

No. 64813-6

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

HQ SUSTAINABLE MARITIME MARKETING, INC. and
HQ SUSTAINABLE MARITIME INDUSTRIES, INC.

Plaintiffs/Appellants,

v.

PACIFIC SUPREME SEAFOODS, LLC and ELITE SEAFOOD, LTD.,

Defendants/Respondents.

BRIEF OF APPELLANTS

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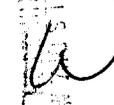
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I. INTRODUCTION

HQ Sustainable Maritime Marketing, Inc. (“HQ Marketing”) and HQ Sustainable Maritime Industries (“HQ Industries”) respectfully request this Court reverse the December 4, 2009 order granting summary judgment to the plaintiffs, Pacific Supreme Seafoods, LLC and Elite Seafood Ltd (“Pacific Supreme”) because whether Trond Ringstad performed under his contract with HQ Marketing is a genuine issue of material fact. HQ Industries respectfully requests this Court reverse the January 14, 2010 order denying its motion to vacate the order and judgment as to HQ Industries, not HQ Marketing.

II. ISSUES

1. Did the trial court err by granting summary judgment on a breach of contract claim where the parties’ dispute whether one party performed under the contract and the court’s interpretation of the contract would make it illusory?

2. Where the parent company has denied liability and the record does not reflect any evidence or argument related to the parent’s liability for the acts of its subsidiary, did the trial court abuse its discretion by refusing to vacate the judgment and order against the parent company?

III. STATEMENT OF FACTS

This is a breach of contract claim. CP 1-4. HQ Marketing sells tilapia farmed by its parent company/owner, HQ Industries. CP 75. The fish are farmed in China and sold primarily in the west. *Id.* HQ Marketing hired Trond Ringstad, former executive/owner of Pacific

Supreme Seafoods, LLC to sell \$15 million worth of tilapia annually.

Norbert Sporns is HQ Marketing's chief executive officer. CP 68.

A. Mr. Ringstad Claimed He Had a Multi-Million Dollar Seafood Sales Network.

During negotiations with HQ Marketing, Mr. Ringstad represented he had built Pacific Supreme into a multi-million dollar seafood trading business. CP 76. According to Mr. Ringstad, he “invested significant time, money, and energy into developing relationships and goodwill with [his] customers” and “developed significant knowledge of the seafood sales industry and a valuable sales reputation[.]” CP 21-22. When Mr. Ringstad signed the contract with HQ Marketing, he supposedly brought “clients and a sales network which spans the United States and extends throughout the world[.]” CP 81. *See also* CP 76, 94.

Mr. Ringstad represented that he had the experience, connections, industry knowledge, relationships, customer loyalty and sales network that would enable him to sell \$15 million dollars of fish for HQ Marketing per year. CP 69.

Based on Mr. Ringstad's representations, HQ Marketing not only hired him as Executive Vice President-Sales and Distribution, but also separately purchased his goodwill. CP 81-95. The Employment Agreement (“Agreement”), structured as an earn-out or commission,

anticipated Mr. Ringstad would sell \$15 million dollars worth of fish his first year at HQ Marketing:

6. Compensation.

a. Base Salary. During the term of this Agreement, the Company shall pay, and the Executive agrees to accept, in consideration for the Executive's services hereunder, *pro rata* bi-weekly payments of the annual salary of US\$150,000.00, less all applicable taxes and other appropriate deductions ("Base Salary"). The Executive's Base Salary is calculated based on sales generated by the Seattle based sales office of the Company for the year immediately following his employment (or *pro rata* portion thereof in the case of a period of less than twelve (12) months) **of no less than USD\$ 15 million.** The Executive agrees and acknowledges that the Base Salary will be adjusted according to the percentage represented by the fraction formed by the sales actually completed during this year period and USD 15 million calculated proportionally at the end of the calendar year.

CP 82.¹

Under Annex A to the Agreement, HQ Marketing agreed to purchase the goodwill Mr. Ringstad possessed from his work at Pacific Supreme for \$500,000 in cash and stock:

WHEREAS, prior commencing to the Effective Date (the "Inception Date"), the

¹ A copy of the Agreement and Annex A are attached in an appendix.

Executive has owned and operated Pacific Supreme Seafoods and built a multi-million dollar seafood trading business, with clients and a sales network which spans the United States and extends throughout the world and has been made aware of the sales objectives of the Company;

....

The Company does hereby purchase from the Executive the Goodwill which he has attached to Pacific Supreme Seafoods and to him personally as well as to any other companies he owns or is associated with which trade in seafood products including without limitation, tilapia, shrimp, Bering Sea Crab, Dungeness Crab, scallops etc., and the executive does hereby consent to sell such Goodwill to the Company for the price of USD 250,000 paid for USD 150,000 at the execution of the present agreement and another USD 100,000 90 days from the execution of these presents as well as the transfer of USD 300,000 payable in shares calculated at 80% of the trading value as of February 24, 2006.

CP 94.

B. No Goodwill Was Ever Delivered, and Mr. Ringstad Knew It.

1. Mr. Ringstad's Sales Were Terrible: \$80,000, Not \$15 Million.

The first six months of his employment, Mr. Ringstad sold no fish.

CP 69. His subsequent performances in 2007, 2008 and 2009 were equally poor.

In 2007, Mr. Ringstad sold no more than \$80,000 worth of fish. CP 69. Most of Mr. Ringstad's orders that year were less than \$10,000. CP 69, 97-98. Some were less than \$1000. *Id.* His largest order for that year—\$25,000—was less than half of HQ Marketing's largest order of \$52,731 for the year. *Id.*

In 2008, Mr. Ringstad's performance continued to lag. Over the course of 12 months, Mr. Ringstad sold a maximum of \$287,273 worth of fish, a total well below the \$15 million expected.² *Id.* In other words, Mr. Ringstad averaged less than \$31,000 in sales per month.

Mr. Ringstad's performance in 2009 nose-dived. During the six months he worked at HQ Marketing, his total sales were \$30,119. CP 69.

2. There Is No Evidence Mr. Ringstad Contacted Former Customers, and the Sales He Made Were to New Customers.

Mr. Ringstad claims he delivered goodwill because he gave HQ Marketing a list of his customers with their pricing information and their sales history, liquidated Pacific Supreme's inventory, and began working for HQ. CP 22.

Mr. Ringstad has not offered one example of where his "goodwill" translated into a sale for HQ Marketing. *Most, if not all, of Mr. Ringstad's sales were to new customers, not prior Pacific Supreme customers.* CP

² We say "maximum of" because the issue of who is responsible for particular orders may be the subject of a good-faith dispute.

69. Mr. Ringstad has offered no evidence of calling prior customers or meeting with prior customers. He's offered no letters or emails written to prior customers informing them of his new company and contact information. There is no evidence Mr. Ringstad ever did anything to capitalize on the relationships, reputation and sales networks inherent to a delivery of goodwill.

After watching Mr. Ringstad's performance, HQ Marketing surmised the goodwill Mr. Ringstad promised to deliver did not exist. CP 79. If it did exist, Mr. Ringstad never delivered it.

3. Mr. Ringstad Knew He Did Not Deliver the Promised Goodwill.

Mr. Ringstad recognized he never delivered any goodwill to HQ Marketing. Mr. Sporns, HQ Marketing's chief executive officer, was the person authorized to approve payments. CP 113-17. Except for one brief conversation with Mr. Sporns, shortly after being hired, Mr. Ringstad never in the three-year period of his employment requested the payments or shares of stock due under Annex A. CP 69, 78.³ Mr. Ringstad was, in fact, happy not to be fired or to have his salary reduced. CP 69.

³ Mr. Ringstad asked HQ Marketing's Chief's Financial Officer, J.P. Dallaire, about the status of payment twice. CP 113-17. Mr. Dallaire told Mr. Ringstad he had to ask Mr. Sporns about it. *Id.*

C. Despite Mr. Ringstad's Lackluster Performance, HQ Marketing Paid Him His Entire Salary.

Despite the fact that Mr. Ringstad did not sell anywhere near \$15 million worth of fish, HQ Marketing continued to pay him \$150,000 per year. It did not reduce his salary, despite its right to do so under paragraph 6, Compensation, of the Agreement. CP 69, 94. However, because HQ Marketing had no indication Mr. Ringstad ever delivered the goodwill he allegedly possessed to the company, it did not pay him the amounts set forth in Annex A. CP 33. Though Mr. Ringstad would have received \$500,000 worth of compensation had he delivered the goodwill, he assigned his entire right under the Annex as security for a \$160,000 debt to the plaintiffs in this action. CP 69.

D. HQ Industries is HQ Marketing's Parent Corporation, Not Its Alter Ego.

After Mr. Ringstad assigned his rights under Annex A to Pacific Supreme, it filed this action on July 7, 2008. Mr. Ringstad's Agreement was with HQ Marketing, but the plaintiffs named HQ Marketing and its parent corporation, HQ Industries, as defendants CP 1, 39, 489. Pacific Supreme alleged they were "alter egos of one another." CP 1. Both defendants answered, expressly denying they were alter egos. CP 5. Three weeks after the action was filed, counsel for HQ Marketing and HQ

Industries wrote to Pacific Supreme's counsel and again expressly disputed the companies were alter egos:

Finally, the Complaint at paragraph 3 on page 1 asserts that HQ Sustainable Maritime Marketing, Inc. and HQ Sustainable Maritime Industries, Inc. are alter egos of one another. We understand the liberal pleading rules, but would be amazed if your clients had any information from which one could fairly conclude that this point could be proven.

CP 494.

HQ Industries is a Delaware corporation. CP 254, 329. HQ Marketing is a New York corporation. CP 1, 5, 8. No discovery occurred that would establish a basis for arguing HQ Industries should be held liable for the alleged breach of the agreement between HQ Marketing and Mr. Ringstad. CP 490.

On November 9, 2009, Pacific Supreme moved for summary judgment. CP 11. Although Pacific Supreme sought judgment against both HQ Marketing and HQ Industries, it offered no briefing explaining why the parent, HQ Industries, should be held liable for any breach by its subsidiary, HQ Marketing. CP 11-20. Defense counsel responded on behalf of HQ Marketing. CP 54-67. Besides mentioning in passing that HQ Industries owns HQ Marketing, the response brief did not present any facts or argument addressing whether the parent, HQ Industries, could be

held liable for its subsidiary HQ Marketing's alleged breach. *Id.*⁴ In reply, Pacific Supreme again presented no argument addressing whether HQ Industries could be held liable for the alleged actions of HQ Marketing. CP 99-108. The brief addressed HQ Industries only for a single reason: it presented statements from HQ Industries' stock prospectus and Securities and Exchange Commission 10-K forms that Mr. Ringstad had been paid as evidence of HQ Marketing's breach. *Id.*

The prospectus and 10-K forms presented the consolidated financials of HQ Industries and all of its subsidiaries, as required by law. *See* Statement of Financial Accounting Standards No. 94, Financial Accounting Standards Board 1987. HQ Industries expressly explained the consolidated nature of the statement on the first page of its prospectus:

In this prospectus, when we use phrases such as "we," "us," "our," "HQSM," or "our company," we are referring to HQ Sustainable Maritime Industries, Inc. and all of its subsidiaries and affiliated companies as a whole, unless it is clear from the context that any of these terms refer only to HQ Sustainable Maritime Industries, Inc.

CP 124. It made the same express statement in its 10-K filings. CP 256, 332.

⁴ As explained below, Pacific Supreme would have to present evidence and argument justifying piercing the corporate veil to establish liability of the parent corporation. CP 490.

At one hour of oral argument on December 4, 2009, no issue, legal or factual, with respect to the parent/subsidiary relationship was ever raised. CP 490. Discussion about the stock prospectus and 10-K focused on the issue raised in Pacific Supreme's reply brief—why the documents stated Mr. Ringstad had been paid for goodwill. CP 102-03. At the end of oral argument, the court granted summary judgment in favor of Pacific Supreme. An order was entered. CP 490. The order does not specify whether it applies to HQ Industries and HQ Marketing, or just HQ Marketing. *Id.*

E. Preparing the Judgment Was Unusually Complicated and Focused on The Value of the Stock Options.

Counsel for Pacific Supreme and HQ Marketing thereafter spent several days discussing the treatment of interest in Pacific Supreme's proposed judgment. CP 490, 542. The issue was more complicated than usual because part of Mr. Ringstad's compensation under Annex A was shares of HQ Industries' stock at their 2006 value. CP 490, 543, 545-46.

On December 17, 2009, when Jeffrey Tilden, counsel for defendants received a proposed form of judgment from counsel for plaintiffs, Robert Green, he was out of town and working by e-mail/Blackberry. CP 475. Mr. Tilden confirmed that the numbers on the form were correct and instructed his associate that she or Mr. Green could

sign on his behalf. *Id.* When Mr. Tilden reviewed a copy of the judgment on December 24, 2009, he realized judgment was entered mistakenly against both HQ Industries and HQ Marketing, instead of just HQ Marketing. CP 491. Mr. Tilden did not have authority to confess judgment on behalf of HQ Industries. CP 491.

HQ Industries promptly moved to vacate the order and judgment under CR 60.⁵ CP 473-483. The court denied HQ Industries' motion. CP 556.

IV. ARGUMENT

A. **The Standard of Review is *De Novo*. New York Law Governs This Dispute.**

The contract provides New York law governs this breach of contract dispute:

All issues and disputes concerning, relating to or arising out of this Agreement and From the Executive's employment by the Company, including, without limitation, the construction and interpretation of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York[.]

Below, the parties did not dispute that New York law controls the substantive issues in this case.⁶

⁵ HQ Industries does not concede the order granting summary judgment expressly applies to it. It moved to vacate both, with respect to HQ Industries only, because the order is unclear.

Review of an order granting summary judgment is procedural. Consequently, Washington law provides the standard of review. This Court reviews a grant of summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 429, 38 P.3d 322, 327 (2002). Summary judgment is appropriate where “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” CR 56(c).⁷

B. To Show Breach, Mr. Ringstad Must Prove He Performed.

Under New York law, a plaintiff must establish all of the following four elements to show breach of contract: “(1) formation of a contract between plaintiff and defendant; (2) *performance by plaintiff*; (3) defendant’s failure to perform; and (4) resulting damage.” *Hermandad Y*

⁶ Even if the parties disputed this issue, New York law would govern: Washington enforces contract choice of law provisions unless three conditions are met: (1) without the provision, Washington law would apply; (2) the chosen state’s law violates a fundamental public policy of Washington; and (3) Washington’s interest in the determination of the issue materially outweighs the chosen state’s interest. *McKee v. AT&T Corp.*, 164 Wn.2d 372, 384, 191 P.3d 845 (2008). Here, no applicable New York law violates a fundamental public policy of Washington, and Washington’s interest does not materially outweigh New York’s interest.

⁷ Regardless, New York applies the same standard reviewing orders of summary judgment as Washington. *E.g., Wedgewood Care Center, Inc. v. Sassouni*, 891 N.Y.S.2d 434, 436 (2009).

Asociados, Inc. v. Movimiento Misionero Mundial, Inc., 880 N.Y.S.2d 873, 873 (2009) (italics supplied); *see also Hecht v Components Int'l, Inc.*, 867 N.Y.S.2d 889, 895 (2008). If fact issues regarding the adequacy of plaintiff's performance exist, the plaintiff is not entitled to summary judgment. *Breeze Nat'l, Inc. v. CATI, Inc.*, 738 N.Y.S.2d 851, 851 (2002).

C. The Definition of "Goodwill" is A Question of Law. Whether Mr. Ringstad Performed Is A Question of Fact.

Pacific Supreme characterized its breach of contract claim as suitable for summary judgment because it "solely involves interpreting the phrase 'at the execution of the present agreement[.]'" CP 16. Pacific Supreme argued HQ Marketing purchased the "expectancy" or "probability" that Mr. Ringstad's former clients would purchase fish from HQ Marketing. According to Pacific Supreme, the day Mr. Ringstad signed the agreement, the agreement was "executed," and HQ Marketing owed him \$150,000 and another \$100,000 90 days later. CP 17, 19.

Pacific Supreme's characterization of the issues was too limited. The trial court needed to determine 1) what the parties intended by the term "goodwill;" and 2) whether Mr. Ringstad delivered such goodwill. The first is a question of law. The second is a question of fact.

D. Goodwill is More Than Customer Lists.

The interpretation of a contract is a matter of law for the court. *1550 Fifth Ave. Bay Shore, LLC v. 1550 Fifth Ave., LLC*, 748 N.Y.S.2d 601, 603 (2002). Goodwill is “the element of value which inheres in the fixed and favorable consideration of customers arising from an established and well-known and well-conducted business.” *Castelli v. Tolibia*, 83 N.Y.S.2d 554, 564 (1948). It is the “advantage or benefit” a business derives from “constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.” *Dawson v. White & Case*, 88 N.Y.S.2d 666, 671 n.2 (1996). In other words, goodwill is “all the good disposition which a business’s customers entertain towards its and which induces them to deal with it.” *Robert’s Service Station, Inc. v. Narula*, 601 N.Y.S.2d 960, 961 (1993) (quoting 62 N.Y. Jur.2d, *Good Will*, § 1).

A customer list alone is not goodwill:

Good will and customer lists are separate assets of a business, and thus the contractual obligation to transfer the service station’s good will did not encompass a requirement to compile a customer list for the defendant’s benefit.

Robert's Service Station, Inc., 601 N.Y.S.2d at 961. When a business purchases goodwill, it is purchasing a "substantial client base" and the "probability of repeat patronage." *Raskopf v. Raskopf*, 167 Misc.2d 1017, 1021, 641 N.Y.2d 993 (1996).

In the case of salespeople, the goodwill is not just the customer names and contact information. It is the salesperson's longstanding relationships that will result in future sales:

It has long been recognized that good will may sometimes attach to an employee who maintains distinctly personal or professional relationships with customers[.]

P.A. Building Co. v. Elwyn D. Lieberman, Inc., 642 N.Y.S.2d 300, 301 (1996).

Transfer of goodwill, when it is attached to salesperson, must include a component of capitalizing on personal relationships with customers.

E. Mr. Ringstad Did Not Perform. In the Very Least, His Performance Is a Genuine Issue of Material Fact.

Under New York law, Mr. Ringstad must prove he delivered the goodwill to establish breach of contract.

HQ Marketing presented the following evidence of Mr. Ringstad's failure to deliver goodwill:

- Mr. Ringstad misrepresented the scope, size, value and depth of his sales network. CP 69;
- Between 2007 and 2009, Mr. Ringstad's sales ranged from \$30,119 to \$287,273, millions below the promised \$15 million. *Id.*;
- The sales he made were to new customers, not customers of his former business, Pacific Supreme. *Id.*;
- Mr. Ringstad asked Mr. Sporns, the person with the authority to approve payments, for the goodwill payment only one time. *Id.*;
- Mr. Ringstad assigned the entire goodwill payment, worth \$500,000, as security for a \$160,000 debt. *Id.*

Pacific Supreme argued Mr. Ringstad delivered his goodwill because he gave HQ contact information, pricing information and sales history for 48 customers, liquidated Pacific Supreme's inventory, and only worked for HQ Marketing. CP 22. But HQ Marketing had hired Mr. Ringstad as an employee, and the Employment Agreement, without Annex A, contained a broad non-compete requirement. CP 81-82. Paragraphs two and three of the Agreement required Mr. Ringstad to "devote substantially all of his working time, skill, energy and best business efforts" to HQ Marketing, and prohibited him from "render[ing] any services to any other person or business...which is in competition with the Company." *Id.* Consequently, the parties' agreement related to goodwill must have required more than Mr. Ringstad working for HQ Marketing

and not competing. Similarly, if the parties had intended merely a transfer of Mr. Ringstad's customer information, the agreement would have so stated.

Nothing in Pacific Supreme's evidence shows Mr. Ringstad did anything to capitalize on the "distinctly personal or professional" relationships he allegedly had with his former customers. For example, there's no evidence Mr. Ringstad contacted his former customers once he worked at HQ Marketing. The record does not contain any emails from Mr. Ringstad to former customers announcing his new position and contact information. There's no evidence he met with his former customers to introduce them to his new company and encourage them purchase fish. Mr. Ringstad never delivered to HQ Marketing an "advantage or benefit" derived from "constant or habitual customers." *Dawson*, 88 N.Y.S.2d at 671 n.2 Taking Mr. Ringstad at his word—that he possessed relationships across the United States that would support a multi-million dollar seafood trading business—there is no evidence that Mr. Ringstad did anything to turn these relationships into sales for HQ Marketing.

Pacific Supreme may argue that Mr. Ringstad's sales numbers are irrelevant to whether he delivered goodwill. Where the goodwill is attached to a salesperson, and there's no evidence that Mr. Ringstad

contacted his former customers, his sales numbers are highly relevant to determining whether he delivered any goodwill. At the very least, the low numbers create an inference in favor of HQ Marketing, the non-moving party below.

Where Mr. Ringstad's sales were abysmal, where those sales were made to new instead of previous customers, and where there is no evidence he tried to capitalize on his relationships to sell to previous customers, the Court erred by ruling as a matter of law that Mr. Ringstad delivered goodwill. Because Mr. Ringstad did not deliver goodwill, he did not perform under Annex A, and he cannot establish breach of contract.

Hermandad Y Asociados, Inc., 880 N.Y.S.2d at 873.

F. Pacific Supreme Wants Mr. Ringstad to Be Paid Without Him Ever Having to Perform. This Position Makes the Contract Illusory.

In its motion for summary judgment, Pacific Supreme argued HQ Marketing breached Annex A because the first goodwill payment was due the date Annex A was signed, and the second was due 90 days thereafter.

CP 19. The language of the agreement appears to support this position:

[T]he executive does hereby consent to sell such Goodwill to the Company for the price of USD 250,000 paid for USD 150,000 at the execution of the present agreement and another USD 100,000 90 days from the execution of these presents...

CP 94. However, this position assumes HQ Marketing had to pay Mr. Ringstad regardless of whether he ever performed. In other words, HQ Marketing agreed to purchase Mr. Ringstad's goodwill and had to pay for it the day the agreement was signed and 90 days later, even if Mr. Ringstad never delivered any goodwill.

The court erred by adopting Pacific Supreme's interpretation of the Annex A, because under that interpretation the agreement lacks a mutual obligation. The mere act of signing and the passage of time oblige HQ Marketing to perform, while nothing obliges Mr. Ringstad to perform. In other words, Mr. Ringstad gets \$150,000 for signing a piece of paper and another \$100,000 for waiting 90 days.

A contract that lacks mutuality of obligation is illusory. *Curtis Props. Corp. v. Greif Cos.*, 628 N.Y.S.2d 628, 632 (1995); *Dorman v. Cohen*, 413 N.Y.S.2d 377, 380 (1979). "[T]he courts will not adopt an interpretation that renders a contract illusory when it is clear that the parties intended to be bound thereby." *Blandford Land Clearing Corp. v. National Union Fire Ins. Co.*, 698 N.Y.S.2d 237, 243 (1999).

To be enforceable, the contract must be interpreted to require Mr. Ringstad's performance. New York law recognizes this fundamental criterion. It requires the plaintiff in *any* breach of contract action to prove he performed. *Hermandad*, 880 N.Y.S.2d at 873.

G. HQ Marketing Did Not Assume the Risk of Mr. Ringstad's Breach.

Pacific Supreme may rely on the Agreement's general disclaimer clause to argue HQ Marketing assumed the risk of Mr. Ringstad's failure to perform. Unlike whether Mr. Ringstad performed his obligation to deliver goodwill, which is a question of fact, the scope of the Agreement's disclaimer clause is a question of law.

1. The Agreement's disclaimer does not excuse breach.

The disclaimer expressly limits the assumption of risk to information the parties relied on "in entering into" the Agreement:

Each party assumes the risk of any
misrepresentation or mistaken understanding
or belief relied upon by him or it *in entering*
into this Agreement.

CP 92 (emphasis added). The clause does not apply to the performance of the parties under the Agreement. The "entering into" phrase reflects the parties' intent to prohibit claims and defenses related to the *formation* of the contract, such as mistake, not claims related to breach. A party cannot assume the risk that the other party will breach the contract. In that event, the contract would become entirely unenforceable. There would be no mutuality of obligation, and the agreement would be illusory. *Curtis Props. Corp.*, 628 N.Y.S.2d at 632 (1995).

Here, Mr. Ringstad failed to perform under the contract. He never delivered the goodwill. The disclaimer clause is inapplicable.

2. New York does not enforce general disclaimer clauses where misrepresentation is a defense.

Even if the disclaimer/assumption of risk clause applied to the parties' performance under the Agreement, which it does not, New York courts do not enforce this type of disclaimer when a party is trying to escape the consequences of its misrepresentations.

Only specific, not general, disclaimer clauses may foreclose a defense based on misrepresentations. *GTE Automatic Electric Inc. v. Martin's Inc.*, 512 N.Y.S.2d 107, 108 (1987); *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 320 (1959) (“the parole evidence rule is not a bar to showing the fraud—either in the inducement or in the execution—despite an omnibus statement that the written instrument embodies the whole agreement, or that no representations have been made”). To be effective, a disclaimer must “in the plainest language” announce and stipulate that the party “is not relying on any representations *as to the very matter as to which it now claims it was defrauded.*” *Danann Realty Corp.*, 5 N.Y.2d at 320 (italics supplied). If parties could induce others to enter into contracts based on their material misrepresentations and then protect themselves from the legal effect of such representations by relying on assumption of

risk clauses, “the implied covenant of good faith and fair dealing existing in every contract would cease to exist.” *Jackson v. State*, 210 A.D. 115, 120 (N.Y. 1924).

For example, in *Danann Realty Corp.*, the disclaimer listed the items to which the disclaimer applied:

The Seller has not made and does not make any representations as to the physical *condition, rents, leases, expenses, operation* or any other matter or thing affecting or related to the aforesaid premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no such representations have been made, and the Purchaser further acknowledges that it has inspected the premises and agrees to take the premises “as is.”

5 N.Y.2d at 320 (italics supplied). Because the disclaimer specifically mentioned “expenses” and “operation,” the buyer could not later allege it was induced to enter the contract because of the defendant’s false representations about a building’s operating expenses. *Id.* at 321.

Here, the disclaimer clause does not list any specific representations upon which the parties relied. It is a general disclaimer that, if enforced, would protect the seller from any and all representations. New York law is clear: these types of disclaimers are unenforceable.

Even specific disclaimers are unenforceable “if the facts allegedly misrepresented are peculiarly within the seller’s knowledge.” *Yurish v.*

Sportini, 123 507 N.Y.S.2d 234, 235 (1986); *Danann*, 5 N.Y.2d at 322 (recognizing and preserving this exception). Mr. Ringstad purported to have a national seafood sales network based on strong personal relationships and customer loyalty. CP 21. The basis for these relationships, such as long-standing personal and professional interactions, was information available only to Mr. Ringstad. In fact, Mr. Ringstad was proud that he “maintained both the confidentiality” of his pricing and his customer account histories until he arrived at HQ Marketing. CP 22.

Because Mr. Ringstad’s performance under Annex A is a genuine issue of material fact, this Court should reverse the trial court’s order granting summary judgment to the plaintiffs.

H. The Order and Judgment Entered Against The Parent, HQ Industries, Should Be Vacated.

HQ Industries requests this Court also reverse the trial court’s order denying its motion to vacate based on Civil Rule 60.

This Court reviews a trial court’s decision on a Civil Rule 60 motion for abuse of discretion. *Vance v. Offices of Thurston County Com’rs*, 117 Wn. App. 660, 671, 71 P.3d 680 (2003). A court abuses its discretion only when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. *Id.* Here, the trial court abused

its discretion by declining to vacate the order and judgment against HQ Industries under both Civil Rule 60(a) or Civil Rule 60(b).

1. The Error Was A Clerical Oversight.

Civil Rule 60(a) authorizes the court to correct errors in orders and judgments:

Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from *oversight* or omission may be corrected by the court at any time of its own initiative or of the motion of any party and after such notice, if any, as the court orders.

(italics added). The rule applies both to errors arising from oversight and errors arising from clerical mistakes. “CR 60(a) permits correction of ‘errors . . . arising from oversight or omission’ as well as correction of ‘clerical mistakes.’” *Entranco Engineers v. Envirodyne, Inc.*, 34 Wn. App. 503, 507 (1983); *In Re Marriage of Getz*, 57 Wn. App. 602, 604, 789 P.2d 331 (1990). The rule is designed to make judicial rulings reflect what happened in court:

Rule 60(a) enables the court to ensure that its orders, judgments, and other parts of its record of proceedings are an accurate reflection of the true actions and intent of the court and the parties.

J.W. Moore, 12 *Moore’s Federal Practice* (3 Ed. 2009) at § 60.02[1].⁸

⁸ The federal version of CR 60(a) is functionally identical to the state rule, although phrased in plainer language.

2. A Mistake Is “Clerical” If It Misrepresents the Court’s Actual Intention

Where the Court makes a substantive error—of law or fact—it can only be corrected by appeal or, if time permits, a motion to reconsider. A correction to reflect the court’s substantive intent can be made at any time. An error that fails to reflect the trial court’s intention as expressed in the record is clerical:

In deciding whether an error is “judicial” or “clerical,” a reviewing court must ask itself whether the judgment, as amended, embodies the trial court’s intention, *as expressed in the record at trial*. . . . If the answer to that question is yes, it logically follows that the error is clerical and that the amended judgment merely corrects language that did not correctly convey the intention of the court, or supplies language that was inadvertently omitted from the original judgment. If the answer to that question is no, however, the error is not clerical, and, therefore, must be judicial.

Presidential Estates Apartment Associates v. Barrett, 129 Wn.2d 320, 326 (1996) (italics added).

[I]f the trial judge signs a decree, through misplaced confidence in the attorney who presents it, or otherwise, which does not represent the court’s intentions in the premises, an error contained therein may be corrected under Rule 60.

In Re Marriage of Getz, 57 Wn. App. at 604 (quoting 4 L. Orland, *Wash. Practice, Rules Practice* § 5712, at 540 (3d Ed. 1983)); *Marchel v. Bunger*, 13 Wn. App. 81, 84 (1975) (additional language in judgment “in no way embodies that which the court intended”).

The application of the corresponding federal rule is the same:

Rule 60(a) applies when the record indicates that the court intended to do one thing but, by virtue of a clerical mistake or oversight, did another. The mistake to be corrected must be clerical or mechanical, because Rule 60(a) does not provide relief from substantive errors in judgment . . . The Seventh Circuit Court of Appeals expressed this idea clearly when it observed that:

If the flaw lies in the translation of the original meaning to the judgment, then Rule 60(a) allows a correction; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.

12 *Moore's* at § 60.11z, quoting *United States v. Griffin*, 782 F.2d 1393, 1396-97 (7th Cir. 1986).

Who made the mistake is irrelevant as long as the pleadings do not reflect the Court's intent. See 12 *Moore's Federal Practice* at 60.10[2]. The rule is not limited to mistakes made by the court or a clerk. See, e.g., *Entranco*, 34 Wn. App. at 504-05. "The language of the rule itself leaves no doubt as to the court's power to correct clerical mistakes in judgments or orders" 12 *Moore's Federal Practice* at 60.10.

3. The Court Has Broad Equitable Powers to Resolve Cases on Their Merits

[T]he Civil Rules contain a preference for deciding cases on their merits rather than on procedural technicalities. . . . CR 60 gives trial courts a broad measure of equitable power to grant parties relief from judgments or orders.

Shaw v. City of Des Moines, 109 Wn. App. 896, 901 (2002).

4. New York Law Has Specific Requirements For Establishing Corporate Alter Egos and Piercing the Corporate Veil.

Pacific Supreme's complaint alleged HQ Industries is HQ Marketing's "alter ego." CP 1. New York law requires a specific evidentiary showing before parents and subsidiaries can be considered alter egos. "For a subsidiary corporation to be considered the alter ego of the parent corporation, there must be direct intervention by the parent in the management of the subsidiary to such an extent that the subsidiary's paraphernalia of incorporation, directors and officers' are completely ignored." *Shelley v. Flow Intern. Corp.*, 283 A.D.2d 958, 960, 724 N.Y.S.2d 244 (2001). The record does not provide any evidence on this issue, and the parties did not argue it below.

The standard for holding a corporate parent liable for the acts of the subsidiary is extremely high:

It is well settled that there must be complete domination and control of a subsidiary before the parent's corporate veil can be pierced. Stock control, interlocking directors and officers, and the like are in and of themselves insufficient. The control must actually be used to commit a wrong against the plaintiff and must be the proximate cause of the plaintiff's loss.

Musman v. Modern Deb, Inc., 50 A.D.2d 761, 762, 377 N.Y.S.2d 17 (1975).⁹ The record is empty of any evidence or argument that would establish a basis for piercing HQ Industries' corporate veil because of HQ Marketing's conduct related to Mr. Ringstad.

Plaintiffs may argue the stock prospectus and 10-K filings are evidence, but that position is not tenable. The consolidated filing is required by law. *See* Statement of Financial Accounting Standards No. 94, Financial Accounting Standards Board 1987.

5. Where There Is No Basis In the Record or Law for Entering An Order or Judgment Against HQ Industries, The Failure to Vacate Them Was An Abuse of Discretion.

The trial court, by refusing to vacate judgment against HQ Industries, was manifestly unreasonable and did not base its decision on tenable grounds. This case is like *Entranco Engineers v. Envirodyne, Inc.*, 34 Wn. App. 503, 662 P.2d 73 (1983). Entranco obtained a default judgment against Envirodyne Industries, the parent, but had served the subsidiary. The allegations of the Complaint made clear the subsidiary

⁹ The standard under Washington law is equally high. In Washington, ignoring the corporate entity requires showing both: (a) intentional disregard of the corporate form to violate or evade a duty; and (b) that disregard of the corporate form must be necessary to prevent an injustice. *See generally Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 645 P.2d 689 (1982); *Morgan v. Burks*, 93 Wn.2d 580, 611 P.2d 751 (1980).

was the intended defendant. The parent corporation did not respond, having no contact with Washington state. 34 Wn. App. at 505-06.

When Entranco realized its error, it moved pursuant to CR 60(a) to have the subsidiary replaced as the defendant in the judgment. The trial court did not believe it had authority to correct the reference to the parties and declined to do so. The Court of Appeals reversed:

[T]he commissioner *intended* to enter a default judgment against the party whose activities were described in the complaint. Consequently, this is not a “judicial error” beyond correction pursuant to CR 60(a). . . .

Id. at 507 (emphasis supplied).

HQ Industries is in the same position. HQ Industries has denied it can be held liable for the acts of HQ Marketing from the beginning. No discovery on this issue has occurred. None of the summary judgment briefing or oral argument addressed this issue. The order entering summary judgment does not specify to which defendants it applies. Most, if not all, attorneys know that holding a parent liable for the acts of a subsidiary has specific evidentiary requirements and will be a contested issue whenever it is raised. Where the parties dispute whether the parent may be held liable for the acts of the subsidiary and the merits of the issue have never been addressed, the court could not have intended entry of judgment against HQ Industries absent any evidence or argument. *See,*

e.g., *Presidential Estates Apartment Associates*, 129 Wn.2d 320, 328-29, 917 P.2d 100 (trial court intended to permit plaintiff to install waste water line); *Hope v. Larry's Markets*, 108 Wn. App. 185, 197, 29 P.3d 1268 (2001) (no intent by lawyer for losing party on a summary judgment motion to approve the order as to "content."); *Shaw v. City of Des Moines*, 109 Wn. App. at 902 (no intention to dismiss damages claim); *In Re Marriage of Getz*, 57 Wn. App. at 604-5 (trial court intended in divorce proceeding to award wife half of both pension plans and not just one); *Helbling Bros. v. Turner*, 14 Wn. App. 494, 495-96, 542 P.2d 1257 (1975) (judgment of foreclosure not intended to preclude subsequent deficiency judgment, notwithstanding its terms); *Marchel v. Bunger*, 13 Wn. App. 81, 84, 533 P.2d 406 (erroneous legal description corrected); *In Re Estate of Kramer*, 49 Wn.2d 829, 830, 307 P.2d 274 (1957) (judgment amended to conform to language of the Will, which was the trial court's intention).

6. CR 60(b) Provides Another Basis for Relief.

CR 60(b) provides for relief from a judgment or order based on the ground of mistake, among others:

On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1. Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order. . . .

As with CR 60(a), there is a strong preference under CR 60(b) for resolving cases on their merits. *See Vaughn v. Chung*, 119 Wn.2d 273, 280 (1992); *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wn. App. 647, 653-54, 774 P.2d 1267 (1989). The court has broad equitable powers to achieve this result. *Id.*

Here, counsel for HQ Industries made a mistake. He relied on his knowledge of the issues disputed by the parties, his understanding of which of those issues was before the trial court on summary judgment, and the subsequent discussions related to prejudgment interest. Consequently, when authorizing entry of the judgment, he focused on the whether the interest question had been adequately resolved, not whether HQ Industries was named in the judgment. When he realized his mistake, he promptly tried to correct it.

7. Attorneys May Not Waive a Client's Substantive Legal Rights

A special application of CR 60(b) involves the inadvertent waiver of client's legal rights:

Absent express authority or an informed consent or ratification, attorneys may not waive, compromise or bargain away a client's substantive rights. . . . A stipulated settlement which is entered into improvidently is subject to being vacated.

Morgan v. Burks, 17 Wn. App. 193, 200 (1977). See also *Hope*, 108 Wn. App. at 197 (“A mistaken signature of an order of dismissal is ineffective and a trial court should grant a motion to vacate or reconsider that order”); *Ebsary v. Pioneer Human Services*, 59 Wn. App. 218, 796 P.2d 769 (1990) (Department of Labor and Industries lacked any authority to sign a release); *Graves v. P.J. Taggares Co.*, 94 Wn.2d 298, 304-05, 616 P.2d 1223 (1980); *In Re Marriage of Burkey*, 36 Wn. App. 487, 490 n.2, 675 P.2d 619 (1984).

Counsel did not have authority to confess judgment on behalf of HQ Industries’ and thus waive its substantive rights.

The trial court abused its discretion by refusing to vacate the order and judgment as to HQ Industries as authorized by CR 60(b).

V. CONCLUSION

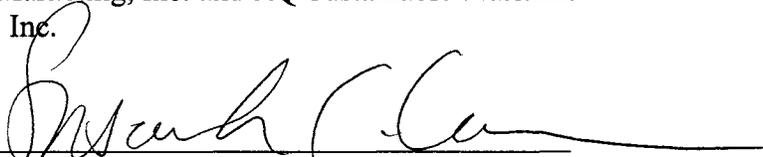
When a salesperson like Mr. Ringstad tells a company he has a national and international sales network that will support a multi-million dollar trade in seafood, sells the relationships he has within that network for \$500,000, but makes less than \$1 million in sales each year, and then presents no evidence that he contacted any customers in his network, he cannot establish he delivered goodwill as a matter of law. This Court should reverse the order granting summary judgment.

The trial court, by failing to vacate the order and judgment in light of the defenses raised in the action, the scope of the argument before it, and the events surrounding entry of the judgment, abused its discretion. This Court should reverse.

DATED this 9th day of April, 2010.

GORDON TILDEN THOMAS & CORDELL LLP
Attorneys for Plaintiff/Appellants HQ Sustainable
Maritime Marketing, Inc. and HQ Sustainable Maritime
Industries, Inc.

By



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 9, 2010, a copy of

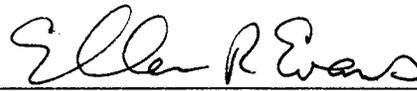
BRIEF OF APPELLANTS

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I declare under penalty of perjury under the laws of the state of
Washington this 9th day of April, 2010, at Seattle, Washington


Ellen R. Evans
Ellen R. Evans

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 APR -9 PM 4:02

APPENDIX A

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made, entered into and effective as of June 28th, 2006 (the "Effective Date"), between HQ Sustainable Maritime Marketing Inc., a New York corporation licensed to do business in the State of Washington with its principal place of business located at 788 Melbourne Towers 1511 Third Avenue, Seattle, WA. 98101 USA tel. 206 621 9888 and Fax. 206 621 0318 (the "Company"), and Trond Ringstad, an individual residing at 159 Western Avenue West Suite 457, Seattle WA 98119, Tel. 206 282 2273 and Fax 206 282 2276 (the "Executive").

WHEREAS, prior commencing to the Effective Date (the "Inception Date"), the Executive has owned and operated Pacific Supreme Seafoods and built a multi-million dollar seafood trading business, with clients and a sales network which spans the United States and extends throughout the world and has been made aware of the sales objectives of the Company; and

WHEREAS, the Company and the Executive wish to memorialize the terms and conditions of the Executive's employment by the Company purchasing as well the Goodwill (See Annex "A") and sales network of Pacific Supreme Seafoods through the present agreement and the hiring of the Executive in the position of Executive Vice President Sales;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the Company and the Executive agree as follows:

1. Employment Period. The Company offers to employ the Executive, and the Executive agrees to be employed by Company, in accordance with the terms and subject to the conditions of this Agreement, commencing on the Effective Date and terminating on the third anniversary of the Effective Date (the "Scheduled Termination Date"), unless terminated in accordance with the provisions of paragraph 11 herein below, in which case the provisions of paragraph 11 shall control, provided however, that unless either party provides the other party with written notice of his or its intention not to renew this Agreement at least six (6) months prior to the Scheduled Termination Date, this Agreement shall automatically renew for an additional three-year period commencing on the day after the Scheduled Termination Date and terminating on the fifth anniversary of the day after the Scheduled Termination Date. The Executive affirms that no obligation exists between the Executive and any other entity which would prevent or impede the Executive's immediate and full performance of every obligation of this Agreement.

2. Position and Duties. During the term of the Executive's employment hereunder, the Executive shall continue to serve in, and assume duties and responsibilities consistent with, the position of Executive Vice-President Sales, unless and until otherwise instructed by the Company. The Executive agrees to devote substantially all of his working time, skill, energy and best business efforts during the term of his employment with the Company, and the Executive shall not engage in activities outside the scope of his employment with the Company if such activities would detract from or interfere with his ability to fulfill his responsibilities and duties under this Agreement or require substantial amounts of his time or of his services. Notwithstanding anything to the contrary contained herein, the Executive may hold officer and non-executive director positions (or the equivalent position) in or at other entities that are affiliated and not affiliated with

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the Company. The Company acknowledges that the Executive currently holds, and acknowledges the Executive's right to continue to hold, such positions in such entities and to continue to fulfill his obligations in connection with holding such positions in such entities so long as it does not interfere with his ability to perform his duties and responsibilities hereunder.

3. No Conflicts. The Executive covenants and agrees that for so long as he is employed by the Company, he shall inform the Company of each and every business opportunity related to the business of the Company of which he becomes aware, and that he will not, directly or indirectly, exploit any such opportunity for his own account, nor will he render any services to any other person or business, acquire any interest of any type in any other business or engage in any activities that conflict with the Company's best interests or which is in competition with the Company.

4. Hours of Work. The Executive's normal days and hours of work shall coincide with the Company's regular business hours. The nature of the Executive's employment with the Company requires flexibility in the days and hours that the Executive must work, and may necessitate that the Executive work on other or additional days and hours.

5. Location. The locus of the Executive's employment with the Company shall be the Company's office located at 788 Melbourne Towers 1511 Third Avenue, Seattle, WA. 98101 USA.

6. Compensation.

a. Base Salary. During the term of this Agreement, the Company shall pay, and the Executive agrees to accept, in consideration for the Executive's services hereunder, *pro rata* bi-weekly payments of the annual salary of US\$150,000.00, less all applicable taxes and other appropriate deductions ("Base Salary"). The Executive's Base Salary is calculated based on sales generated by the Seattle based Sales office of the Company for the year immediately following his employment (or *pro-rata* portion thereof in the case of a period of less than twelve (12) months) of no less than USD\$ 15 million. The Executive agrees and acknowledges that the Base Salary will be adjusted according to the percentage represented by the fraction formed by the sales actually completed during this year period and USD 15 million calculated proportionately at the end of the calendar year. Executive agrees and acknowledges that where sales have exceeded USD 15 million for that period the adjustments awarded within 90 days of year end will be no more than 1.5 times the Base Salary and no less than 50% of the salary. An adjustment increasing the Base Salary will be paid 50% in cash and 50% in restricted shares of Company common stock. In addition, the Company's Board of Directors (the "Board") shall review the Executive's Base Salary annually to determine whether it should be increased otherwise within the Board's sole discretion. Determination of the amount of sales generated shall be in the sole discretion of the Board.

b. Annual Bonus. During the term of this Agreement, the Executive shall be entitled to an annual bonus paid in restricted shares of Company common stock or in cash at the

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Company's discretion based on the profitability of the company and the quality of sales as seen by the profitability for the company of such sales and the quality and creditworthiness of the buyers of such products for each calendar year (or *pro-rata* portion thereof in the case of a period of less than twelve (12) months). The decision to pay any annual bonus shall be within the Board's sole discretion based on its review of the operating performance of the Company during the preceding fiscal year. Each annual bonus shall be paid by the Company to the Executive promptly after the first meeting of the Board following the previous calendar year, but in no case later than March 30th of each year.

7. Expenses. Expenses pre-authorized in writing by the Board will be promptly reimbursed by the Company against proper proof in writing of such expenses.

8. Vacation. During the term of this Agreement, the Executive shall be entitled to accrue, on a *pro rata* basis, 10 vacation days, per year. The Executive shall be entitled to carry over any accrued, unused vacation days from year to year without limitation which the Company can adjust from year to year based on its absolute discretion.

9. Stock Options The Board may from time to time grant to the Executive the right to participate in a Stock Option plan to the extent which remains to be determined.

10. Other Benefits.

a. During the term of this Agreement, the Executive shall be eligible to participate in incentive, savings, retirement (401(k)), and welfare benefit plans, including, without limitation, health, medical, dental, vision, life (including accidental death and dismemberment) and disability insurance plans (collectively, "Benefit Plans"), in substantially the same manner and at substantially the same levels as the Company makes such opportunities available to the Company's managerial or salaried employees executive employees.

b. Notwithstanding anything contained in paragraph 10(a) herein above to the contrary:

(i) The cost of the Executive's coverage under the Benefit Plans providing health, medical, dental, vision, life (including accidental death and dismemberment) and disability insurance, shall be paid by the Company.

(ii) The Executive's spouse and dependent minor children will be covered ~~under the Benefit Plans providing health, medical, dental, and vision benefits, and the cost of such coverage shall be paid by the Company.~~

(iii) The Company shall reimburse the Executive for any pre-authorized in writing out-of-pocket expenses incurred in connection with the Benefit Plan coverages provided in this paragraph 10 as the result of any deductible or co-insurance provision of any insurance policy;

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provided however, that any such reimbursements shall not exceed Five Thousand Dollars (US\$5,000.00) per calendar year.

11. Termination of Employment.

a. Death. In the event that, during the term of this Agreement, the Executive dies, this Agreement and the Executive's employment with the Company shall automatically terminate and the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits accruing thereafter, except for the obligation to pay the Executive's heirs, administrators or executors any earned but unpaid base salary, unpaid *pro rata* annual bonus and unused vacation days accrued through the date of death. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

b. Disability. In the event that, during the term of this Agreement, the Executive shall be prevented from performing his duties and responsibilities hereunder to the full extent required by the Company by reason of "Disability," as defined herein below, this Agreement and the Executive's employment with the Company shall automatically terminate and the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits accruing thereafter, except for the obligation to pay the Executive's heirs, administrators or executors any earned but unpaid base salary, unpaid *pro rata* annual bonus and unused vacation days accrued through the date of Disability. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions through the last date of the Executive's employment with the Company. For purposes of this Agreement, "Disability" shall mean a physical or mental disability that prevents the performance by the Executive, with or without reasonable accommodation, of his duties and responsibilities hereunder for a continuous period of not less than four consecutive months, or not less than an aggregate of four months during any one-year period.

c. "Cause."

(i) At any time during the term of this Agreement, the Company may terminate this Agreement and the Executive's employment hereunder for "Cause." For purposes of this Agreement, "Cause" shall mean: (a) the willful and continued failure of the Executive to perform ~~substantially his duties and responsibilities for the Company (other than any such failure resulting from a Disability)~~ after a written demand for substantial performance is delivered to the Executive by the Company, which specifically identifies the manner in which the Company believes that the Executive has not substantially performed his duties and responsibilities, which willful and continued failure is not cured by the Executive within ten (10) business days of his receipt of said written demand; (b) the conviction of, or plea of guilty or *nolo contendere* to, a felony, after the exhaustion of all available appeals; or (c) the willful engaging by the Executive in gross

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misconduct which is materially and demonstratively injurious to the Company, after a written demand to cease or cure such gross misconduct is delivered to the Executive by the Company, which specifically identifies the manner in which the Company believes that the Executive has committed gross misconduct that is materially and demonstratively injurious to the Company, which gross misconduct does not cease or is not cured by the Executive within ten (10) business days of his receipt of said written demand. Gross misconduct includes without limitation the payment or receipt of unauthorized payments in cash or kind.

(ii) Termination of the Executive for "Cause" pursuant to paragraphs 11(c)(i)(a) and (c) shall be made by delivery to the Executive of a copy of the written demand referred to in paragraphs 11(c)(i)(a) and (c), or pursuant to paragraphs 11(c)(i)(b) by a written notice, either of which shall specify the basis of such termination and the particulars thereof and finding that in the reasonable judgment of the Company, the conduct set forth in paragraph 11(c)(i)(a), 11(c)(i)(b) or 11(c)(i)(c), as applicable, has occurred and that such occurrence warrants the Executive's termination.

(iii) Upon termination of this Agreement for "Cause," the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits thereafter, except for the obligation to pay the Executive any earned but unpaid base salary, and approved expenses. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions. All unexercised options granted to Executive shall expire immediately.

d. "Good Reason."

(i) At any time during the term of this Agreement, subject to the conditions set forth in paragraph 11(d)(iii) herein below, the Executive may terminate this Agreement and the Executive's employment with the Company for "Good Reason." For purposes of this Agreement, "Good Reason" shall mean the occurrence, without the Executive's consent, of any of the following events: (a) the assignment to the Executive of duties that are significantly different from, and that result in a substantial diminution of, the duties that he assumed on the Inception Date; (b) the assignment to the Executive of a title that is different from and subordinate to the title specified in paragraph 2 herein above, or (c) a Change of Control (as defined in paragraph 11(d)(ii) herein below).

~~(ii) For purposes of this Agreement, "Change of Control" means the Company's Board votes to approve: (a) a change in control of the Company such that one entity (directly or through affiliates) purchases control of over 75% of the Company's common stock and does not agree, prior to the change of control, to assume the terms and conditions of this Agreement); or (b) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Company other than any sale, lease,~~

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exchange or other transfer to any company where the Company owns, directly or indirectly, 100 percent of the outstanding voting securities of such company after any such transfer.

(ii) The Executive shall not be entitled to terminate his employment with the Company and this Agreement for "Good Reason" unless and until (a) he shall have received written notice from the Company of the occurrence of an event constituting "Good Reason" as that term is defined in paragraph 11(d)(i) and (ii) herein above, which written notice the Company shall deliver to the Executive within five (5) business days of the occurrence of any such event; (b) he shall have delivered written notice to the Company of his intention to terminate this Agreement or his employment with the Company for "Good Reason," which notice specifies in reasonable detail the circumstances claimed to provide the basis for such termination for "Good Reason," within 30 days of his receipt from the Company of the written notice described in paragraph 11(d)(iii)(a) herein above, the Executive's having obtained actual knowledge of a "Good Reason," and (c) the Company shall not have eliminated the circumstances constituting "Good Reason" within 30 days of its receipt from the Executive of the written notice described in paragraph 11(d)(iii)(b) herein above.

(iv) In the event that the Executive terminates this Agreement and his employment with the Company for "Good Reason," the Company shall pay or provide to the Executive (or, following his death, to the Executive's heirs, administrators or executors): (a) any earned but unpaid Base Salary, unpaid *pro rata* annual bonus and unused vacation days accrued through the Executive's last day of employment with the Company; (b) six months of Executive's full Base Salary; (c) the value of vacation days that the Executive has accrued; and (c) six months continued coverage, at the Company's expense, under all Benefits Plans in which the Executive was a participant immediately prior to his last date of employment with the Company. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(v) The Executive shall have no duty to mitigate his damages, except that Continued Benefits shall be canceled or reduced to the extent of any comparable benefit coverage offered to the Executive during the period prior to the Scheduled Termination Date by a subsequent employer or other person or entity for which the Executive performs services, including but not limited to consulting services.

e. Without "Good Reason" Or "Cause"

(i) By The Executive. At any time during the term of this Agreement, the Executive shall be entitled to terminate this Agreement and the Executive's employment with the Company without "Good Reason," as that term is defined in paragraph 11(d)(i) and (ii) herein above, by providing prior written notice of at least thirty (30) days to the Company. Upon termination by the Executive of this Agreement and the Executive's employment with the Company without "Good Reason," the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits thereafter, except for the obligation to pay the Executive any earned but unpaid base salary and

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unused vacation days accrued through the Executive's last day of employment with the Company. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions. All unexercised options granted to Executive shall expire in thirty (30) days.

(ii) By The Company. At any time during the term of this Agreement, the Company shall be entitled to terminate this Agreement and the Executive's employment with the Company without "Cause," as that term is defined in paragraph 11(c)(i) herein above, by providing prior written notice of at least thirty (30) days to the Executive. Upon termination by the Company of this Agreement and the Executive's employment with the Company without Cause, the Company shall pay or provide to the Executive (or, following his death, to the Executive's heirs, administrators or executors): (a) any earned but unpaid base salary, unpaid *pro rata* annual bonus and unused vacation days accrued through the Executive's last day of employment with the Company; (b) six months Base Salary; (c) the value of accrued but unused vacation days that the Executive; (d) six months continued coverage, at the Company's expense, under all Benefits Plans in which the Executive was a participant immediately prior to his last date of employment with the Company. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

12. Confidential Information.

a. The Executive expressly acknowledges that, in the performance of his duties and responsibilities with the Company, he has been exposed since the Inception Date, and will be exposed, to the trade secrets, business and/or financial secrets and confidential and proprietary information of the Company, its affiliates and/or its clients or customers ("Confidential Information"). The term "Confidential Information" means, without limitation, information or material that has actual or potential commercial value to the Company, its affiliates and/or its clients or customers and is not generally known to and is not readily ascertainable by proper means to persons outside the Company, its affiliates and/or its clients or customers.

b. Except as authorized in writing by the Board, during the performance of the Executive's duties and responsibilities for the Company and (i) until such time as any such Confidential Information becomes generally known to and readily ascertainable by proper means to persons outside the Company, its affiliates and/or its clients or customers, or (ii) for one year following the termination of the Executive's employment by the Company for any reason, whichever is earlier, the Executive agrees to keep strictly confidential and not use for his personal benefit or the benefit to any other person or entity the Confidential Information, whether or not prepared or developed by the Executive. Confidential Information includes, without limitation, the following, whether or not expressed in a document or medium, regardless of the form in which it is communicated, and whether or not marked "trade secret" or "confidential" or any similar legend: (i) lists of and/or information concerning customers, suppliers, employees, consultants, and/or co-venturers of the Company, its affiliates or its clients or customers; (ii) information submitted by customers, suppliers, employees, consultants and/or co-venturers of the Company, its affiliates and/or its clients or customers; (iii) information concerning the business of the

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Company, its affiliates and/or its clients or customers, including, without limitation, cost information, profits, sales information, prices, accounting, unpublished financial information, business plans or proposals, markets and marketing methods, advertising and marketing strategies, administrative procedures and manuals, the terms and conditions of the Company's contracts and trademarks and patents under consideration, distribution channels, franchises, investors, sponsors and advertisers; (iv) technical information concerning products and services of the Company, its affiliates and/or its clients or customers, including, without limitation, product data and specifications, diagrams, flow charts, know how, processes, designs, formulae, inventions and product development; (v) lists of and/or information concerning applicants, candidates or other prospects for employment, independent contractor or consultant positions at or with any actual or prospective customer or client of Company and/or its affiliates, any and all confidential processes, inventions or methods of conducting business of the Company, its affiliates and/or its clients or customers; (vi) any and all versions of proprietary computer software (including source and object code), hardware, firmware, code, discs, tapes, data listings and documentation of the Company, its affiliates and/or its clients or customers; (vii) any other information disclosed to the Executive by, or which the Executive obtained under a duty of confidence from, the Company, its affiliates and/or its clients or customers; (viii) all other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the business of the Company, its affiliates and/or its clients or customers.

c. The Executive affirms that he does not possess and will not rely upon the protected trade secrets or confidential or proprietary information of his prior employer(s) in providing services to the Company.

d. In the event that the Executive's employment with the Company terminates for any reason, the Executive shall deliver forthwith to the Company any and all originals and copies of Confidential Information.

13. Ownership And Assignment of Inventions.

a. The Executive acknowledges that, in connection with his duties and responsibilities relating to his employment with the Company, he and/or other employees of the Company working with him, without him or under his supervision, may create, conceive of, make, prepare, work on or contribute to the creation of, or may be asked by the Company or its affiliates to create, conceive of, make, prepare, work on or contribute to the creation of, without limitation, lists, business diaries, business address books, documentation, ideas, concepts, inventions, designs, ~~works of authorship, computer programs, audio/visual works, developments, proposals, works for hire or other materials~~ ("Inventions"). To the extent that any such Inventions relate to any actual or reasonably anticipated business of the Company or any of its affiliates, or falls within, is suggested by or results from any tasks assigned to the Executive for or on behalf of the Company or any of its affiliates, the Executive expressly acknowledges that all of his activities and efforts relating to any Inventions, whether or not performed during his or the Company's regular business hours, are within the scope of his employment with the Company and that the Company owns all right, title

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and interest in and to all Inventions, including, to the extent that they exist, all intellectual property rights thereto, including, without limitation, copyrights, patents and trademarks in and to all Inventions. The Executive also acknowledges and agrees that the Company owns and is entitled to sole ownership of all rights and proceeds to all Inventions.

b. The Executive expressly acknowledges and agrees to assign to the Company, and hereby assigns to the Company, all of the Executive's right, title and interest in and to all Inventions, including, to the extent they exist, all intellectual property rights thereto, including, without limitation, copyrights, patents and trademarks in and to all Inventions.

c. In connection with all Inventions, the Executive agrees to disclose any Invention promptly to the Company and to no other person or entity. The Executive further agrees to execute promptly, at the Company's request, specific written assignments of the Executive's right, title and interest in any Inventions, and do anything else reasonably necessary to enable the Company to secure or obtain a copyright, patent, trademark or other form of protection in or for any Invention in the United States or other countries.

d. The Executive acknowledges that all rights, waivers, releases and/or assignments granted herein and made by the Executive are freely assignable by the Company and are made for the benefit of the Company and its Affiliates, subsidiaries, licensees, successors and assigns.

14. Non-Competition And Non-Solicitation.

a. The Executive agrees and acknowledges that the Confidential Information that the Executive has already received and will receive are valuable to the Company, its affiliates and/or its clients or customers, and that its protection and maintenance constitutes a legitimate business interest of Company, its affiliates and/or its clients or customers to be protected by the non-competition restrictions set forth herein. The Executive agrees and acknowledges that the non-competition restrictions set forth herein are reasonable and necessary and do not impose undue hardship or burdens on the Executive. The Executive also acknowledges that the products and services developed or provided by the Company, its affiliates and/or its clients or customers are or are intended to be sold, provided, licensed and/or distributed to customers and clients in and throughout the United States ("the Geographic Boundary"), and that the Geographic Boundary, scope of prohibited competition, and time duration set forth in the non-competition restrictions set forth below are reasonable and necessary to maintain the value of the Confidential Information of, and to protect the goodwill and other legitimate business interests of, the Company, its affiliates and/or its clients or customers.

b. The Executive hereby agrees and covenants that he shall not, directly or indirectly, in any capacity whatsoever, including, without limitation, as an employee, employer, consultant, principal, partner, shareholder, officer, director or any other individual or representative capacity (other than a holder of less than one percent (1%) of the outstanding voting shares of any publicly held company), or whether on the Executive's own behalf or on behalf of any other person or entity or otherwise howsoever, during the Executive's employment with the Company and for a

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period of one year following after the termination of this Agreement or of the Executive's employment with the Company for any reason, in the Geographic Boundary:

(i) Engage, own, manage, operate, control, be employed by, consult for, participate in, or be connected in any manner with the ownership, management, operation or control of any business in competition with the "Business of the Company." The "Business of the Company" is defined as vertically integrated aquatic product company marketing and distributing seafood products.

(ii) Recruit, hire, induce, contact, divert or solicit, or attempt to recruit, hire, induce, contact, divert or solicit, any employee, consultant or independent contractor of the Company to leave the employment thereof, whether or not any such employee, consultant or independent contractor is party to an employment agreement.

15. Dispute Resolution. The Executive and the Company agree that any dispute or claim, whether based on contract, tort, discrimination, retaliation, or otherwise, relating to, arising from, or connected in any manner with this Agreement or with the Executive's employment with Company shall be resolved exclusively through final and binding arbitration under the auspices of the American Arbitration Association ("AAA"). The arbitration shall be held in the Borough of Manhattan, New York, New York. The arbitration shall proceed in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") in effect at the time the claim or dispute arose, unless other rules are agreed upon by the parties. The arbitration shall be conducted by one arbitrator who is a member of the AAA, unless the parties mutually agree otherwise. The arbitrators shall have jurisdiction to determine any claim, including the arbitrability of any claim, submitted to them. The arbitrators may grant any relief authorized by law for any properly established claim. The interpretation and enforceability of this paragraph of this Agreement shall be governed and construed in accordance with the United States Federal Arbitration Act, 9. U.S.C. §1, *et seq.* More specifically, the parties agree to submit to binding arbitration any claims for unpaid wages or benefits, or for alleged discrimination, harassment, or retaliation, arising under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the National Labor Relations Act, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the Employee Retirement Income Security Act, the Civil Rights Act of 1991, the Family and Medical Leave Act, the Fair Labor Standards Act, Sections 1981 through 1988 of Title 42 of the United States Code, COBRA, the New York State Human Rights Law, the New York City Human Rights Law, and any other federal, state, or local law, regulation, or ordinance, and any common law claims, claims for breach of contract, or claims for declaratory relief. The Executive acknowledges that the purpose and effect of this paragraph is solely to elect private arbitration in lieu of any judicial proceeding he might otherwise have available to him in the event of an employment-related dispute between him and the Company. Therefore, the Executive hereby waives his right to have any such employment-related dispute heard by a court or jury, as the case may be, and agrees that his exclusive procedure to redress any employment-related claims will be arbitration.

16. Notice. For purposes of this Agreement, notices and all other communications provided for in this Agreement or contemplated hereby shall be in writing and shall be deemed to have been duly given when personally delivered, delivered by a nationally recognized overnight delivery service or when mailed United States Certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Company:

HQ Sustainable Maritime Industries Inc
Melbourne Towers,
1511 Third Avenue, Suite 788,
Seattle, WA. 98101

If to the Executive:

Trond Ringstad,
159 Western Avenue West Suite 457,
Seattle WA 98119

17. Miscellaneous.

a. Telephones, stationery, postage, e-mail, the internet and other resources made available to the Executive by the Company, are solely for the furtherance of the Company's business.

b. All issues and disputes concerning, relating to or arising out of this Agreement and from the Executive's employment by the Company, including, without limitation, the construction and interpretation of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to that State's principles of conflicts of law.

c. The Executive and the Company agree that any provision of this Agreement deemed unenforceable or invalid may be reformed to permit enforcement of the objectionable provision to the fullest permissible extent. Any provision of this Agreement deemed unenforceable after modification shall be deemed stricken from this Agreement, with the remainder of the Agreement being given its full force and effect.

~~d. The Company shall be entitled to equitable relief, including injunctive relief and specific performance as against the Executive, for the Executive's threatened or actual breach of paragraphs 12, 13 and 14 of this Agreement, as money damages for a breach thereof would be incapable of precise estimation, uncertain, and an insufficient remedy for an actual or threatened breach of paragraphs 12, 13 and 14 of this Agreement. The Executive and the Company agree that any pursuit of equitable relief in respect of paragraphs 12, 13 and 14 of this Agreement shall have~~

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no effect whatsoever regarding the continued viability and enforceability of paragraph 15 of this Agreement.

e. Any waiver or inaction by the Company for any breach of this Agreement shall not be deemed a waiver of any subsequent breach of this Agreement.

f. The Executive and the Company independently have made all inquiries regarding the qualifications and business affairs of the other which either party deems necessary. The Executive affirms that he fully understands this Agreement's meaning and legally binding effect. Each party has participated fully and equally in the negotiation and drafting of this Agreement. Each party assumes the risk of any misrepresentation or mistaken understanding or belief relied upon by him or it in entering into this Agreement.

g. The Executive's obligations under this Agreement are personal in nature and may not be assigned by the Executive to any other person or entity.

h. This instrument constitutes the entire Agreement between the parties regarding its subject matter. When signed by all parties, this Agreement supersedes and nullifies all prior or contemporaneous conversations, negotiations, or agreements, oral and written, regarding the subject matter of this Agreement. In any future construction of this Agreement, this Agreement should be given its plain meaning. This Agreement may be amended only by a writing signed by the Company and the Executive.

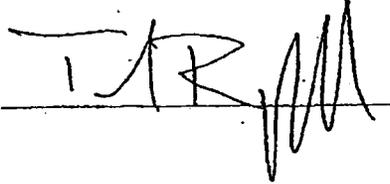
i. This Agreement may be executed in counterparts, a counterpart transmitted via facsimile, and all executed counterparts, when taken together, shall constitute sufficient proof of the parties' entry into this Agreement. The parties agree to execute any further or future documents which may be necessary to allow the full performance of this Agreement. This Agreement contains headings for ease of reference. The headings have no independent meaning.

[remainder of page intentionally left blank]



THE EXECUTIVE STATES THAT HE HAS FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT AND THAT HE HAS READ AND UNDERSTOOD EACH AND EVERY PROVISION THEREOF. THIS AGREEMENT IS EFFECTIVE UPON THE EXECUTION OF THIS AGREEMENT BY BOTH PARTIES. UNDERSTOOD, AGREED, AND ACCEPTED:

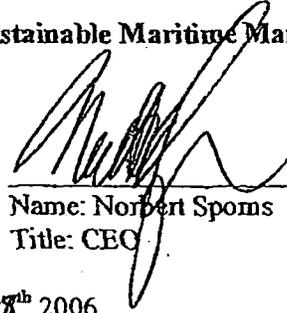
Trond Ringstad



Date: June 28th 2006

HQ Sustainable Maritime Marketing Inc

By:



Name: Norbert Spoms
Title: CEO

Date: June 28th 2006

ANNEX A

THIS AGREEMENT FOR THE PURCHASE OF GOODWILL ("Goodwill Agreement") is made, entered into and effective as of April 10th, 2006 (the "Effective Date"), between HQ Sustainable Maritime Marketing Inc., a New York corporation licensed to do business in the State of Washington with its principal place of business located at 788 Melbourne Towers 1511 Third Avenue, Seattle, WA. 98101 USA tel. 206 621 9888 and Fax. 206 621 0318 (the "Company"), and Trond Ringstad, an individual residing at 159 Western Avenue West suite 457, Seattle WA 98119, Tel. 206 282 2273 and Fax 206 282 2276 (the "Executive").

WHEREAS, prior commencing to the Effective Date (the "Inception Date"), the Executive has owned and operated Pacific Supreme Seafoods and built a multi-million dollar seafood trading business, with clients and a sales network which spans the United States and extends throughout the world and has been made aware of the sales objectives of the Company; and

WHEREAS, the Company and the Executive wish to memorialize the terms and conditions of the acquisition of Goodwill and the sales network of Pacific Supreme Seafoods and any other Seafood companies with which the Executive is associated, through the present agreement;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the Company and the Executive agree as follows:

The Company does hereby purchase from the Executive the Goodwill which he has attached to Pacific Supreme Seafoods and to himself personally as well as to any other companies he owns or is associated with which trade in seafood products including without limitation, tilapia, shrimp, Bering Sea Crab, Dungeness crab, scallops etc., and the executive does hereby consent to sell such Goodwill to the Company for the price of USD 250,000 paid for USD 150,000 at the execution of the present agreement and another USD 100,000 90 days from the execution of these presents as well as the transfer of USD 300,000 payable in shares calculated at 80% of the trading value as of February 24th, 2006.

The Executive acknowledges and that the Company may amortize this purchase over a designated period and time and the Executive agrees to execute any documentation needed to accommodate this intent.

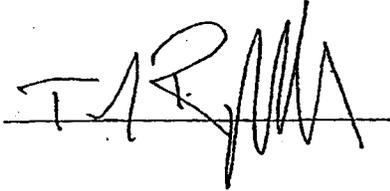
The Executive hereby warrants that the Goodwill attached to all seafood companies he has been dealing with and is associated with flows to the Company in virtue of the present agreement, and that those companies will cease to exist and be terminated so as not to enter into conflict with the present agreement, the Executive being bound by the non-competition clause forming part of the Employment agreement and the present transfer and sale of Goodwill.

[remainder of page intentionally left blank]



THE EXECUTIVE STATES THAT HE HAS FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT AND THAT HE HAS READ AND UNDERSTOOD EACH AND EVERY PROVISION THEREOF. THIS AGREEMENT IS EFFECTIVE UPON THE EXECUTION OF THIS AGREEMENT BY BOTH PARTIES. UNDERSTOOD, AGREED, AND ACCEPTED:

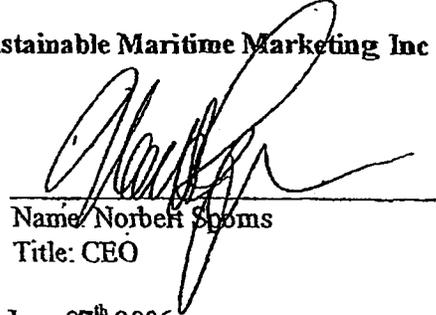
Tronds Ringstad



Date: June 28th 2006

HQ Sustainable Maritime Marketing Inc

By:



Name: Norbert Spoms

Title: CEO

Date: June 28th 2006