.00
8156	11211	2577	1/5/89	COMPUTERLAND	B. WINATCIEB	WA	D	8	\$984.00	\$984.00	1/10/89				\$9.84	\$984.00
8437	11482	4667A	1/24/89	CONNECTING POINT	ALBUQUERQUE	NM	D	6	\$100.00	\$100.00	1/30/89				\$1.00	\$100.00
8482	11493	18633	1/30/89	CW ELECTRONICS	DENVER	CO	D	6	\$946.00	\$946.00	1/31/89				\$9.46	\$946.00
8164	11176	989	1/5/89	DESIGN ACCESS	SAN FRANCISCO	CA	D	6	\$1,648.00	\$1,648.00	1/9/89				\$16.48	\$1,648.00
7616		4318	11/22/88	DIGITAL TECHNOLOGY INTL	OREM	UT	D	6	\$12,300.00	\$12,300.00					\$123.00	\$12,300.00
7803		886661	12/7/88	ECLIPSE TECHNOLOGIES	TORRANCE	CA	D	6	\$792.00	\$792.00			DTALK		\$7.92	\$792.00
8143	11217	KWPK01018	1/4/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$623.00	\$623.00	1/10/89				\$6.23	\$623.00
8144	11218	YK0X00722	1/4/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	\$28.00	1/10/89				\$0.28	\$28.00
8282	11323	KWPK01067	1/12/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$685.00	\$685.00	1/16/89				\$6.85	\$685.00
8307	11361	YK0X00791	1/16/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	\$28.00	1/19/89				\$0.28	\$28.00
8364	11407	KWPK01102	1/20/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$685.00	\$685.00	1/24/89				\$6.85	\$685.00
8365	11408	YK0X00828	1/20/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$28.00	\$28.00	1/24/89				\$0.28	\$28.00
8400	11436	YK0X00845	1/24/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$56.00	\$56.00	1/26/89				\$0.56	\$56.00
8447	11472	KWPK01122	1/26/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$8,060.00	\$8,060.00	1/30/89				\$80.60	\$8,060.00
8458	11508	KWPK01133	1/27/89	EDS TECHNICAL PRODUCTS	RICHARDSON	TX	D	6	\$561.00	\$561.00	1/31/89				\$5.61	\$561.00
8498		CAR0002215	1/31/89	EDS TECHNICAL PRODUCTS	GOLTA	CA	D	8	\$103.00	\$103.00					\$1.03	\$103.00
8103	11153	X33534	1/3/89	EGGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	\$100.00	1/4/89				\$1.00	\$100.00
8277	11317	X33815	1/12/89	EGGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	\$100.00	1/16/89				\$1.00	\$100.00
8312	11346	X34003	1/17/89	EGGHEAD SOFTWARE	BOTHELL	WA	D	6	\$100.00	\$100.00	1/17/89				\$1.00	\$100.00
8013	11090		12/21/88	FIRE MAC USERS GROUP	PLEASANTON	CA	U	5	\$0.00	\$0.00	1/11/89		DP VIDEO		\$0.00	\$0.00
	17			FIRMAN'S FUND	SAN RAFAEL	CA	U		(\$1,085.00)	(\$1,085.00)			RETURNED		(\$10.85)	(\$1,085.00)
8331	11372	ACT0046	1/17/89	FIRMAN'S FUND INSURANCE	NOVATO	CA	U	13	\$1,310.00	\$1,310.00	1/19/89				\$13.10	\$1,310.00
7678		112988AF	11/29/88	FIRST SECURITY	HAVERHILL	CA	U	5	\$567.00	\$567.00			DTALK		\$5.67	\$567.00
8399			1/24/89	GILBERT PLUMBING	MESA	AZ	U	5	\$756.00	\$756.00			DTALK		\$7.56	\$756.00

SO #	INV #	P.O.#	DATE	CUSTOMER	CITY	ST	TYPE	TERR	COMM	COMM PAY	SHIPPED	BO SHIP	COMMENTS	COMM	OVERRIDE	QUOTA CREDIT
7687		64850-WGG	11/29/88	GILMAR, GARY	BAKERSFIELD	CA	U	5	\$456.00	\$456.00			DTALK/CHANGED SO #8301		\$4.56	\$456.00
8301		64850WGG	1/6/89	GILMAR, GARY	BAKERSFIELD	CA	U	5	\$0.00	\$0.00			DTALK/CHANGED SO #7687		\$0.00	\$0.00
8430	11450	3073101	1/24/89	GRAPHIC SERVICES	LOS ANGELES	CA	B	13	\$52.80	\$52.80	1/27/89		PWR SPLY		\$0.53	\$52.80
7314	10354	W2097	11/1/88	HARVARD UNIVERSITY	CAMBRIDGE	MA	B	6	\$100.00	\$100.00	11/2/88	12/15/88			\$1.00	\$100.00
6660		091288TH	9/12/88	HELLMAN'S MARIN COMPUTER CTR	SAN RAFAEL	CA	D	8	\$2,926.00	\$2,926.00			DTALK		\$29.26	\$2,926.00
7937		HR6228	12/16/88	HIGHLANDS RANCH HIGH SCHOOL	HIGHLAND RANCH	CO	B	5	\$765.00	\$765.00			DTALK		\$7.65	\$765.00
7535		TH111588	11/15/88	HOEHN, DR. TED	SAN GABRIEL	CA	U	6	\$1,134.00	\$1,134.00					\$11.34	\$1,134.00
8478	11490	01308WI	1/30/89	HOMB & BUSINESS COMPUTER	PLASANTON	CA	D	6	\$1,247.00	\$1,247.00	1/31/89				\$12.47	\$1,247.00
8345	11381	7-6CB304-TA7	1/8/89	HUGHES AIRCRAFT	FULLERTON	CA	U	13	\$160.00	\$160.00	1/20/89				\$1.60	\$160.00
8348	11396	11889JM	1/16/89	JAGUAR COMPUTERS	RIVERSIDE	CA	D	6	\$16.00	\$16.00	1/23/89				\$0.16	\$16.00
8358	11395		1/20/89	K&H PRINTERS	EVERETT	WA	U	14	\$255.00	\$255.00	1/23/89				\$2.55	\$255.00
8480	11491	1358	1/30/89	LANSOFT, INC.	SAN FRANCISCO	CA	D	6	\$601.00	\$601.00	1/31/89				\$6.01	\$601.00
8213	11246	16947-00	1/9/89	LANTOR, INC.	GARDENA	CA	D	6	\$1,548.00	\$1,548.00	1/11/89				\$15.48	\$1,548.00
8131	11145	8075986	1/5/89	LAWRENCE LIVERMORE NAT'L LABS	LIVERMORE	CA	B	14	\$764.00	\$764.00	1/6/89				\$7.64	\$764.00
8135	11145	8075987	1/5/89	LAWRENCE LIVERMORE NAT'L LABS	LIVERMORE	CA	B	14	\$888.00	\$888.00	1/6/89				\$8.88	\$888.00
6657		100988MH	9/12/88	M.A.C.	BERKELEY	CA	D	8	\$6,195.00	\$6,195.00			DTALK		\$61.95	\$6,195.00
7751		MP1202D	12/2/88	MAC PRODUCTS USA	AUSTIN	TX	D	6	\$1,968.00	\$1,968.00			DTALK		\$19.68	\$1,968.00
8309	11340	5251	1/16/89	MICRO AGE	PHOENIX	AZ	D	6	\$1,365.00	\$1,365.00	1/18/89				\$13.65	\$1,365.00
8462		2283	1/25/89	MICRO COMPUTER CO.	CAMARILLO	CA	D	6	\$1,599.00	\$1,599.00			DTALK		\$15.99	\$1,599.00
8268	11271	1340	1/12/89	MICRO COMPUTER SYSTEMS	LYNNWOOD	WA	D	6	\$42.00	\$42.00	1/13/89				\$0.42	\$42.00
8234	11283	011089TP	1/10/89	MICRO INTERFACE	FALLBROOK	CA	D	6	\$53.00	\$53.00	1/13/89		POWER SUPPLY		\$0.53	\$53.00
8418		2283	1/25/89	MICRON COMPUTER CO.	CAMARILLO	CA	D	6	\$369.00	\$369.00			DTALK		\$3.69	\$369.00
	10188			MIDA COMPUTER	MIDLAND	TX	D		(\$1,889.00)	(\$1,889.00)			RETURNED		(\$18.89)	(\$1,889.00)
8372	11416	N66001-89-M-AKX	1/20/89	NAVAL OCEAN SYSTEMS CENTER	SAN DIEGO	CA	D	13	\$1,145.00	\$1,145.00	1/24/89				\$11.45	\$1,145.00
8266	11270	N66001-89-ZAF00	1/12/89	NAVAL OCEAN SCIENCE CENTER	SAN DIEGO	CA	D	14	\$1,110.00	\$1,110.00	1/13/89				\$11.10	\$1,110.00
8141			1/4/89	NET PROFIT COMPUTERS	RANCHO CORDOVA	CA	D	6	\$910.00	\$910.00					\$9.10	\$910.00
7938		1216KS	12/16/88	NORTHERN TELECOM	RICHARDSON	TX	U	5	\$378.00	\$378.00			DTALK		\$3.78	\$378.00
7095			10/13/88	NORTON EQUIPMENT	PITTSBURGH	PA	U	6	\$378.00	\$378.00			DTALK		\$3.78	\$378.00
8490	11495	845448	1/20/89	OREGON STATE UNIVERSITY	CORVALLIS	OR	B	8	\$724.00	\$724.00	1/31/89				\$7.24	\$724.00
8140	11219	010489-GA	1/4/89	PAC TEL INFO SYSTEMS	SEATTLE	WA	D	6	\$696.00	\$696.00	1/10/89		EVALUATION UNIT		\$6.96	\$696.00
	10999			PACIFIC BELL	SAN RAMON	CA	U		(\$855.00)	(\$855.00)			RETURNED		(\$8.55)	(\$855.00)
5991	8237	7571	7/29/88	PENINSULA OFFICE EQUIPMENT	SALINAS	CA	D	4	\$1,089.00	\$1,089.00					\$10.89	\$1,089.00
6674		4060	9/12/88	PENINSULA OFFICE EQUIPMENT	SALINAS	CA	D	4	\$1,476.00	\$1,476.00			DTALK		\$14.76	\$1,476.00
8346	11387	P98760-011889	1/18/89	PERSONAL COMPUTING CENTER	PULLMAN	WA	D	6	\$1,902.00	\$1,902.00	1/20/89				\$19.02	\$1,902.00
8484			1/31/89	PROFESSIONAL FINANCIAL CONSULT	RIALTO	CA	U	5	\$810.00	\$810.00					\$8.10	\$810.00
8214	11253	3501	1/8/89	QUANTUM COMPUTERS	TACOMA	WA	D	8	\$820.00	\$820.00	1/11/89				\$8.20	\$820.00
8233	11282	3505	1/10/89	QUANTUM COMPUTERS	TACOMA	WA	D	8	\$1,136.00	\$1,136.00	1/13/89				\$11.36	\$1,136.00
8330	11373	3531	1/17/89	QUANTUM COMPUTERS	TACOMA	WA	D	8	\$633.00	\$633.00	1/19/89				\$6.33	\$633.00
8054		3472	12/27/88	QUANTUM COMPUTERS	TACOMA	WA	D	8	\$238.00	\$238.00			DTALK		\$2.38	\$238.00
8515		3563	1/31/89	QUANTUM COMPUTERS	TACOMA	WA	D	8	\$820.00	\$820.00					\$8.20	\$820.00
7709		224	11/30/88	RDR, INC.	PORTLAND	OR	D	6	\$8,610.00	\$8,610.00			DTALK		\$86.10	\$8,610.00
7710		224	11/30/88	RDR, INC.	PORTLAND	OR	D	6	\$1,230.00	\$1,230.00			DTALK		\$12.30	\$1,230.00
	10938			RIVERSIDE TRANSIT AGENCY	RIVERSIDE	CA	U		(\$125.00)	(\$125.00)			RETURNED		(\$1.25)	(\$125.00)
8361	11415	R94QBA89700321	1/20/89	ROCKWELL INTERNATIONAL	CIATSWORTH	CA	U	5	\$905.00	\$905.00	1/24/89				\$9.05	\$905.00
7670		SP18025	11/28/88	ROSEN ELECTRIC	PICO RIVERA	CA	U	5	\$567.00	\$567.00			DTALK		\$5.67	\$567.00
8255	11269	7129	1/11/89	SAIC	HONOLULU	HI	U	5	\$320.00	\$320.00	1/13/89				\$3.20	\$320.00
8335	11367	84-4458	1/18/89	SANDIA NATIONAL LABORATORIES	LIVERMORE	CA	D	5	\$730.00	\$730.00	1/19/89				\$7.30	\$730.00
8142	11179	MU14A	1/4/89	SANTA ROSA COMPUTER CENTER	SANTA ROSA	CA	D	6	\$520.00	\$520.00	1/9/89				\$5.20	\$520.00
7656		SC1128A	11/28/88	SANTA ROSA COMPUTER CENTER	SANTA ROSA	CA	D	6	\$924.00	\$924.00			DTALK		\$9.24	\$924.00
8009		13034	12/21/88	SHARPER IMAGE	SAN FRANCISCO	CA	U	5	\$378.00	\$378.00			DTALK		\$3.78	\$378.00
6356		1693L	8/19/88	SIGMA BUSINESS SYSTEMS	BURBANK	CA	D	8	\$1,703.00	\$1,703.00					\$17.03	\$1,703.00
8436	11449		1/26/89	SLAUGHTER, LOUIS S.	DALLAS	TX	U	5	\$125.00	\$125.00	1/27/89				\$1.25	\$125.00
6971		100388-R	10/3/88	SOFTWARE FOR LESS	SAN FRANCISCO	CA	D	8	\$1,428.00	\$1,428.00			DTALK		\$14.28	\$1,428.00
6160			8/1/88	SUN, PAMELA	SAN JOSE	CA	D	4	\$0.00	\$0.00			REPLACING DEMO UNIT		\$0.00	\$0.00
5997	8241	072988PS	7/29/88	SUN, PAMELA	SAN JOSE	CA	D	8	\$868.00	\$868.00			30-DAY EVALUATION		\$8.68	\$868.00
7694		277	11/29/88	SYSTEC COMPUTER SERVICES	SAN JOSE	CA	D	6	\$1,188.00	\$1,188.00			DTALK		\$11.88	\$1,188.00
7750		277	12/2/88	SYSTEC COMPUTER SERVICES	SAN JOSE	CA	D	6	\$1,188.00	\$1,188.00			DTALK		\$11.88	\$1,188.00
8389	11428	01249-11	1/24/89	TODAY'S COMPUTERS/BYTELAND	BROWNSVILLE	TX	D	6	\$1,086.00	\$1,086.00	1/25/89				\$10.86	\$1,086.00
8203	11239	0510-269-303	1/8/89	UNION CARBIDE	SEADRIFT	TX	U	13	\$930.00	\$930.00	1/11/89				\$9.30	\$930.00
8493		72984	1/31/89	UNIVERSITY BOOKSTORE	SAN DIEGO	CA	D	6	\$224.00	\$224.00					\$2.24	\$224.00
6675		72393	9/12/88	UNIVERSITY BOOKSTORE	SAN DIEGO	CA	D	8	\$476.00	\$476.00			DTALK		\$4.76	\$476.00
7939		DN60600	12/16/88	UNIVERSITY OF CALIFORNIA	DAVIS	CA	B	5	\$459.00	\$459.00			DTALK		\$4.59	\$459.00
8249	11304	HS40095NML	1/11/89	UNIVERSITY OF COLORADO	DENVER	CO	B	5	\$620.00	\$620.00	1/16/89				\$6.20	\$620.00
8250	11314	HS40096NML	1/11/89	UNIVERSITY OF COLORADO	DENVER	CO	B	5	\$684.00	\$684.00	1/16/89				\$6.84	\$684.00
7672		SB11288	11/28/88	VERTICAL SOLUTIONS	VALENCIA	CA	D	6	\$792.00	\$792.00			DTALK		\$7.92	\$792.00
	10170			WELLS FARGO BANK	SAN FRANCISCO	CA	U		(\$1,085.00)	(\$1,085.00)			RETURNED		(\$10.85)	(\$1,085.00)

57,881

SO #	INVO #	P.O.#	DATE	CUSTOMER	CITY	ST	TYPE	TERR	COMM	COMM PAY	SHIPPED	NO SHIP	COMMENTS	COMM	OVERRIDE	QUOTA CREDIT
				SUBTOTAL					\$133,132.80	\$133,132.80			DECEMBER COMMISSION OVERPAYMENT		\$857.74	\$133,132.80
				BUSINESSLAND SHIP-INS												
			12/1/88	BUSINESSLAND	LITTLE ROCK	AR	D	H6	\$1,105.50	\$1,105.50	2-DP0104				\$8.29	\$829.13
			12/1/88	BUSINESSLAND	PHOENIX	AZ	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	DENVER	CO	D	H6	\$1,105.50	\$1,105.50	2-DP0104				\$8.29	\$829.13
			12/1/88	BUSINESSLAND	DENVER	CO	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	DENVER	CO	D	H6	\$497.75	\$497.75	1-DP0103				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	DENVER	CO	D	H6	\$137.50	\$137.50	2-TS0001				\$1.03	\$103.13
			12/1/88	BUSINESSLAND	KANSAS CITY	KS	D	H6	\$3,982.00	\$3,982.00	8-DP0102				\$29.87	\$2,986.50
			12/1/88	BUSINESSLAND	KANSAS CITY	KS	D	H6	\$350.00	\$350.00	8-TS0001				\$4.13	\$412.50
			12/1/88	BUSINESSLAND	NEW ORLEANS	LA	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	NEW ORLEANS	LA	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	NEW ORLEANS	LA	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	ALBUQUERQUE	NM	D	H6	\$2,986.50	\$2,986.50	6-DP0101				\$22.40	\$2,239.88
			12/1/88	BUSINESSLAND	ALBUQUERQUE	NM	D	H6	\$412.50	\$412.50	6-TS0001				\$3.09	\$309.38
			12/1/88	BUSINESSLAND	TULSA	OK	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	DALLAS CONFIG	TX	D	H6	\$715.00	\$715.00	2-DP0100				\$5.36	\$536.25
			12/1/88	BUSINESSLAND	DALLAS	TX	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	SAN ANTONIO	TX	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	HOUSTON	TX	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	DALLAS	TX	D	H6	\$412.50	\$412.50	1-DP0200				\$3.09	\$309.38
			12/1/88	BUSINESSLAND	DALLAS	TX	D	H6	\$412.50	\$412.50	1-DP0200				\$3.09	\$309.38
			12/1/88	BUSINESSLAND	DALLAS	TX	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	HOUSTON	TX	D	H6	(\$68.75)	(\$68.75)	1-TS0001				(\$0.52)	(\$51.56)
			12/1/88	BUSINESSLAND	SALT LAKE	UT	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	HAYWARD CONFIG	CA	D	H6	\$1,430.00	\$1,430.00	4-DP0100				\$10.73	\$1,072.50
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$995.50	\$995.50	2-DP0103				\$7.47	\$746.63
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$995.50	\$995.50	2-DP0102				\$7.47	\$746.63
8388	11422	97387	1/24/89	BUSINESSLAND	ROWLAND HEIGHTS	CA	D	H6	\$195.00	\$195.00	1/25/89				\$1.46	\$146.25
			12/1/88	BUSINESSLAND	LOS ALTOS	CA	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	LA/MANHATTAN BEA	CA	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	LA/IRVINE	CA	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	WOODLAND HILLS	CA	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	LA/LENDALE	CA	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	LA/MANHATTAN BEA	CA	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	LA/CONFIG	CA	D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	LA/CITY OF ORANGE	CA	D	H6	(\$497.75)	(\$497.75)	1-DP0103				(\$3.73)	(\$373.31)
			12/1/88	BUSINESSLAND	SAN JOSE	CA	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	LA/MANHATTAN BEA	CA	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	LA/PUEBLO HILLS	CA	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	SAN RAPHAEL	CA	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	LA	CA	D	H6	(\$412.50)	(\$412.50)	1-DP0200				(\$3.09)	(\$309.38)
			12/1/88	BUSINESSLAND	LA	CA	D	H6	\$825.00	\$825.00	2-DP0200				\$6.19	\$618.75
			12/1/88	BUSINESSLAND	WOODLAND HILLS	CA	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	LA	CA	D	H6	(\$68.75)	(\$68.75)	1-TS0001				(\$0.52)	(\$51.56)
			12/1/88	BUSINESSLAND	LA/MANHATTAN BEA	CA	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	LA/PUEBLO HILLS	CA	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	LA	CA	D	H6	\$275.00	\$275.00	4-TS0001				\$2.06	\$206.25
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$715.00	\$715.00	2-DP0100				\$5.36	\$536.25
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$995.50	\$995.50	2-DP0102				\$7.47	\$746.63
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$497.75	\$497.75	1-DP0102				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$412.50	\$412.50	1-DP0200				\$3.09	\$309.38
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$206.25	\$206.25	3-TS0001				\$1.55	\$154.69
			12/1/88	BUSINESSLAND	PORTLAND	OR	D	H6	\$137.50	\$137.50	2-TS0001				\$1.03	\$103.13
			12/1/88	BUSINESSLAND	SEATTLE	WA	D	H6	\$1,493.25	\$1,493.25	3-DP0103				\$11.20	\$1,119.94
			12/1/88	BUSINESSLAND	SEATTLE	WA	D	H6	\$497.75	\$497.75	1-DP0103				\$3.73	\$373.31
			12/1/88	BUSINESSLAND	SEATTLE	WA	D	H6	\$68.75	\$68.75	1-TS0001				\$0.52	\$51.56
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$2,502.50	\$2,502.50	7-DP0100				\$18.77	\$1,876.88
			12/1/88	BUSINESSLAND	LA/CONFIG		D	H6	\$357.50	\$357.50	1-DP0100				\$2.68	\$268.13
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$1,787.50	\$1,787.50	5-DP0100				\$13.41	\$1,340.63
			12/1/88	BUSINESSLAND	HAYWARD		D	H6	\$552.75	\$552.75	1-DP0104				\$4.15	\$414.56
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$1,658.25	\$1,658.25	3-DP0104				\$12.44	\$1,243.69
			12/1/88	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$1,658.25	\$1,658.25	3-DP0104				\$12.44	\$1,243.69

SO # INV#	P.O.#	DATE	CUSTOMER	CITY	ST	TYPE	TECH	COMM	COMM PAY SHIP#	BU SHIP	COMMENTS	COMM	OVERIDE	QUOTA CREDIT
		12/08	BUSINESSLAND	HAYWARD		D	H6	\$995.50	\$995.50	2-DP0103			\$7.47	\$746.63
		12/08	BUSINESSLAND	HAYWARD		D	H6	\$1,991.00	\$1,991.00	4-DP0102			\$14.93	\$1,497.23
		12/08	BUSINESSLAND	HAYWARD		D	H6	\$1,237.50	\$1,237.50	3-DP0200			\$9.28	\$928.13
		12/08	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$1,237.50	\$1,237.50	3-DP0200			\$9.28	\$928.13
		12/08	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$412.50	\$412.50	1-DP0200			\$3.09	\$309.38
		12/08	BUSINESSLAND	WATL SALIS		D	H6	\$206.25	\$206.25	2-DP0002			\$2.10	\$210.30
		12/08	BUSINESSLAND	HAYWARD		D	H6	\$206.25	\$206.25	3-T-S0001			\$1.55	\$154.65
		12/08	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$412.50	\$412.50	6-T-S0001			\$3.09	\$309.38
		12/08	BUSINESSLAND	BUSINESSLAND DIRECT		D	H6	\$825.00	\$825.00	12-T-S0001			\$6.19	\$618.75
			SUBTOTAL					\$46,623.25	\$46,623.25				\$349.67	\$34,967.44
BUSINESSLAND DISTRIBUTION														
8222	11248	97337	BUSINESSLAND	ROWLAND HEIGHTS	CA	D	H6	\$195.25	\$195.25	1/1/69			\$0.49	\$48.11
8348	11422	97357	BUSINESSLAND	ROWLAND HEIGHTS	CA	D	H6	\$195.00	\$195.00	1/25/69			\$0.49	\$48.11
8222	11248	97337	BUSINESSLAND	ROWLAND HEIGHTS	CA	D	H6	\$195.25	\$195.25	1/1/69			\$0.49	\$48.11
8491		51003	BUSINESSLAND	HAYWARD	CA	D	H6	\$35,860.00	\$35,860.00				\$89.65	\$8,965.00
			SUBTOTAL					\$36,445.50	\$36,445.50				\$91.11	\$9,111.38
HEALTH ZENITH SHIP-INS														
6507		63-077901	HEALTH ZENITH	PEARL CITY	HI	D	H4	\$5,670.00	\$5,670.00		DTALK		\$42.35	\$4,232.50
8102	11154	23-116244T	HEALTH ZENITH	TULSA	OK	D	H6	\$543.00	\$543.00	1/4/69			\$4.07	\$467.23
8197	11151	23-116414	HEALTH ZENITH	TULSA	OK	D	H6	\$1,086.00	\$1,086.00	1/10/69			\$8.15	\$814.50
8100	11153	16N109493YQ	HEALTH ZENITH	HOUSTON	TX	D	H6	\$618.00	\$618.00	1/4/69			\$4.64	\$644.50
8196	11256	23-116411	HEALTH ZENITH	DALLAS	TX	D	H6	\$390.00	\$390.00	1/1/69			\$2.93	\$392.50
8248	11313	23116395	HEALTH ZENITH	DALLAS	TX	D	H6	\$438.00	\$438.00	1/1/69			\$3.29	\$378.50
8157	11180	21-86581	HEALTH ZENITH	SACRAMENTO	CA	D	H6	\$666.00	\$666.00	1/9/69			\$5.00	\$669.50
8188	11253	2110181	HEALTH ZENITH	ANAHEIM	CA	D	H6	\$618.00	\$618.00	1/10/69			\$4.64	\$643.50
8340	11253	2110181	HEALTH ZENITH	ANAHEIM	CA	D	H6	\$450.00	\$450.00	1/20/69			\$3.38	\$337.50
8102		58-114850	HEALTH ZENITH	TORONTO	OR	D	H6	\$75.00	\$75.00				\$0.56	\$36.25
8163	11213	1113179	HEALTH ZENITH	SEATTLE	WA	D	H6	\$450.00	\$450.00	1/10/69			\$3.38	\$337.50
			SUBTOTAL					\$11,004.00	\$11,004.00				\$82.35	\$8,232.00
NYNEX SHIP-INS														
			NYNEX	PHOENIX	AZ	D	H6	\$1,017.45	\$1,017.45	3-DP0100			\$7.63	\$763.00
			NYNEX	DENVER	CO	D	H6	\$219.86	\$219.86	1-DP0004			\$1.65	\$164.90
			NYNEX	DENVER	CO	D	H6	\$1,017.45	\$1,017.45	3-DP0100			\$7.63	\$763.00
			NYNEX	SAN FRANCISCO	CA	D	H6	\$219.86	\$219.86	1-DP0004			\$1.65	\$164.90
			NYNEX	SAN FRANCISCO	CA	D	H6	\$339.15	\$339.15	1-DP0100			\$2.54	\$254.36
			NYNEX	SUNNYVALE	CA	D	H6	\$339.15	\$339.15	1-DP0100			\$2.54	\$254.36
			NYNEX	LOS ANGELES	CA	D	H6	\$10.00	\$10.00	1-DP0000			\$0.08	\$7.50
			NYNEX	PORTLAND	OR	D	H6	\$40.00	\$40.00	4-DP0000			\$0.30	\$30.00
			NYNEX	PORTLAND	OR	D	H6	\$879.44	\$879.44	4-DP0004			\$6.60	\$869.58
			NYNEX	PORTLAND	OR	D	H6	\$678.30	\$678.30	2-DP0100			\$5.09	\$508.73
			NYNEX	PORTLAND	OR	D	H6	\$142.50	\$142.50	2-T-S0001			\$1.07	\$106.88
			NYNEX	SEATTLE	WA	D	H6	\$439.72	\$439.72	2-DP0004			\$3.29	\$329.79
			NYNEX	SEATTLE	WA	D	H6	\$71.25	\$71.25	1-T-S0001			\$0.52	\$53.44
			SUBTOTAL					\$2,939.51	\$2,939.51				\$22.65	\$2,764.43
SOFTSEL SHIP-INS														
			SOFTSEL		AK	B	H6	\$542.70	\$542.70	1-DP0203			\$2.93	\$548.43
			SOFTSEL		AZ	B	H6	\$125.00	\$125.00	2-T-S0001			\$0.64	\$112.50
			SOFTSEL		AZ	B	H6	\$1,193.40	\$1,193.40	2-DP0204			\$6.44	\$1,074.06
			SOFTSEL		CO	B	H6	\$187.50	\$187.50	3-T-S0001			\$1.01	\$186.75
			SOFTSEL		CO	B	H6	\$17.49	\$17.49	1-DP0209			\$0.09	\$15.74
			SOFTSEL		CO	B	H6	\$90.00	\$90.00	4-DP0206			\$0.69	\$89.00
			SOFTSEL		CO	B	H6	\$1,452.00	\$1,452.00	3-DP0400			\$11.00	\$1,441.00
			SOFTSEL		CO	B	H6	\$427.50	\$427.50	1-DP0300			\$3.11	\$424.75
			SOFTSEL		CO	B	H6	\$1,482.00	\$1,482.00	4-DP0100			\$11.00	\$1,471.00
			SOFTSEL		CO	B	H6	\$1,954.80	\$1,954.80	4-DP0103			\$14.56	\$1,933.80
			SOFTSEL		CO	B	H6	\$488.70	\$488.70	1-DP0102			\$3.64	\$484.39
			SOFTSEL		ID	B	H6	\$370.50	\$370.50	1-DP0100			\$2.00	\$373.43
			SOFTSEL		ID	B	H6	\$542.70	\$542.70	1-DP0104			\$2.93	\$548.43
			SOFTSEL		K3	B	H6	\$62.50	\$62.50	1-T-S0001			\$0.34	\$62.33
			SOFTSEL		K3	B	H6	\$542.70	\$542.70	1-DP0104			\$2.93	\$548.43
			SOFTSEL		LA	B	H6	\$427.50	\$427.50	1-DP0200			\$2.31	\$424.75
			SOFTSEL		ND	B	H6	\$370.50	\$370.50	1-DP0100			\$2.00	\$373.43

[illegible]

SO #	INV#	P O #	DATE	CUSTOMER	CITY	ST	TYPE	TERR	COMM	COMM PAY	SHIPPED	BO SHIP	COMMENTS	COMM	OVERRIDE	QUOTA CREDIT
7458		14-19455	12/12/88	SOFTSEL COMPUTER PRODUCTS	ATLANTA	GA	B	HS	\$950.00	\$950.00			DTALK		\$0.57	\$95.00
8506		14-20234	1/31/89	SOFTSEL COMPUTER PRODUCTS	ATLANTA	GA	B	HS	\$950.00	\$950.00			DTALK		\$0.57	\$95.00
8110	11206	13-28845	1/4/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$12,919.50	\$12,919.50	1/9/89				\$7.75	\$1,291.95
8114	11165	13-28844	1/4/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$1,250.00	\$1,250.00	1/5/89				\$0.75	\$125.00
8215	11292	13-29061	1/9/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$6,412.50	\$6,412.50	1/12/89				\$3.85	\$641.25
8217	11291	13-29022	1/9/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$16,690.50	\$16,690.50	1/12/89				\$10.01	\$1,669.05
8422	11460	13-29677	1/25/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$25,319.50	\$25,319.50	1/27/89				\$15.19	\$2,531.95
7459		13-27939	12/12/88	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$6,010.00	\$6,010.00			DTALK/DMAIL		\$3.61	\$601.00
8210		13-29906	1/31/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$2,140.00	\$2,140.00					\$1.28	\$214.00
8504		13-29908	1/31/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$34,350.00	\$34,350.00			DNET		\$20.61	\$3,435.00
8505		13-29908	1/31/89	SOFTSEL COMPUTER PRODUCTS	WOOD DALE	IL	B	HS	\$4,750.00	\$4,750.00			DTALK		\$2.85	\$475.00
8109	11184	12-21066	1/4/89	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$8,410.50	\$8,410.50	1/9/89				\$5.05	\$841.05
8113	11166	12-21065	1/4/89	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$1,250.00	\$1,250.00	1/5/89				\$0.75	\$125.00
8421	11464	12-21423	1/25/89	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$100.00	\$100.00	1/27/89				\$0.06	\$10.00
7860		12-20611	12/12/88	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$1,900.00	\$1,900.00			DTALK		\$1.14	\$190.00
8028		12-20829	12/22/88	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$1,900.00	\$1,900.00			DTALK		\$1.14	\$190.00
8031		14-19643	12/22/88	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$950.00	\$950.00			DTALK		\$0.57	\$95.00
8503		12-21522	1/31/89	SOFTSEL COMPUTER PRODUCTS	FAIRFIELD	NO	B	HS	\$4,750.00	\$4,750.00			DTALK		\$2.85	\$475.00
8424	11463	15-12249	1/25/89	SOFTSEL COMPUTER PRODUCTS	CARROLLTON	TX	B	HS	\$13,407.00	\$13,407.00	1/27/89				\$8.04	\$1,340.70
7857		15-11719	12/12/88	SOFTSEL COMPUTER PRODUCTS	CARROLLTON	TX	B	HS	\$475.00	\$475.00			DTALK		\$0.29	\$47.50
8507		15-12308	1/31/89	SOFTSEL COMPUTER PRODUCTS	CARROLLTON	TX	B	HS	\$1,900.00	\$1,900.00			DTALK		\$1.14	\$190.00
				SUBTOTAL					\$224,411.40	\$224,411.40					\$134.65	\$22,441.14
				TOTAL					\$516,463.80	\$516,463.80					\$1,872.85	\$265,826.99

87,950

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFF: D. KENDALL PERKINS
124 SOUTH 600 EAST
SALT LAKE CITY, UTAH 84102

FOR THE DEFENDANT: PATRICIA M. LEITH
VAN COTT, BAGLEY, CORNWALL &
MC CARTHY
50 SOUTH MAIN STREET
SUITE #1600
P.O. BOX 45340
SALT LAKE CITY, UTAH 84145

* * *

I N D E X

JUDGE'S RULING

PAGE 3

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE YOUNG: THE COURT FINDS THAT THE PLAINTIFF
IS ENTITLED TO RECOVERY.

THE COURT FINDS THAT THE CONTRACT IS CLEAR ON ITS
FACE, THAT THE PROVISIONS OF THE PARAGRAPH REFERRED TO
HEREIN AS PARAGRAPH 6 ON THE QUOTA--LET ME DEAL FIRST WITH
THE PROVISION OF THE QUOTA.

THE NUMBERS THEMSELVES ARE INHERENTLY VAGUE. THE
FIRST QUOTA IS \$2,000,000.00 FOR THE FIRST QUARTER, THE
SECOND IS 3200. THEY ARE ROUND NUMBERS. THEY WERE DE-
SIGNED TO "INCENTIVIZE," IF I CAN USE THE WORD OF MR.
ROMNEY, THOSE EMPLOYEES TO SEEK TO ACHIEVE A PARTICULAR
FUTURE OBJECTIVE. HAD THEY BEEN NEGOTIATED AS MINIMUMS
THEY WOULD HAVE BEEN CLOSELY AND HEARTILY NEGOTIATED BE-
TWEEN THE PARTIES. INSTEAD OF THAT THEY WERE SIMPLY CREAT-
ED BY THE COMPANY, BY PRINCIPALLY MR. WALTZ, WHO SIMPLY SET
THOSE GOALS BECAUSE THEY THOUGHT THEY WOULD BE SOMETHING
THAT COULD BE ACHIEVED AND SOUGHT AFTER. THEY WERE NOT
CONSIDERED TO BE MINIMUMS, THEY'VE NEVER BEEN INTERPRETED
AS MINIMUMS, AND THEY ARE NOT NOW INTERPRETED AS MINIMUMS.
AND THE PARTIES THEMSELVES TESTIFIED TO THAT EFFECT IN
SEVERAL SPECIFICS.

THE PARTIES--MR. ROMNEY TESTIFIED THAT THE WHOLE
CORPORATE PROGRESS WAS ON AN INCLINE PLANE EVEN DURING THIS
DIFFICULT PERIOD OF TIME, THAT OTHER EMPLOYEES WERE NOT

1 TERMINATED AS A RESULT OF THESE QUOTAS. IT APPEARS TO ME,
2 HONESTLY, THAT THE QUOTA CONCEPT WAS CALCULATED AFTER THE
3 RECEIPT OF THE LETTER FROM MR. PERKINS. IT WAS NOT DIS-
4 CUSSED BEFORE--WHILE THERE IS CONFLICTING TESTIMONY ON THAT
5 IT'S MY BELIEF THAT IT WAS NOT DISCUSSED BEFORE, IN A WAY
6 THAT WOULD LEAD EITHER OF THE PARTIES TO BELIEVE THAT MR.
7 BARRETT WAS BEING TERMINATED FOR FAILURE TO MEET HIS OBLI-
8 GATIONS CREATED IN THE QUOTA. IN FACT, I DON'T FIND THE
9 QUOTA TO BE AN OBLIGATION AT ALL. IT'S SIMPLY AN INCENTIVE
10 AND AN OBJECTIVE.

11 MR. ROMNEY TESTIFIED THAT THE PLAINTIFF HAD NO
12 RESPONSIBILITY TO MAKE ANY SALES AT ALL. SO IF THE PLAIN-
13 TIFF HAS AN OBLIGATION TO MEET A QUOTA FOR WHICH HE HAS NO
14 RESPONSIBILITY TO MAKE SALES, BUT THE SALES ARE MADE BY
15 OUTSIDE DISTRIBUTORS OR OTHER EMPLOYEES THAT ARE DOING SOME
16 DIRECT CONTACTING IN SALES, IT WOULD SEEM TO CAUSE ME TO
17 INFER THAT ALL OF THEM UNDERSTOOD THESE QUOTAS TO BE SOME-
18 THING QUITE DIFFERENT FROM WHAT IS NOW BEING CLAIMED BY THE
19 COMPANY.

20 THE COMPANY DID NOT DEAL WITH ANY OTHERS IN A
21 SIMILAR WAY. AND WHILE THAT IS NOT CONTROLLING HERE, IT'S
22 PERSUASIVE TO THE COURT THAT NOBODY REALLY FELT THE QUOTAS
23 TO BE A MINIMUM.

24 WHEN SALES DECLINED, AS THEY WERE TESTIFIED TO--
25 IN FACT, THERE'S CONFLICTING TESTIMONY. AT ONE POINT IT

1 WAS INDICATED THAT SALES DECLINED. ACTUALLY, PARTIES WERE
2 FALLING SHORT OF THEIR QUOTAS, THERE WAS NEVER ANY EFFORT
3 TO AMEND THE CONTRACT SO THAT ALL OF THE EMPLOYEES WOULD
4 NOT BE IN PERIL OF LOSING THEIR JOB. IN FACT, IF I WERE TO
5 INTERPRET THE CONTRACT, AS HAS BEEN STATED BY THE CORPORA-
6 TION, DEFENDANT HERE, WHEN THE CONTRACT WAS DRAFTED, THE
7 PROVISION IN RELATION TO QUOTAS COULD BE INTERPRETED TO
8 HAVE BEEN UNCONSCIONABLE BECAUSE IT WOULD HAVE CREATED A
9 FUTURE INCENTIVE OBJECTIVE WHICH WOULD HAVE REQUIRED VIRTU-
10 ALLY ALL EMPLOYEES TO BE IN BREACH OF THE CONTRACT BECAUSE
11 NO ONE WOULD HAVE MET IT, IN A DIFFICULT PERIOD OF TIME.
12 WHICH THE COMPANY ENCOUNTERED HERE. SO THE CORPORATION
13 WOULD BE IN THE ADVANTAGE OF BEING ABLE TO FIRE ANYBODY IT
14 WISHED AT ANY TIME WHEN THE QUOTAS WERE NOT MET AND SALES
15 WERE EITHER LEVEL OR DECLINING. THAT SEEMS TO ME TO BE AN
16 UNCONSCIONABLE POSITION TO ALLOW THE CORPORATION TO CLAIM.

17 THE COURT WILL CALCULATE DAMAGES IN FAVOR OF THE
18 DEFENDANT--OR IN FAVOR OF THE PLAINTIFF, AND RENDER A
19 JUDGMENT IN FAVOR OF THE PLAINTIFF UPON THE FOLLOWING
20 CALCULATIONS. THE COURT WILL AWARD \$3,000.00 PER MONTH FOR
21 THREE MONTHS OF--THAT BEING 90 DAYS--AND THAT WOULD TOTAL
22 \$9,000.00.

23 IN ADDITION, THE COURT WILL TAKE THE FIGURE OF
24 1418.12 AS THE AVERAGE MONTHLY EARNINGS FOR THE PERIOD OF
25 THE CONTRACT, THE AVERAGE BONUS PERIOD. THAT COMES OUT TO

1 A TOTAL OF 4,254.36. FROM THAT I WILL DEDUCT--EXCUSE ME.
2 THAT COMES OUT TO A TOTAL COMBINED OF 13,254.36. FROM THAT
3 I WILL DEDUCT \$1,384.62 WHICH REPRESENTS THE TWO WEEKS PAY
4 THAT THE CORPORATION PAID AS A VOLUNTEER.

5 I DECLINED TO DEDUCT THE AMOUNT THAT WAS TENDERED
6 FOR THE 16 DAYS FOR VACATION PAY BECAUSE I BELIEVE THAT THE
7 PLAINTIFF WAS ENTITLED TO THOSE DAYS. HE HAD ALREADY
8 ACCRUED THOSE.

9 I FURTHER DECLINE TO DEDUCT THE AMOUNT THAT WAS
10 PAID FOR THE ITEMS ORDERED BUT NOT YET SHIPPED. IN MY
11 OPINION, THE CORPORATION VOLUNTEERED THAT AND MR. BARRETT
12 IS ENTITLED TO RETAIN THE BENEFIT OF THAT, THAT THE CORPO-
13 RATION VOLUNTEERED.

14 SO THE NET JUDGMENT, THE JUDGMENT THAT HE IS
15 ENTITLED TO, IS \$11,869.74.

16 THERE WAS A COMMENT MADE BY MISS LEITH THAT
17 IMPLICITLY THE EMPLOYER--EXCUSE ME, BY MR. PERKINS--AS TO
18 THE REQUIREMENT THAT IMPLICITLY THE EMPLOYER MUST BE DIS-
19 SATISFIED WITH THE WORK IN ORDER TO TERMINATE SOMEONE FOR
20 CAUSE. I BELIEVE THAT'S TRUE. AND I DON'T BELIEVE THAT
21 THE EMPLOYER WAS DISSATISFIED WITH THE WORK OF MR. BARRETT
22 UNTIL AFTER THEY GOT THE LETTER FROM MR. PERKINS. MR.
23 BARRETT--THE REAL REASON WAS THAT THE COMPANY WANTED TO
24 TERMINATE THOSE PERSONS WHO WERE IN THE HIGH SALARY BUT
25 MIDDLE MANAGEMENT POSITIONS BECAUSE OF A CASH FLOW

1 PROBLEM, AND SO THE CORPORATION SIMPLY MADE THAT CHOICE.

2 NOW, IN RELATION TO THE CONTRACT PROVISION,
3 PARAGRAPH 10 ON TERMINATION, THE AGREEMENT PROVIDES THAT
4 "THE AGREEMENT SHALL TERMINATE AUTOMATICALLY AT THE END OF
5 ITS TERM." THAT DID NOT OCCUR HERE.

6 "THIS AGREEMENT SHALL TERMINATE PRIOR TO THE END
7 OF ITS TERM, (i), AT THE DEATH OF DS"--THAT DID NOT OCCUR--
8 OR (ii), "AT DAYNA'S OPTION AND UPON THE GIVING OF 90 DAYS'
9 WRITTEN NOTICE OF TERMINATION TO DS"--MEANING MR. BARRETT.
10 THAT'S THE PROVISION THAT THE COURT FINDS APPLIES TO THIS
11 CASE AND TO THESE CIRCUMSTANCES.

12 THE REASON THE COURT FINDS THAT IS THAT PROVI-
13 SION, READ ON ITS FACE, WOULD CLEARLY INDICATE TO ME AND TO
14 ANYBODY READING THAT PROVISION THAT IT IS INTENDED TO
15 PROVIDE SOMEBODY WITH THREE MONTHS SEVERANCE PAY. I FIND
16 IT DIFFICULT TO READ THAT PROVISION TO BE DESIGNED TO
17 PRINCIPALLY PROTECT THE CORPORATION FROM A PRODUCT THAT
18 TAKES OFF AND ALLOWS SOMEBODY TO HAVE A HIGH COMMISSION
19 INCOME AND THUS, SUDDENLY, SUBJECT THE CORPORATION TO THE
20 POTENTIAL OF HAVING TO PAY HUGE FUNDS SO THEY WANT TO
21 EXERCISE THAT PROVISION AND TERMINATE THAT AND THEN RENEGO-
22 TIATE THE AMOUNT OF COMMISSION AFTER 90 DAYS EVEN THOUGH
23 THEY ARE HAPPY WITH THE PERSONS' PERFORMANCE.

24 THE THIRD PROVISION OF THAT IS TERMINATION FOR
25 CAUSE. THE PROVISION SPECIFICALLY STATES IT "SHALL

1 INCLUDE, BUT NOT BE LIMITED TO, CONVICTION OF A FELONY,
2 DISHONESTY, BREACH OF CONFIDENTIALITY, OR ANY MATERIAL
3 BREACH OF THE DEFENDANT'S OBLIGATIONS." I FIND NO EVIDENCE
4 OF ANY OF THOSE ELEMENTS.

5 "OBLIGATIONS, COVENANTS, AGREEMENTS OR WARRANTIES
6 HEREUNDER." NO EVIDENCE OF ANY OF THAT.

7 THEN IT SAYS, "OR A FAILURE BY DS TO PERFORM THE
8 DUTIES ASSIGNED TO DS IN AN ACCEPTABLE MANNER." I CAN FIND
9 NO EVIDENCE THAT HE FAILED TO PERFORM HIS DUTIES AND OBLI-
10 GATIONS TO THE CORPORATION IN AN--HE FAILED TO DO THAT IN
11 AN ACCEPTABLE MANNER. THERE'S NO EVIDENCE OF THAT. HE
12 WORKED HARD, HE WAS DILIGENT, HE WAS A CAREFUL EMPLOYEE.
13 AND BOTH OF THE PARTIES FUNDAMENTALLY AGREED TO THAT.

14 SO I SIMPLY FIND THAT THE CORPORATION IS ATTEMPT-
15 ING, BY ITS CLAIM, AS TO THE CONCERNS WITH THIS CONTRACT,
16 TO MAKE SOMETHING OUT OF THIS PARAGRAPH 6 IN THE QUOTA
17 PROVISION THAT WAS NEVER INTENDED BY THE PARTIES TO BE A
18 MINIMUM. THAT WOULD BE A FAULTY INTERPRETATION OF IT.

19 NOW, I'LL ASK YOU, MR. PERKINS, IF YOU WILL
20 PREPARE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND A
21 JUDGMENT CONSISTENT WITH THE RULING OF THE COURT AND CON-
22 SISTENT WITH THE EVIDENCE PRESENTED HERE.

23 MR. PERKINS: I WILL DO THAT, YOUR HONOR. THANK
24 YOU.

25 JUDGE YOUNG: ANYTHING FURTHER OF EITHER--YOU

1 OFFER THAT, MR. PERKINS?

2 MR. PERKINS: RIGHT.

3 JUDGE YOUNG: AND YOU HAVE NO OBJECTION?

4 MS. LEITH: RIGHT, YOUR HONOR.

5 JUDGE YOUNG: THEN 7-P IS RECEIVED. I WILL ASK
6 YOU EACH TO CHECK ALSO THE RECORD WITH THE CLERK AT THE
7 CONCLUSION TO BE SURE EVERYTHING IS ACCURATE. I THINK ALL
8 THE EXHIBITS HAVE PROPERLY BEEN RECEIVED. ANYTHING FUR-
9 THER?

10 MR. PERKINS: NO.

11 MS. LEITH: THANK YOU.

12 JUDGE YOUNG: THANK YOU EACH FOR YOUR PRESENTA-
13 TION AND TESTIMONY AS WITNESSES.

14 COURT'S IN RECESS.


15 (WHEREUPON, THE JUDGE'S RULING WAS CONCLUDED).
16

17 * * *
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

I, EILEEN M. AMBROSE, HEREBY CERTIFY THAT I AM A
CERTIFIED SHORTHAND REPORTER OF THE STATE OF UTAH; THAT AS
SUCH CERTIFIED SHORTHAND REPORTER, I ATTENDED THE HEARING
OF THE ABOVE-MENTIONED MATTER AT THAT TIME AND PLACE SET
OUT HEREIN; THAT THEREAT I TOOK DOWN IN SHORTHAND THE
TESTIMONY GIVEN AND THE PROCEEDINGS HAD THEREIN; AND THAT
THEREAFTER I TRANSCRIBED MY SAID SHORTHAND NOTES INTO
TYPEWRITING, AND THAT THE FOREGOING TRANSCRIPTION IS A
FULL, TRUE, AND CORRECT TRANSCRIPTION OF THE SAME.


EILEEN M. AMBROSE, C.S.R.

MY COMMISSION EXPIRES:

JANUARY 14TH, 1992