

CONTENTS

| | |
|--|--|
| INTRODUCTION | 1 |
| SPECIAL INSTRUCTIONS FOR USE AS A FULL TRIAL | 3 |
| STIPULATIONS AND PRETRIAL RULINGS | 5 |
| CALENDAR | 7 |
| COMPLAINT | 9 |
| ANSWER AND COUNTERCLAIM | 13 |
| REPLY TO COUNTERCLAIM AND AFFIRMATIVE DEFENSE | 17 |
| REQUEST FOR ADMISSION | 19 |
| RESPONSE TO REQUEST FOR ADMISSION | 21 |
| DEPOSITION OF CHRISTOPHER KAY | 23 |
| DEPOSITION OF VIRGINIA YOUNG | 31 |
| DEPOSITION OF MICHAEL LUBELL | 39 |
| DEPOSITION OF ELLIOT MILSTEIN | 49 |
| EXHIBITS | |
| Exhibit 1A | BMI Price List 61 |
| Exhibit 1B | BMI Electronic Order Form 62 |
| Exhibit 2 | 9/3/YR-2 Minicom Phone Log—Michael Lubell 63 |
| Exhibit 3A–C | 9/3/YR-2 Email/Letter from Michael Lubell to Chris Kay 65 |
| Exhibit 4 | 9/6/YR-2 Work Order Sent by Email 69 |
| Exhibit 5A–C | 9/9/YR-2 Email/Letter from Chris Kay to Michael Lubell 71 |
| Exhibit 6 | 9/9/YR-2 NPS Shipping Record—BMI to Minicom 75 |
| Exhibit 7A | 9/23/YR-2 Letter from Michael Lubell to Chris Kay 77 |
| Exhibit 7B | 9/23/YR-2 Check from Minicom to BMI for \$491,232.60 78 |
| Exhibit 8 | 11/12/YR-2 Phone Log—Elliot Milstein 79 |
| Exhibit 9A | 11/18/YR-2 Email from Chris Kay to Elliot Milstein 81 |
| Exhibit 9B | BMI Invitation to Eastern Regional Exposition of Computer Products Received by Elliot Milstein 82 |
| Exhibit 10 | 12/13/YR-2 Phone Log—Elliot Milstein 83 |
| Exhibit 11 | 12/15/YR-2 Email from Elliot Milstein to Michael Lubell 85 |
| Exhibit 12 | 1/3/YR-1 Email from Elliot Milstein to Michael Lubell 87 |
| Exhibit 13 | 1/3/YR-1 Email from Michael Lubell to Chris Kay 89 |

| | | |
|---------------|---|-----|
| Exhibit 14 | 1/3/YR-1 Email from Virginia Young to Michael Lubell | 91 |
| Exhibit 15 | 1/6/YR-1 Phone Log—Michael Lubell | 93 |
| Exhibit 16 | 1/6/YR-1 Email Message for Chris Kay Taken by Virginia Young | 95 |
| Exhibit 17A–B | 1/6/YR-1 Email from Michael Lubell to Chris Kay with Attached Letter Order | 97 |
| Exhibit 17C | 1/6/YR-1 BMI Online Order Form. | 99 |
| Exhibit 18 | 1/10/YR-1 Work Order Sent by Email | 101 |
| Exhibit 19A–B | 1/10/YR-1 Email and Letter from Chris Kay to Michael Lubell Signed by Virginia Young | 103 |
| Exhibit 19C | 1/10/YR-1 BMI Statement of Account for Minicom | 105 |
| Exhibit 20 | 1/17/YR-1 NPS Shipping Record—BMI to Minicom (100 Gross of ICP-73s) | 107 |
| Exhibit 21 | 1/17/YR-1 NPS Shipping Record—BMI to Minicom (10 Gross of ICP-73s) | 109 |
| Exhibit 22A | 1/24/YR-1 NPS Shipping Record—Minicom to BMI (10 Gross of ICP-22s) | 111 |
| Exhibit 22B | 1/24/YR-1 Letter from Michael Lubell to Chris Kay | 112 |
| Exhibit 23 | 1/27/YR-1 Email from Chris Kay to Michael Lubell | 113 |
| Exhibit 24 | 2/3/YR-1 Text from Elliot Milstein to Michael Lubell | 115 |
| Exhibit 25 | 2/3/YR-1 Text from Michael Lubell to Elliot Milstein | 117 |
| Exhibit 26A | 2/14/YR-1 Letter from Chris Kay to Michael Lubell | 119 |
| Exhibit 26B | 2/11/YR-1 NPS Check Made to BMI Endorsed to Minicom | 120 |
| Exhibit 27A | 2/21/YR-1 Phone Log—Michael Lubell | 121 |
| Exhibit 27B | 1/5/YR-1 Michael Lubell Prescription Label for Lexapro. | 122 |
| Exhibit 28 | 2/21/YR-1 Email from Michael Lubell to Elliot Milstein. | 123 |
| Exhibit 29 | 2/21/YR-1 Phone Log—Elliot Milstein. | 125 |
| Exhibit 30 | 3/3/YR-1 Letter from Chris Kay to Elliot Milstein | 127 |
| Exhibit 31 | 3/7/YR-1 Letter from Elliot Milstein to Chris Kay | 129 |
| Exhibit 32 | 3/10/YR-1 Phone Log—Michael Lubell | 131 |
| Exhibit 33 | 3/10/YR-1 Email from Michael Lubell to Brent Taylor, Exrox. | 133 |
| Exhibit 34A | 3/14/YR-1 Email from Brent Taylor to Michael Lubell | 135 |
| Exhibit 34B | 3/14/YR-1 Exrox Statement of Account for Minicom | 136 |
| Exhibit 35 | 3/27/YR-1 Email chain between Elliot Milstein and Greg Smith, Neiman Marcus | 137 |
| Exhibit 36 | 6/13/YR-1 Exrox Statement of Account for Minicom Past Due Plus Interest. | 139 |
| Exhibit 37A | 6/20/YR-1 Letter from Michael Lubell to Brent Taylor, Exrox. | 141 |
| Exhibit 37B | 6/20/YR-1 Check from Minicom to Exrox for \$555,640.60 | 142 |

EXPERT REPORTS

| | |
|---|-----|
| Expert Report of Dr. Seligman | 145 |
| Deposition of Dr. Seligman | 151 |
| Seligman CV | 159 |
| Expert Report of Dr. Singell | 163 |
| Deposition of Dr. Singell | 169 |
| Singell CV | 177 |

GENERAL JURY INSTRUCTIONS 181**JURY INSTRUCTIONS SPECIFIC TO THIS CASE. 185**

VERDICT FORMS

Special Verdict Form #1 191
Special Verdict Form #2 193
Special Verdict Form #3 195
Special Verdict Form #4 197