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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,**

Plaintiffs,

**CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff**

v.

**NATIONAL GEOGRAPHIC SOCIETY, a district
of Columbia corporation,
NATIONAL GEOGRAPHIC ENTERPRISES, INC, a
corporation, and MINDSCAPE, INC., a
California corporation,**

**ANSWER TO COUNT II OF
AMENDED COMPLAINT**

Defendants.

The defendants National Geographic Society and National Geographic Enterprises, which is incorporated under the name NGE, Inc. and does business as National Geographic Interactive (collectively, the "Society"), by their attorneys, Weil, Gotshal & Manges LLP, hereby answer Count II of the Amended Complaint of the plaintiffs, Jerry and Idaz Greenberg, as follows:

1 - 20. The answers in Paragraphs 1 - 20 of the Partial Answer to Amended Complaint and Affirmative Defenses dated January 30, 1998 (the "Partial Answer") are realleged and incorporated herein.

21. Admit that Jerry Greenberg provided to the Society a photograph of a sea fan, taken by him, to appear in the Society's monthly magazine in July 1990. Admit that there was a written agreement between Plaintiffs and the Society, to which Defendants refer

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for the terms thereof. Admit that in 1996, the Society included the sea fan photograph in a color brochure promoting the Society's 1996 Jason Project. Deny that when challenged by Mr. Greenberg concerning the use, the Society admitted that it had violated Mr. Greenberg's copyright, but admit that the Society acknowledged that it had used Mr. Greenberg's photograph without permission. Admit that the dispute has not been resolved.

22 - 41. Do not respond to the allegations contained in paragraphs 22 - 41, since the Court has granted Defendants' motion for summary judgment on Plaintiffs' claims based on the Complete National Geographic CD-ROM.

Count I

42 - 47. The answers in Paragraphs 42 - 47 of the Partial Answer are realleged and incorporated herein.

Count II

48. The answers in Paragraph 21 are realleged and incorporated herein.

49. Admit that the Society had access to the Greenberg photograph of the sea fan and deny knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 49 of the Amended Complaint.

50. Deny the allegations of Paragraph 50 of the Amended Complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Amended Complaint.

52. Admit that the sea fan photograph was used by the Society without the prior authorization of Mr. Greenberg and deny the remaining allegations of Paragraph 52 of the Amended Complaint.

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Affirmative Defenses

- 53. Defendants' use of any images of Plaintiffs' was fair use.
- 53. Defendants' use of any images of Plaintiffs' was de minimis.

WHEREFORE Defendants demand judgment against Plaintiffs dismissing this action, awarding to Defendants their costs and disbursements incurred in connection with this action, including attorneys' fees, and granting Defendants such other and further relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing has been sent by facsimile and mail this 24th day of June, 1998 to Norman Davis and David A. Aronberg, Steel Hector & Davis LLP, 200 South Biscayne Boulevard, 40th Floor, Miami, Florida 33131-2398, attorneys for plaintiff.

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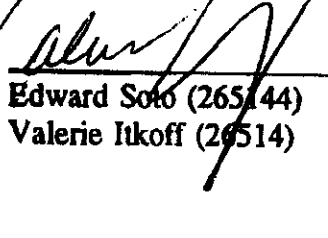
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