

DOCKET NO.: CV-01-0450989-S : SUPERIOR COURT  
:  
NEATO, LLC : JUDICIAL DISTRICT OF NEW HAVEN  
:  
:  
AT NEW HAVEN  
:  
SOUNDVIEW PARTNERS : FEBRUARY 25, 2002

**FIRST AMENDED COUNTERCLAIM  
OF SOUNDVIEW PARTNERS**

**COUNT ONE (Against Neato):**

1. On May 29, 2001, plaintiff Neato, LLC now known as “NTO, LLC” (“Neato”) commenced the above-captioned action. Prior to its sale to Fellowes Manufacturing as further alleged herein, Neato formerly manufactured, distributed and licensed devices, software and media for the application of labels on CD’s and CD packages throughout the world. Neato claims that it is a limited liability company with a principal place of business in East Haven, Connecticut.

2. Defendant, Soundview Partners (“Soundview”) is a named defendant in the above-captioned action. Defendant is a partnership between Harvey Thomas and Stuart Benton with a principal place of business in New York, New York. Soundview acquires or invests in business enterprises, manages those enterprises, and, generally, resells those enterprises for a profit.

3. Peter Tracy (“Tracy”) is an individual residing at 170 Barker Hill Drive, in Guilford, Connecticut and was the principal officer and owner of Neato. Tracy has been named

by Neato as having a personal interest in this action.

4. On or about October 13, 2000, Neato and Soundview entered into a letter agreement (“the Agreement”) whereby Soundview agreed to purchase Neato’s assets and business for a net total price (less adjustments) of approximately Seventeen Million Dollars (\$17,000,000.00). (A copy of the Agreement is attached hereto as Exhibit A).

5. The Agreement was subject to a number of conditions, including a pre-existing right of first refusal by a licensee of Neato’s products, Fellowes Manufacturing (“Fellowes”). The Agreement required Neato to pay Soundview a \$500,000.00 Breakup Fee in the event that Fellowes exercised its rights to purchase Neato.

6. On or about February 12, 2001, Neato and Soundview executed an amendment to the Agreement (“the Amendment”) that required Soundview to pay Neato a good faith deposit of \$50,000. The Amendment provided that Soundview would be entitled to a return of the deposit in the event that Neato refused to consummate the sale or breached the Agreement, or if Fellowes exercised its first refusal right.

7. Tracy immediately terminated the Agreement as a result of learning that Fellowes was making an offer to purchase Neato pursuant to Fellowes’ first refusal right.

8. In the Complaint, Neato seeks a declaration that it did not breach the Agreement and is, therefore, entitled to retain Soundview’s good faith deposit. To the contrary, Soundview claims that Neato breached the Agreement upon learning that Fellowes was submitting a proposal

to purchase Neato.

9. Soundview alleges that Neato not only breached the Agreement, but that Neato and Tracy schemed to intentionally and wrongfully deprive Soundview of its deposit. Additionally, the Counterclaim seeks the \$500,000.00 Breakup Fee to which Soundview is entitled by virtue of Fellowes' exercise of its first refusal right and by virtue of its eventual purchase of Neato's business. Tracy is named as a Third Party Defendant in pleadings currently being filed in this action.

10. Since at least 1999, Tracy actively sought to sell Neato. While Fellowes had expressed an interest in purchasing Neato, Fellowes was only willing to pay between Twelve and Fifteen Million Dollars, less adjustments, an amount that was unacceptable to Tracy.

11. In about early October 2000, Tracy, Thomas and Benton began to discuss the possibility of Soundview purchasing Neato. Tracy stated that Fellowes had a right of first refusal, but that Fellowes was unlikely to exercise its right. Tracy explained that he had courted Fellowes for years and that Fellowes had done nothing to acquire Neato's business. In reliance on Tracy's assurances, Soundview began preparations to purchase Neato's business.

12. On or about October 13, 2000, Neato and Soundview entered into the Agreement. Soundview based its offer on Neato's financial records, as well as on Tracy's representations that Neato had solid worldwide patent protection with no risk of exposure. The Agreement

specifically omitted reference that time was of the essence to close the transaction.

13. Paragraph 5 of the Agreement prohibited Tracy or any member or agent of Neato from initiating or entering into any discussions, negotiations or agreements with any person other than Soundview with respect to any merger, acquisition, joint venture, sale of any interest in, or similar transaction involving, Neato or a substantial portion of Neato's assets ("the No Shop Clause").

14. However, the Agreement recognized that Fellowes' license agreement required Neato to provide Fellowes with written notice of Soundview's offer, and allowed Neato to do so.

15. Specifically, the Agreement provided that Neato would give Fellowes written notice of Soundview's acquisition offer as required by Fellowes' license agreement. Neato would pay Soundview a \$500,000.00 Breakup Fee if Fellowes exercised its rights to purchase Neato.

16. The parties intended the Breakup Fee to compensate Soundview for its time and expense in pursuing the Agreement in the event that Fellowes ultimately exercised its right of first refusal. Tracy believed that a third party offer to purchase Neato would invite renewed interest by Fellowes and that an agreement to pay a Breakup Fee was necessary to get this third party offer. Additionally, the Breakup Fee would compensate Soundview if Soundview's offer acted as a trigger for Fellowes to finally commit to purchase Neato.

17. Neato notified Fellowes of Soundview's offer and provided Fellowes with a copy

of the Agreement , as required by Fellowes' licensing agreement.

18. By November, Fellowes indicated its lack of interest in exercising its right of first refusal.

19. As a result, Tracy became increasingly skeptical about his ability to get Fellowes to purchase Neato. Consequently, Neato and Tracy developed a scheme ("the scheme") to use the Agreement to coax Fellowes to commit to purchase Neato, and to obtain a higher price for Neato than Fellowes had previously discussed, while at the same time avoiding paying Soundview the Breakup Fee. Tracy had a personal interest and involvement in taking every conceivable action, including the scheme, to sell Neato because of his desire and his family's demands that he retire to Florida.

20. Tracy and Neato believed that, in order for the scheme to be successful, Neato needed to (a) maintain Soundview's interest in purchasing Neato until Neato obtained an offer from Fellowes, (b) lead Soundview to believe that Fellowes had no interest in purchasing Neato; and (c) maintain (what Tracy believed to be) the illusion that Soundview could consummate the acquisition by delaying the closing date for the Soundview purchase until Neato was in a position to obtain an offer from Fellowes.

21. In furtherance of the scheme, Neato and Tracy violated their duty of good faith and the No Shop Clause by continually contacting Fellowes to encourage Fellowes to exercise its

right of first refusal, thereby preventing the Agreement from being consummated..

22. Between November, 2000 and December, 2000, without notice to Soundview, Tracy repeatedly called and e-mailed Peter Fellowes with inquiries and information regarding Neato's former business in an attempt to generate interest in Fellowes' purchase of Neato's former business.

23. Between November, 2000 and December, 2000, Tracy also instructed his business subordinate at Neato, Patricia Cecchi, to provide Fellowes with information regarding the Agreement, information regarding Neato's former business, including its financials and business projections, and information about the pending acquisition by Soundview. Tracy expressly instructed Cecchi not to disclose his or her dealings with Fellowes to Soundview under the guise that it was "none of their business".

24. During this time, also in furtherance of the scheme, Tracy and Neato did not inform Soundview that it was contacting Fellowes to encourage Fellowes' purchase of Neato. To the contrary, Tracy assured Soundview that Fellowes was not interested in purchasing Neato. Additionally, during this time, Tracy failed to inform Soundview of his doubts regarding Soundview's ability to obtain financing to purchase Neato's former business. Instead, Neato led Soundview to believe that Neato had confidence in the parties' ability to finalize the purchase by actively negotiating the documents necessary for the purchase.

25. In December, when Fellowes had not yet offered to purchase Neato, Neato orally agreed to extend the deadlines in the Agreement.

26. Between December 18, 2000 and January, 2001, Neato and Soundview drafted, reviewed and negotiated various versions of a purchase agreement. During this time, in furtherance of the scheme, and in an effort to further delay the closing date, Tracy requested that Soundview convert the structure of the acquisition from an asset purchase to a merger transaction.

27. On February 14, 2001, the parties executed an amendment to the Agreement that provided, among other things, that:

- a. The parties would work in good faith to execute definitive agreements;
- b. The parties would restructure the transaction as a merger;
- c. The parties would execute a purchase agreement before March 14, 2001 and close on May 14, 2001; and
- d. Soundview would deposit the sum of \$50,000.00 as a good faith deposit towards the purchase price. Neato would refund the deposit if: (i) Neato refused to consummate the transaction or breached the Agreement; (ii) Neato defaulted under the definitive agreements; (iii) there was a material adverse change in operations, financial results or position of Neato; or (iv) Fellowes exercised its rights to purchase Neato, in which event Soundview would also be entitled to the

Breakup Fee of \$500,000.00.

The amendment did not provide that time was of the essence.

28. Soundview proceeded to perform as called for in the amended Agreement by negotiating new documentation, revising existing documentation, meeting with lending institutions, and otherwise engaging in efforts necessary to consummate the sale.

29. However, unbeknownst to Soundview, Neato continued to initiate discussions and contacts designed to entice Fellowes to purchase Neato's former business. Neato's conduct included:

- a. On February 15, 2001, Tracy conversed with Peter Fellowes to discuss Fellowes' purchase of Neato;
- b. On February 16, 2001, Tracy again instructed Cecchi to contact Fellowes and provide it with consolidated balance sheets, profit and loss statements, and the year-end audit, although Fellowes never requested this information. Cecchi followed Tracy's instructions and provided Fellowes with worksheets regarding Neato's former business;
- c. Between February 21, 2001 and February 26, 2001, Tracy and Cecchi repeatedly contacted Fellowes in an effort to further entice Fellowes to purchase Neato's former business;

d. Tracy also allowed representatives of Fellowes to visit various Neato operations and to review Neato's financial books and marketing records of Neato's former business.

30. Neither Neato nor Tracy informed Soundview that Tracy had encouraged Fellowes to exercise its right of first refusal.

31. To the contrary, Tracy and Neato continually assured Soundview during this time that Fellowes had no interest in purchasing Neato's business and that he did not foresee any obstacles to Soundview's acquisition of Neato's former business.

32. On February 26, 2001, Fellowes notified Tracy and Neato that Fellowes might offer to buy Neato's business at a value materially similar to Soundview's offer, as set forth in the Agreement. Fellowes also made arrangements to visit Neato's operations in Connecticut and London.

33. In furtherance of the scheme, and in order to avoid paying the Breakup Fee or returning Soundview's deposit, Tracy and Neato failed to notify Soundview of Fellowes' pending offer and failed to attempt to finalize the Agreement with Soundview before the March 14, 2000 deadline.

34. On February 27, 2001, Neato claimed that it wanted to change the deal with Soundview again, and sought a restructuring of the transaction as a purchase of a limited liability

company rather than a merger or asset sale, causing the parties to undertake a new set of discussions, negotiations, and document preparation. Neato did not indicate that time was of the essence nor advise Soundview of the continuing discussions with Fellowes. Instead, Neato led Soundview to believe that the parties were continuing to proceed toward a definitive agreement even though, by this date, it was apparent that the parties would not be able to finalize the documents by the March 14, 2001 execution date. Neato and Tracy continued to hide their knowledge that Fellowes was preparing a proposal to purchase Neato.

35. On March 9, 2001, Soundview contacted Tracy at Neato, who indicated that he believed Fellowes lacked interest in purchasing Neato. Tracy and Neato realized that, if Soundview discovered that Fellowes was planning to make an offer to Neato, Soundview might back out of the negotiations. Tracy and Neato were concerned that, if Soundview backed out of the negotiations, Fellowes would not be motivated to make an offer to purchase Neato, or that Fellowes may offer a lower price for Neato's business.

36. On March 14, 2001, Neato was continuing to draft, redraft, and comment on the documents for Soundview's purchase of Neato. Neato and Tracy did not indicate to Soundview that (a) time was of the essence; (b) it would consider Soundview in breach of the amended Agreement if the parties did not execute the purchase agreement on March 14, 2001; or (c) that Fellowes was going to purchase Neato.

37. Indeed, Neato's attorneys continued to finalize the documents and, around 4:00 p.m. on March 16, 2001, they notified Soundview that Neato considered many of the documents such as the Escrow Agreement and Disclosure Schedule to be in final form and ready for signature. Neato's attorneys notified Soundview that other documents, such as the Purchase Agreement, Employment Agreement, Consulting Agreement, Subscription and Stockholders' Agreement, had been reviewed and revised. Neato indicated that the parties only needed to continue discussions to resolve some incidental issues in some of the underlying documents.

38. However, in the mid afternoon of March 16, 2001, Cecchi had advised Tracy that Fellowes notified her that it would submit a formal offer to purchase Neato. Consequently, at 5:45 p.m. on March 16, 2001, Neato and Tracy notified Soundview that Neato was terminating the Agreement claiming that Soundview had breached its obligations. Tracy failed to notify Soundview that the real reason for not continuing the Agreement was the fact that Fellowes was making an offer to purchase Neato, triggering the Breakup Fee.

39. Immediately following Neato's notice of termination, Tracy had communications with both Benton and Thomas reiterating his claim that Soundview had not complied with the February Agreement and he no longer wanted to talk with them; he did not mention that he expected to receive a proposal from Fellowes in either of these telephone calls. The following Tuesday, Fellowes made its offer to purchase Neato for a net total purchase price (less

adjustments) of Seventeen Million Dollars (\$17,000,000.00), approximately the same price that Soundview had offered. Thereafter, Neato and Fellowes continued to negotiate Fellowes' purchase of Neato. Neato failed to notify Soundview of Fellowes' offer and intended purchase.

40. On April 2, 2001, Neato and Fellowes entered into a Letter of Understanding regarding Fellowes' purchase of Neato. Neato failed to inform Soundview of this fact or pay a breakup fee.

41. On April 20, 2001, Neato filed the above-captioned action, seeking a declaratory judgment that Neato did not breach the Agreement and that it was entitled to retain Soundview's \$50,000.00 good faith deposit.

42. On September 7, 2001, Neato closed on the sale to Fellowes and Tracy failed to disclose the sale to Soundview, pay the Breakup Fee or refund Soundview's deposit.

43. At all relevant times, Soundview substantially fulfilled its obligations under the Agreement and amendment thereto.

44. As set forth above, Neato's actions were in breach of its obligations under the Agreement and amendment thereto, which has caused harm to Soundview, including, but not limited to, the loss of the deposit of \$50,000.00, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, and the expenses that Soundview incurred in pursuing the Agreement and amendment thereto.

**COUNT TWO (Against Neato):**

1-44: Soundview hereby incorporates paragraphs 1 through 44 of Count One as paragraphs 1 through 44 of this Count Two as though more fully set forth herein.

45. The Agreement and amendment thereto provided a duty to engage in good faith negotiations between Soundview and Neato.

46. Soundview's acquisition of Neato was a commercial opportunity in which Soundview had a tangible expectancy. Soundview relied upon the duty assumed by Neato under the Agreement to act in good faith and in the best interest of the parties to the acquisition, including the No Shop Clause.

47. Neato had superior knowledge about Fellowes and Fellowes' right of first refusal and the course of dealing between Neato and Fellowes. Neato gained a superiority of influence over Soundview, the Neato acquisition and over the financial terms of the sale by virtue of its knowledge of Soundview's acquisition plans, Fellowes' competing interests, and Neato's own dealings and disclosures to Fellowes.

48. Neato usurped Soundview's opportunity to acquire Neato and breached its fiduciary duty to Soundview by the conduct described above.

49. As a result of Neato's breach of its duty of good faith and fair dealing, Soundview has suffered damages.

**COUNT THREE (Against Neato):**

1-49: Soundview hereby incorporates paragraphs 1 through 49 of Count Two as paragraphs 1 through 49 of this Count Three as though more fully set forth herein.

50. Soundview provided Neato and Tracy a substantial deposit for the purchase of Neato, and was entitled to the return of the deposit, and a Breakup Fee, upon Fellowes' acquisition of Neato.

51. Neato and Tracy were aware at all times material hereto that Soundview expected, would demand, and had demanded, the return of the deposit and the \$500,000.00 Breakup Fee as provided in the Agreement.

52. By inducing Fellowes to offer to purchase Neato and by hiding Fellowes' interest and the resulting sale of Neato to Fellowes, by using Soundview as a stalking horse in order to induce Fellowes to purchase Neato, and to pay a substantially higher price than Fellowes had previously indicated it would be willing to pay, by misappropriating Soundview's \$50,000.00 deposit and refusing to pay Soundview the \$500,000.00 Breakup Fee, Neato and Tracy were unjustly enriched to Soundview's detriment.

53. As a result of the foregoing, Soundview has suffered and will continue to suffer damages including, but not limited to, its expenses, lost profits, the deposit and Breakup Fee. Soundview also seeks the disgorgement of the additional value received by Tracy and Neato from

Fellowes.

**COUNT FOUR (Against Neato):**

1-53. Soundview hereby incorporates paragraphs 1 through 53 of Count Three as paragraphs 1 through 53 of this Count Four as if more fully alleged herein.

54. As more specifically described above, Neato and Tracy made misrepresentations and omissions of material facts including that Neato would work in good faith to consummate Soundview's purchase of Neato; that Neato and Tracy would not shop the sale of Neato, that Fellowes was not interested in purchasing Neato, that Neato would disclose any interest that Fellowes expressed in purchasing Neato, and that Neato would pay Soundview a \$500,000.00 Breakup Fee and return Soundview's \$50,000.00 deposit in the event that Fellowes purchased Neato.

55. Neato and Tracy made the foregoing representations and omissions in order to induce Soundview to enter the Agreement and amendment thereto, to induce Soundview to continue to engage in negotiations for the purchase of Neato and to otherwise perform under the Agreement, and to induce Soundview to pay Neato a substantial deposit toward the acquisition of Neato.

56. As more specifically described above, the representations were false in that Neato knew that it would, and was, undermining Soundview's ability to purchase Neato by shopping

Neato to Fellowes and delaying the consummation of the acquisition by Soundview in order to allow Fellowes to purchase Neato and avoid paying Soundview the Breakup Fee and refunding Soundview's deposit. As more specifically described herein, Neato and Tracy's omissions, including the failure to disclose their communications with Fellowes and Fellowes' interest and intent to purchase Neato, were material to Soundview's continued participation in the planned acquisition of Neato.

57. Soundview relied upon Neato's and Tracy's misrepresentations and omissions of material fact in entering the Agreement and amendment thereto, continuing to engage in negotiations for the purchase of Neato and otherwise performing under the Agreement

58. Neato and Tracy failed to exercise reasonable care in making the representations and omissions of material fact.

59. Neato's and Tracy's misrepresentations and omissions were innocent misrepresentations, made without intent to deceive.

60. As a direct and proximate result of the innocent misrepresentations and omissions of Neato, Soundview has suffered damages, including, but not limited to, the loss of the \$50,000.00 deposit, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, as well as the expenses associated with pursuing the acquisition of Neato and performing under the Agreement and amendment thereto.

**COUNT FIVE (Against Neato):**

1-60. Soundview hereby incorporates paragraphs 1 through 60 of Count Four as paragraphs 1 through 60 of this Count Five as if more fully alleged herein.

61. Neato and Tracy had a duty to make true, accurate, and complete representations to Soundview, to protect Soundview's interest and investments in the purchase of Neato, and not to use Soundview's interests and investment to continually shop Neato to Fellowes once Fellowes indicated that it was not interested. Additionally, Neato had a duty to disclose to Soundview the competing interest of Fellowes and the existence of indications of interest, offers and agreements involving the purchase of Neato.

62. Neato and Tracy were negligent in performing their duties as described above, and were negligent in making the misrepresentations and omissions described in Count Four above.

63. As a direct and proximate result of Neato's negligent misrepresentations, Soundview has suffered damages, including, but not limited to, the loss of the \$50,000.00 deposit, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, as well as the expenses associated with pursuing the acquisition of Neato and performing under the Agreement and amendment thereto.

**COUNT SIX (Against Neato):**

1-63. Soundview hereby incorporates paragraphs 1 through 63 of Count Five as

paragraphs 1 through 63 of this Count Six as if more fully alleged herein.

64. Neato and Tracy intentionally perpetrated the scheme as set forth above that was designed to willfully, wantonly and maliciously induce and/or deceive and mislead Soundview. The scheme by Neato and Tracy was not prompted by an honest mistake as to Neato's rights and duties under the Agreement. Rather, it was prompted by Tracy's personal desire to sell Neato without paying the Breakup Fee or returning Soundview's deposit.

65. As a direct and proximate result of Neato's intentional misrepresentations, Soundview has suffered damages, including, but not limited to, the loss of the \$50,000.00 deposit, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, as well as the expenses associated with pursuing the acquisition of Neato and performing under the Agreement and amendment thereto. Soundview also seeks the disgorgement of the additional value that Tracy and Neato received from Fellowes.

**COUNT SEVEN (Against Neato):**

1-65. Soundview hereby incorporates paragraphs 1 through 65 of Count Six as paragraphs 1 through 65 of this Count Seven as if more fully alleged herein.

66. Neato and Tracy's deceptions as set forth above were in bad faith and were intended to defraud Soundview out of its \$50,000.00 deposit and the \$500,000.00 Breakup Fee. Through the scheme, Neato and Tracy intended to sell Neato to Fellowes at more favorable terms

than Neato had been able to negotiate without Soundview's offer to purchase Neato.

67. As a direct and proximate result of this fraud by Neato, Soundview has suffered damages, including, but not limited to, the loss of the \$50,000.00 deposit, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, as well as the expenses associated with pursuing the acquisition of Neato and performing under the Agreement and amendment thereto. Soundview also seeks the disgorgement of the additional value that Neato received from Fellowes.

**COUNT EIGHT (Against Neato):**

1-67. Soundview hereby incorporates paragraphs 1 through 67 of Count Seven as paragraphs 1 through 67 of this Count Eight as if more fully alleged herein.

68. Neato was bound to act in good faith and deal fairly with Soundview in undertaking the obligations set forth in the Agreement and amendment thereto both by virtue of the implied covenant of good faith and fair dealing inherent in the Agreement and amendment and the express terms of the Agreement and amendment.

69. As set forth above, Soundview reasonably expected to receive certain benefits under the Agreement, including but not limited to the Breakup Fee, the return of its deposit and the opportunity to profit by the purchase of Neato. By the conduct and acts described above, including, but not limited to, the failure to pay Soundview the Breakup Fee and return its deposit,

Neato acted in bad faith and injured Soundview.

70. As a result of the above, Neato breached the implied covenant of good faith and fair dealing and Soundview has suffered damages, including, but not limited to, the loss of the \$50,000.00 deposit, loss of the \$500,000.00 Breakup Fee, the loss of a business opportunity and the profits associated therewith, as well as the expenses associated with pursuing the acquisition of Neato and performing under the Agreement and amendment thereto.

**COUNT NINE (Against Neato):**

1-70. Soundview hereby incorporates paragraphs 1 through 70 of Count Eight as paragraphs 1 through 70 of this Count Nine as if more fully alleged herein.

71. Neato was engaged in trade and commerce in the State of Connecticut. Tracy was a purchaser and seller of businesses, including, but not limited to, Neato, in the State of Connecticut.

72. As set forth above, Neato and Tracy repeatedly, recklessly, willfully and wantonly deceived Soundview and Fellowes, and misused Soundview's interest and trust.

73. At all times referenced herein, Neato and Tracy engaged in a repeated pattern and practice of deceptive, unscrupulous, unethical, immoral and illegal practices, as described above, which violated the public policies of the State of Connecticut and C.G.S. § 42-110b, *et seq.*

74. The above-identified patterns and practices of Neato and Tracy were designed to

enrich Neato and Tracy at the expense of Soundview and to take advantage of Soundview in order to induce Fellowes to purchase Neato and to avoid the obligation to pay the Breakup Fee and refund Soundview's deposit, in repeated breach of Neato's fiduciary duty.

75. As a direct result of Neato's acts, deceptions, false representations, omissions, misuse of information and breaches of duty, Soundview has sustained monetary damages including, but not limited to, its expenses, attorney's fees, lost profits, Breakup Fee and deposit.

WHEREFORE, Soundview claims:

1. Money Damages;
2. Interest;
3. Punitive Damages;
4. Punitive Damages pursuant to C.G.S. § 42-110g *et seq.*;
5. Attorneys' Fees;
6. Attorneys' Fees pursuant to C.G.S. § 42-110g *et seq.*; and
7. Any other relief in equity or law that the Court deems just and proper.

COUNTERCLAIM PLAINTIFF,  
SOUNDVIEW PARTNERS

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above was mailed on February 25, 2002, via regular U.S. Mail, postage prepaid, to all counsel and pro se parties of record:

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Eliot B. Gersten

Exhibit A - Letter Agreement dated October 13, 200