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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PELICULAS Y VIDEOS)	No. CV 02-03538-WJR(CTx)
INTERNACIONALES, S.A. de C.V.,)	
a Mexican corporation,)	ORDER RE:
)	
Plaintiffs,)	OPINION AND ORDER
)	
v.)	
)	
HARRISCOPE OF LOS ANGELES,)	
INC., a California)	
corporation; MEDIA RESOURCES)	
INTERNATIONAL LLP, a Texas)	
limited liability partnership;)	
and TELEVISION INTERNATIONAL)	
SYNDICATORS, INC., a Texas)	
corporation,)	
)	
Defendants.)	
_____)	

Both Defendants and Plaintiffs have brought motions for summary judgment pursuant to Federal Rule of Civil Procedure 56. The matter came on for hearing before the Court, the Honorable William J. Rea, Judge, presiding, on December 8, 2003. Having considered the

1 motions, the papers filed in support thereof and in opposition
2 thereto, the oral argument of counsel, and the case file, the Court
3 now makes the following decision.

4
5 **FACTUAL BACKGROUND**

6 On April 30, 2002, Peliculas Y Videos Internacionales, ("PVI")
7 filed this lawsuit alleging copyright infringement, under 17 U.S.C.
8 §§ 101 et seq., against Harriscope of Los Angeles, Inc.
9 ("Harriscope"), Media Resources International, LLP ("MRI"), and
10 Television International Syndicators, Inc. ("TIS"), (collectively
11 "Defendants").

12 PVI alleges it owns exclusive copyrights to twenty-nine motion
13 pictures, published in Mexico prior to March 1, 1989, through an
14 assignment of those rights by the films' producers. For purposes of
15 this motion, PVI and Defendants agree that these works fell into the
16 public domain in the United States and were eligible for restoration
17 under the Copyright Act and the Uruguay Round Agreements Act
18 ("URAA"). 17 U.S.C. § 104A. PVI alleges that MRI and TIS licensed
19 broadcast rights to Harriscope in violation of PVI's exclusive
20 copyrights and that Harriscope broadcast those films in violation of
21 PVI's exclusive broadcast rights.

22 Currently before the Court are the parties' cross motions for
23 partial summary judgment. PVI moves for partial summary judgment,
24 seeking to establish that a producer's assignee may qualify as an
25 "author" under the URAA. Conversely, Defendants move for partial
26 summary judgment, seeking to establish that PVI may not qualify as
27 an author because of its assignee status. The Court will analyze
28 these parallel motions together. Additionally, Defendants move for

1 partial summary judgment, seeking to establish that PVI is not
2 entitled to statutory damages or attorney's fees.

3 DISCUSSION

4 I. Legal Standard

5 A court may grant partial summary judgment to determine "before
6 the trial that certain issues shall be deemed established in advance
7 of the trial. The procedure was intended to avoid a useless trial
8 of facts and issues over which there was really never any
9 controversy and which would tend to confuse and complicate a
10 lawsuit." Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 (9th Cir.
11 1981) (quoting Luria Steel & Trading Corp. v. Ford, 9 F.R.D. 479,
12 481 (D. Neb. 1949)). Under Federal Rule of Civil Procedure 56, a
13 summary judgment motion should be granted if "the pleadings,
14 depositions, answers to interrogatories, and admissions on file,
15 together with the affidavits, if any, show that there is no genuine
16 issue as to any material fact and that the moving party is entitled
17 to a judgment as a matter of law." Fed. R. Civ. P. 56©).

18 A fact is material if, under the substantive law governing the
19 case, it "might affect the outcome of the suit." Anderson v.
20 Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct 2505, 91 L. Ed. 2d
21 202 (1986). Further, there is a "genuine" issue over such material
22 fact "if the evidence is such that a reasonable jury could return a
23 verdict for the nonmoving party." Id. Factual disputes that are
24 irrelevant or unnecessary under the relevant substantive law will
25 not be considered. Id.

26 The moving party must establish that there is no genuine issue
27 of material fact to prevail on a motion for summary judgment. Mut.
28 Fund Investors v. Putnam Mgmt. Co., 553 F.2d 620, 624 (9th Cir.

1 1977); Doff v. Brunswick Corp., 372 F.2d 801, 805 (9th Cir. 1966),
2 cert. denied, 389 U.S. 820 (1967). To overcome such a burden and
3 survive a summary judgment motion, the responding party need only
4 present evidence from which a jury might return a verdict in its
5 favor. See, e.g., Anderson, 477 U.S. at 255. However, the mere
6 existence of a scintilla of evidence supporting the non-moving
7 party's position will be insufficient, as there must be evidence on
8 which the jury could reasonably find for the respondent. Id. at
9 252. Moreover, the non-moving party "may not rest upon the mere
10 allegations or denials of [its] pleadings" in opposing the motion
11 for summary judgment. Fed. R. Civ. P. 56(e); Gasaway v. N. Mut.
12 Life Ins. Co., 26 F.3d 957, 959-60 (9th Cir. 1994).

13 Because summary judgment is based on an inquiry into the facts,
14 and their status as material and undisputed, a summary judgment
15 motion is appropriate "after adequate time for discovery . . .
16 against a party who fails to make a showing sufficient to establish
17 the existence of an element essential to that party's case, and on
18 which the party will bear the burden of proof at trial." Celotex
19 Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d
20 265 (1986).

21 Finally, the Court notes that "it is clear enough . . . that at
22 the summary judgment stage the judge's function is not himself to
23 weigh the evidence and determine the truth of the matter but to
24 determine whether there is a genuine issue for trial." Anderson,
25 477 U.S. at 249. In that regard, "[t]he evidence of the non-movant
26 is to be believed, and all justifiable inferences are to be drawn in
27 his favor." Id. at 255 (citing Adickes v. S. H. Kress & Co., 398
28 U.S. 144, 158-59, 90 S. Ct 1598, 26 L. Ed. 2d 142 (1970)).

1 **II. Analysis**

2 **A. Cross Motions for Partial Summary Judgment on PVI's**
3 **Status as an Author Under Mexican Law.**

4 In this lawsuit, PVI seeks to establish that it is the rightful
5 owner of the copyright to twenty-nine films and that Defendants
6 infringed this copyright by copying, licensing, and broadcasting
7 these films without authorization. The films were produced in
8 Mexico between 1930 and 1960 and fell into the public domain in the
9 United States for failure to comply with copyright formalities.
10 However, the Uruguay Round Agreements Act ("URAA") automatically
11 restored the films' copyrights as of January 1, 1996. 17 U.S.C. §
12 104A (a)(1)(A) & (h)(2). The copyright to these works "vests
13 initially in the author or initial rightholder of the work as
14 determined by the law of the source country of the work." 17 U.S.C.
15 § 104A(b). The contentious issue to be decided in this motion is
16 whether PVI qualifies as the author of the films under Mexican law.

17 The Fifth Circuit recently held that an author may be the
18 producer of a film under the Mexican Collaboration Doctrine.
19 Alameda Films S.A. de C.V. v. Authors Rights Restoration Corp.,
20 Inc., 331 F.3d 472 (5th Cir. 2003). The Collaboration Doctrine
21 provides author status only to a producer who remunerates the
22 actors, artists, musicians, and other collaborators on the film.
23 Id. at 477-78 (citing Ley Federal del Derecho de Autor art. 60
24 (1947); Ley Federal del Derecho de Autor art. 60 (1956); Ley Federal
25 del Derecho de Autor art. 59 (1963)). The producer need not be a
26 natural person. Id. at 478. This Court agrees with the Fifth
27 Circuit.

28 However, PVI does not claim to be the original producer of the

1 films at issue. Instead, PVI claims to be the assignee of the
2 producer of each of the twenty-nine films. Thus, to establish its
3 status as the "author" of the films under Mexican law, and its
4 ownership of the copyrights, PVI must prove: (1) each film's
5 producer remunerated the collaborators on the film, (2) an assignee
6 of a producer may qualify as an author under Mexican law, and (3)
7 the valid assignment to PVI of each producer's rights in each film.
8 In this motion, PVI seeks only to establish the second point, that a
9 producer's assignee may qualify as an author under Mexican law.¹ To
10 the Court's knowledge, no court has yet addressed this precise
11 question.² Thus, the Court will undertake to determine the content
12 of Mexican copyright law on this point.³

13 Applicable Mexican copyright law grants two distinct types of
14 rights to an author: (1) moral rights, and (2) exploitation, or
15

16 ¹ Defendants MRI and TIS argue that PVI lacks standing to bring
17 this motion because a ruling will not redress PVI's entire claim. MRI
18 and TIS construe the standing requirement too narrowly. A plaintiff
19 must have standing to bring the "Case" or "Controversy" before the
20 court, not to bring each individual motion. Lujan v. Defenders of
21 Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351,
22 364 (1992) (explaining that the doctrine of standing sets apart the
23 "Cases" or "Controversies" that are "appropriately resolved through the
24 judicial process"). PVI has standing to bring this case; should it
25 prove that Defendants infringed its copyright, it will be entitled to
26 damages. PVI's desire to have the Court adjudicate a single, complex
27 issue of law prior to trial cannot deprive it of standing.

28 ² PVI cites language from this Court's unpublished opinion in
LaParade v. Columbia Pictures Indus., Inc., CV-97-0615 (C.D. Cal. May
30, 2001) (Rea, J.), which is currently on appeal to the Ninth Circuit,
in support of its assertion that an assignee may qualify as an author
under Mexican law. In LaParade, the Court did not reach the precise
question it is now faced with, nor could the Court rely on that
unpublished decision even if it had determined the issue.

³ In determining the content of Mexican copyright law, the Court
"may consider any relevant material or source, including testimony,
whether or not submitted by a party or admissible under the Federal
Rules of Evidence." Fed. R. Civ. P. 44.1.

1 patrimonial, rights.⁴ Exploitation rights include the right to sell
2 the use of the work for profit and may be sold or assigned in much
3 the same manner as copyrights in the United States. Vargas Decl. ¶¶
4 23-28 (citing Ley Federal del Derecho de Autor arts. 2-5, 7 (1956));
5 David Rangel Medina, Derecho de la Propiedad Industrial e
6 Intelectual 8 (1992)). See also, Luis C. Schmidt, Computer Software
7 and the North American Free Trade Agreement: Will Mexican Law
8 Represent a Trade Barrier, 34 IDEA 33, 41-42 (1993). Moral rights,
9 however, protect the author's dignity or personal artistic
10 expression. Id. Because these rights are personal to the author,
11 Mexican law expressly prohibits the sale or assignment of moral
12 rights. Id.; Ley Federal del Derecho de Autor art. 3 (1956).
13 Instead, ownership of moral rights may only pass by succession upon
14 the death of the author. Id. Mexican law clearly splits ownership
15 of authors rights and, thus, anticipates the possibility that two
16 separate groups might hold the two distinct types of rights.

17 Defendants argue that because PVI claims to be the assignee of
18 the producers of the films, it cannot possess the moral rights to
19 the films. Thus, Defendants argue, PVI cannot be deemed an "author"
20 under Mexican law for purposes of the URAA.⁵

21 However, PVI contends that Defendants infringed its
22

23 ⁴ Mexico's Federal Copyright Acts [Ley Federal del Derecho de
24 Autor] of 1947 and 1956 apply to the films at issue, which were
published between 1930 and 1960.

25 ⁵ Defendants also argue that the URAA does not recognize
26 assignments, but instead restores the copyright in the original author,
27 regardless of the author's disposition of its rights. However, the
28 text of the URAA fails to support this reading. The URAA clearly
mandates that the Court identify the author using Mexican law. 17
U.S.C. § 104A. Thus, the Court finds Mexican law on assignment of
copyrights controlling.

1 exploitation rights by unlawfully copying, licensing, and
2 broadcasting, the films. Because Mexican law anticipates the
3 possibility that two separate entities may hold the two types of
4 rights, it must follow that each entity may enforce the right it
5 holds. Thus, PVI may seek to enforce the exploitation rights it
6 claims to hold, but may not seek to enforce the moral rights, which
7 must belong to the original producers' successors. Accordingly, the
8 Court grants PVI's motion for partial summary judgment and holds
9 that an assignee may qualify as an author under the URAA for
10 purposes of enforcing exploitation rights only.

11 **B. Defendants' Motion for Partial Summary Judgment**

12 Defendants move for partial summary judgment, arguing they are
13 not liable to PVI for its attorney's fees or statutory damages
14 because: (1) Defendants qualify as reliance parties under 17 U.S.C.
15 § 104A(d)(4); and (2) Defendants' infringement commenced prior to
16 the date of copyright registration under 17 U.S.C. § 412.⁶

17 **1. Defendants' Status as Reliance Parties**

18 Defendants argue that they bear no liability to PVI for
19 attorney's fees or statutory damages under 17 U.S.C. § 412 because
20 they qualify as reliance parties under 17 U.S.C. § 104A(d)(4). In

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22 ⁶ At the December 8, 2003 hearing, the Court adopted its tentative
23 ruling on the issue of Defendants' status as reliance parties. The
24 Court took under submission the issue of PVI's entitlement to statutory
25 damages and attorney's fees under 17 U.S.C. § 412. Further, the Court
26 allowed the parties to file supplemental evidence of the broadcast
27 dates for the films at issue. Both parties subsequently submitted
28 excerpts from the broadcast logs for each of the films. The Court's
review of this supplemental evidence affects its ruling on both
Defendants' status as reliance parties and PVI's entitlement. To the
extent this opinion conflicts with the Court's prior order, this
opinion supersedes the prior order. Acha v. Beame, 570 F.2d 57, 63-64
(2d Cir. 1978) (vacating partial summary judgment ruling after Supreme
Court decisions in relevant Title VII claims created a question of
material fact).

1 general terms, a reliance party is someone who used a work prior to
2 copyright restoration and who continues to use it after restoration.

3 17 U.S.C. § 104A(h)(4). A defendant qualifies as a reliance party
4 if:

5 (A) with respect to a particular work, [the defendant] engages
6 in acts, before the source country of that work becomes an
7 eligible country, which would have violated [17 U.S.C. § 106] if
8 the restored work had been subject to copyright protection, and
9 who, after the source country becomes an eligible country,
10 continues to engage in such acts; ... or

11 ©) as the result of the sale or other disposition of a
12 derivative work covered under subsection (d)(3), or significant
13 assets of a person described in subparagraph (A) or (B), [the
14 defendant] is a successor, assignee, or licensee of that person.

15 17 U.S.C. § 104A(h)(4).

16 A reliance party may continue, in limited circumstances, to use
17 the copyrighted material after the date of restoration and is not
18 liable for statutory damages or attorney's fees. 17 U.S.C. §
19 104A(d) (absolving a reliance party of liability for statutory
20 damages or attorney's fees under 17 U.S.C. § 412 if "acts which
21 would have constituted infringement had the restored work been
22 subject to copyright were commenced before the date of
23 restoration"). The URAA, thus, balances the interests of foreign
24 owners in copyright restoration against the interests of parties
25 using the copyrighted material at the time of restoration.⁷ See 3

26
27 ⁷ Contrary to PVI's assertion, the Court was unable to discern any
28 good faith requirement. Indeed, such a requirement seems contradictory
to the plain language of sections 104A(d)(4) and (h)(4), which require

1 Melville B. Nimmer & David Nimmer, Nimmer on Copyright, § 9A.04[C]
2 (2002). The copyrights to the twenty-nine films at issue were
3 restored as of January 1, 1996 because Mexico adheres to the Berne
4 Convention. 17 U.S.C. § 104A(h)(2); Berne Convention for the
5 Protection of Literary and Artistic Works, Sept. 9, 1886.

6 The uncontroverted evidence establishes that Defendants qualify
7 as reliance parties as to twenty-two of the twenty-nine films
8 because they engaged in infringing acts prior to January 1, 1996.
9 Defendants and PVI both submitted broadcast logs showing actual
10 broadcast dates for the twenty-nine films.⁸ The following chart
11 summarizes the broadcast logs and shows the broadcast of twenty-two
12 films prior to January 1, 1996.

	Motion Picture Title	First Broadcast Date
13		
14	1 A Sablazo Limpio	11/3/1993
15	2 Cien Gritos de Terror	3/30/1994
16	3 Contigo a la Distancia	10/27/1993
17	4 Delirio Tropical	2/20/1994
18	5 El	4/16/1995
19	6 El Ametralladora	4/5/1994
20	7 El Bello Durmiente	7/5/1993
21	8 El Club de los Suicidas	8/5/1994
22	9 El Fantasma de la Opereta	4/16/1994
23	10 El Fuego de Mi Ahijada	9/4/1994

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25 that the reliance party act in a manner that would have infringed the
copyright, had it been in force, to obtain reliance party status.

26 ⁸ These documents qualify as hearsay but are admissible under the
27 business records exception because it was the television station's
regular practice to make the broadcast logs and to input the
28 information on a daily basis. Garibay Dep., 40:21-43:4, contained in
Mumford Decl., Exh. 1.

1	11	El Medico de las Locas	2/26/1994
2	12	El Rio de las Animas	3/5/1994
3	13	El Zorro de Jalisco	2/27/1994
4	14	Entre Bala y Bala	12/15/1993
5	15	Jesusita en Chihuahua	11/21/1993
6	16	Juan Polainas	9/4/1993
7	17	Los Santos Reyes	2/6/1994
8	18	Los Valientes No Mueren	11/7/1993
9	19	Me Importa Poco	12/2/1993
10	20	Refifi Entre las Mujeres	11/20/1993
11	21	Viaje a la Luna	1/22/1995
12	22	Viva Chihuahua	7/31/1993

12 Deposition testimony confirms this evidence. PVI's
13 President, Mr. Ortega, testified at deposition that he learned as
14 early as 1994 or as late as 1996 that Harriscope had broadcast the
15 films at issue.⁹ Rudin Decl. Exh. F. Further, Mr. Ortega admits

17 ⁹ In an attempt to controvert this evidence from his deposition,
18 PVI submits Mr. Ortega's declaration, in which he testifies:

19 Plaintiff first learned of Harriscope's infringing
20 broadcasts of the 29 motion pictures at issue in this
21 action after the infringing broadcasts which are alleged
22 in this action occurred between May 1999 and June 2001.
23 Plaintiff never learned of any earlier infringing
24 broadcasts by Harriscope, or any other infringing conduct
25 by any other parties for that matter, of the 29 motion
26 pictures at issue in this action.

23 Ortega Decl. ¶ 5. However, this declaration flatly contradicts Mr.
24 Ortega's earlier testimony, discussed above. The Court finds that this
25 portion of Mr. Ortega's declaration is a sham and disregards it. See
26 Sch. Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc., 5 F.3d
27 1255, 1264 (9th Cir. 1993) (explaining that "a party should not be able
28 to substitute an affidavit alleging helpful facts for earlier
deposition testimony harmful to its case in order to avoid summary
judgment" if "the affidavit was a sham").

Further, Defendants are correct that these statements in Mr.
Ortega's declaration are inadmissible hearsay. Fed. R. Evid. 801 &
802. Mr. Ortega testifies in his declaration that PVI "first learned"

1 that Harriscope obtained the films from Jackson Shirley's companies,
2 MRI and TIS. Id. Finally, it is undisputed that MRI and TIS
3 created "pan and scan" copies of the films prior to licensing them
4 to Harriscope, which constitutes infringement under 17 U.S.C. § 106
5 (1)-(3). MRI's Response to PVI's Interrogatory Number 3, contained
6 in Rudin Decl., Exh. H.

7 Thus, the evidence clearly establishes that infringing acts,
8 that is, the creation of the pan and scan copies and the broadcast
9 of the films, occurred prior to January 1, 1996. Because the
10 broadcast logs additionally establish the continued broadcast of the
11 films after January 1, 1996,¹⁰ the Court holds that Defendants
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13 that Harriscope broadcast the 29 works in May 1999. In this statement,
14 Mr. Ortega necessarily repeats someone else's out of court statement
15 and offers it for its truth, namely that Harriscope did not broadcast
16 the works until 1999. Thus, this statement is hearsay, and PVI has not
17 suggested, nor can the Court identify, any relevant hearsay exception
18 that would render the statement admissible.

19 In an apparent contradiction, Mr. Ortega's deposition statements,
20 offered by Defendants, seem to likewise qualify as hearsay. However,
21 these statements qualify as admissions by Mr. Ortega and PVI, and,
22 thus, fall outside the definition of hearsay. Fed. R. Evid. 801(d)(2).

23 ¹⁰ The following chart summarizes the information from the
24 broadcast logs, showing the films' subsequent broadcasts.

	Motion Picture Title	Subsequent Broadcast Date
25	1 A Sablazo Limpio	1/17/1998
26	2 Cien Gritos de Terror	1/11/1998
27	3 Contigo a la Distancia	3/4/2000
28	4 Delirio Tropical	1/22/1998
	5 El	10/26/1999
	6 El Ametralladora	11/7/1999
	7 El Bello Durmiente	4/15/2000
	8 El Club de los Suicidas	5/31/1998

1 qualify as reliance parties as to the twenty-two films listed above.
2 The Court grants Defendants' motion for partial summary judgment as
3 to these twenty-two films.

4 **2. Availability of Attorney's Fees and Statutory**
5 **Damages Under 17 U.S.C. § 412.**

6 Defendants next argue that they are not liable for attorney's
7 fees and statutory damages under 17 U.S.C. § 412. To prevail,
8 Defendants must show: (1) that the works were published; (2) the
9 date of copyright registration; and (3) that Defendants'
10 infringement commenced prior to the registration.¹¹ 17 U.S.C. § 412.

9	El Fantasma de la Opereta	12/31/1997
10	El Fuego de Mi Ahijada	1/29/1998
11	El Medico de las Locas	11/12/1999
12	El Rio de las Animas	5/19/2000
13	El Zorro de Jalisco	3/25/2000
14	Entre Bala y Bala	10/11/1997
15	Jesusita en Chihuahua	2/21/1999
16	Juan Polainas	11/29/1997
17	Los Santos Reyes	5/1/1999
18	Los Valientes No Mueren	6/26/1999
19	Me Importa Poco	2/25/1998
20	Refifi Entre las Mujeres	1/17/1998
21	Viaje a la Luna	8/21/1999
22	Viva Chihuahua	11/2/1997

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26 ¹¹ Section 412 provides, in pertinent part: "no award of statutory
27 damages or of attorney's fees...shall be made for...(2) any
28 infringement of copyright commenced after first publication of the work
and before the effective date of its registration, unless such
registration is made within three months after the first publication

1 Because this case arises under the URAA, § 412 potentially applies
2 to a narrow category of films: those that were first broadcast after
3 January 1, 1996, the date of automatic copyright restoration, and
4 before the date of PVI's copyright registration.

5 The uncontroverted evidence from the broadcast logs discussed
6 above establishes that the following four films meet those criteria.

	Motion Picture Title	First Broadcast Date	U.S. Copyright Registration Date
1	Los Inocentes	11/3/1997	4/30/1998
2	Los Lios De Barba Azul	12/21/1997	2/9/1998
3	Una Horca Para el Texano	11/9/1997	4/30/1998
4	Yo Pecador	5/10/1997	2/9/1998

14 As summarized above, these four films were published, by
15 their broadcast, after the date of copyright restoration, January 1,
16 1996, and before the date of copyright registration. Accordingly,
17 the Court holds that the requirements of § 412 are met and PVI is
18 not entitled to statutory damages or attorney's fees as to these
19 four films. The Court grants Defendants' motion for partial summary
20 judgment as to these four films.

21 However, the Court denies Defendants' motion for partial
22 summary judgment as to the three remaining films: (1) Camino del
23 Infierno, (2) El Tunco Maclovio, and (3) Recien Casados...No

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28 of the work." 17 U.S.C. § 412.

1 Molestar. The evidence provided fails to establish that these
2 three films were broadcast prior to their copyright registration
3 dates.

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6 DATED: January __, 2004.
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 WILLIAM J. REA
11 United States District Judge
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