

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.

a District of Columbia corporation,
NATIONAL GEOGRAPHIC ENTERPRISES,
INC., a corporation, and
MINDSCAPE, INC., a
California corporation,

**DEFENDANT'S VERIFIED RESPONSE
TO PLAINTIFFS' REQUEST
FOR ENTRY BY CLERK OF
DEFAULT AGAINST DEFENDANT
NATIONAL GEOGRAPHIC SOCIETY
AS TO COUNT II OF
AMENDED COMPLAINT**

Defendants.

Defendant National Geographic Society ("Society"), by its attorneys, Weil, Gotshal & Manges LLP, hereby files its Verified Response to Plaintiffs' Request for Entry by Clerk of Default Against Defendant National Geographic Society as to Count II of Amended Complaint, and states as follows:

1. Undersigned counsel received this morning, June 24, 1998, by mail Plaintiffs' Request for Entry by Clerk of Default Against Defendant National Geographic Society as to Count II of Amended Complaint ("Default Request"). The Default Request seeks a clerical default based on Society's failure to serve a responsive pleading to Count II within 10 days after notice of the Court's May 14, 1998 Order, which granted the defendants'

summary judgment on Counts III, IV and V, but denied the defendants' motion to dismiss and/or for summary judgment as to Count II.

2. Prior to today's receipt of the Default Request, Society's counsel was unaware of the Court's May 14 Order and the resulting requirement to serve an answer to Count II within 10 days of that Order.

3. The Court's Order was mailed to only one of the defendants' lawyers, Valerie Itkoff. Although the Order was received by Ms. Itkoff's office, due to a medical emergency of Ms. Itkoff's secretary on the date of receipt of the Order, neither Ms. Itkoff nor any other attorney was ever shown a copy of the Order. Rather, a temporary secretary filling in for Ms. Itkoff's secretary apparently placed the Order in one of the case files without showing it to anyone. This was not discovered until this morning when Society's counsel received a copy of the Default Request and researched the file.

4. As plaintiffs' counsel is aware, Society's counsel has vigorously defended this action. Furthermore, I have been advised by counsel in my firm's New York office working on this case that Society's counsel has taken discovery relating to Count II as recently as May 28, 1998, at the depositions of the plaintiffs.

5. Society is filing its answer to Count II contemporaneously herewith.

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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RECEIVED TIME: JUN. 24. 5:05PM

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- and -

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Attorneys for the Defendants

- and -

Terrence B. Adamson, Esq.
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National Geographic Society
1145 17th Street, N.W.
Washington, D.C. 20036-4688

Of Counsel

By:



Edward Soto, Esq. (265144)
Valerie Itkoff, Esq. (26514)

VERIFICATION

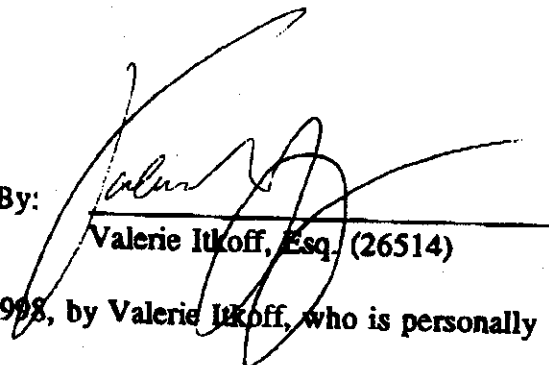
STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, Valerie Itkoff, being duly sworn, state:

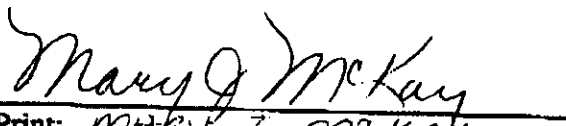
1. I am an attorney in the Miami office of Weil, Gotshal & Mangcs LLP, counsel for Defendant National Geographic Society in this action.

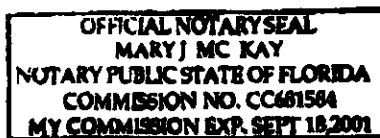
2. I have read and am familiar with the statements contained in the above Verified Response to Plaintiffs' Request for Entry by Clerk of Default Against Defendant National Geographic Society as to Count II of Amended Complaint and know, based upon my own personal knowledge, unless otherwise stated therein, that all of the facts asserted therein are true and correct.

FURTHER AFFIANT SAYETH NOT.

By: 
Valerie Itkoff, Esq. (26514)

Sworn to before me this 24th day of June, 1998, by Valerie Itkoff, who is personally known to me.


Print: MARY J. MCKAY
Notary Public, State of Florida at large
My Commission Expires:



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