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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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Edward Michael O'Brien,  
Plaintiff,

CV97-07863 AHM(RZ)

**AMENDED COMPLAINT**

v.

Adobe Systems, Inc., and Hambrecht & Quist, Inc.

Defendants, and

J.P. Morgan Inc., Morgan Stanley, Inc.,

and Dean Witter, Inc.,

Co-Conspirators.

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## I. INTRODUCTION: CAUSES FOR CURE OF DEFICIENCY

On December 13, 1996 plaintiff, Edward Michael O'Brien, filed an antitrust complaint against Adobe Systems, Inc. and Mr. William R. Hambrecht in the United States District Court, Eastern District of California which designated the case as CIV-S-97-0140 GEB JFM. On October 22, 1997 plaintiff's complaint was dismissed, and he was granted twenty days to file an amended complaint. Mr. O'Brien did not file an amended complaint, and the final Order of Judgement dismissing the case was entered on December 3, 1997.

Mr. O'Brien, did not amend his complaint for the following reasons: (1) the court had warned the plaintiff that filing an amended complaint containing frivolous claims would be punished, (2) the court had chosen not to address plaintiff's allegations of consumer status made in the complaint at page 11 / lines 11-28, and page 12 / lines 1-24, and competitor status alleged in a subsequent motion, and the plaintiff, without other claims to make, thought reiteration of these claims would be considered either frivolous or otherwise offensive, (3) the court had ignored plaintiff's "would-be purchaser" and *defacto* competitor arguments, and plaintiff thought reiteration would likewise not be tolerated by the court, (4) extreme financial hardship at the time precluded plaintiff from performing normal clerical functions necessary to produce, copy and serve an amended complaint, and (5) the court's forementioned threat of punishment for an unacceptable amended complaint so intimidated the *pro se* plaintiff, suffering at the time from clinically diagnosed mental distress, that he was literally too frightened to continue.

In retrospect, and under more conducive circumstances of lifestyle and mental constitution, Mr. O'Brien could have written (if not served) an effective amended complaint using more specific and better supported allegations as he has done so in this complaint, following.

When the district court in Sacramento declared "If plaintiff can cure the deficiency in his complaint, he may file and serve an amended complaint within twenty (20) days from date this order is filed." [Order of October 22, 1997 at page 7 / lines 10-12] the "deficiency" referenced by the court was the absence in plaintiff's complaint of allegations that would qualify him, according to the court's strictly constructed definition, as a *consumer* and/or *competitor* (ie. a "proper party" to bring antitrust litigation).

As just stated, Mr. O'Brien could have amended his complaint in CIV-S-97-0140 GEB JFM to cure said deficiency if he had not been in circumstances alleged, however, the plaintiff in this case does now rise to the occasion re said deficiency cure, and does allege cure for the following reasons:

### A. Plaintiff Was Consumer of Defendants Goods:

(1) In order to establish standing, a plaintiff must prove the existence of antitrust injury. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334, 110 S. Ct. 1884, 109 L.Ed.2d 333 (1990). An antitrust injury is an injury that the antitrust laws were intended to prevent and that flows from the defendants' unlawful acts. *Id.* "The requirement that the alleged injury be related to anticompetitive behavior requires, as a corollary, that the injured party be a participant in the same market as the alleged malefactors." *Bhan v. NME Hospitals, Inc.*, 772 F.2d 1467,

1470 (9th Cir. 1985). To be in the same market as the alleged malefactors, a plaintiff "must be either a consumer of the alleged violator's goods or services or a competitor of the alleged violator in the restrained market." *Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538, 549 (9th Cir. 1987).

Let it be carefully discerned by the court and defendants that the present tense is used in *Bhan* to describe a present condition. A *consumer* presently "in the same market" is a would-be purchaser, a purchaser in the act of purchase or a recent purchaser just leaving the market...not, exclusively, an after-the-fact purchaser.

The Court of Appeals in *Bhan* specifically and clearly declares a would-be purchaser, in the same market as the seller, to be a consumer who may become eligible for antitrust standing when breach of antitrust law(s) injure him/her, and sufficient other-than-jurisdictional antitrust criteria are alleged, and deemed capable of proof at trial.

In CIV-S-97-0140 GEB JFM, and herein, plaintiff's allegations of would-be purchaser status and, thereby, qualification as a bona fide consumer for antitrust litigation purposes are well within the court's criteria cited in *Bhan* and supported by *Ware v. Trailer Mart, Inc.*, 623 F.2d 1150 (6th Cir. 1980).

(2) Consumers' Research, Consumer Reports and many other "Consumer" magazines are geared to various publics of would-be purchasers (shoppers) more than to after-the-fact purchasers no longer "in the market" for goods/services reviewed in the publications.

The Federal Trade Commission's Bureau of Consumer Protection helps would-be purchasers identify and avoid fraudulent schemes before falling prey to them. Other FTC functions (offices), not specifically named "Consumer" are charged with remedy of after-the-fact purchase situations.

"Now, the Federal Trade Commission's Bureau of Consumer Protection offers the following tips on how to spot the typical false claims fraudulent promoters use to deceive consumers:" [Consumers' Research, vol.82, No.9, page 2]

Note: There is a general complaint among would-be private antitrust litigants that far too many complaints have been summarily dismissed over the past several decades for Rule 12 reasons. Perhaps the popular image of the federal court can be at least partially restored by the clarification that, perhaps, after-the-fact purchasers belong under breach of contract, deceptive sales, etc. causes rather than antitrust.

The Truth-In-Lending Act (TILA) is widely referred to as a "consumer law". However, TILA requires disclosures be made by credit grantors before purchase is consummated.

## B. Actual Injury Controls Antitrust Standing Not Status

(1) "1. Monopolies: As a consumer, plaintiff army officer had standing to bring antitrust action against mobile home park complaining of tying of mobile home purchases by prospective tenants to lease of space in the park, as the officer, claiming loss because he had to simultaneously rent

an apartment and a mobile home space in another community, had suffered violation, an injury in his "property" within purview of the Clayton Act, notwithstanding that the officer did not want to purchase a mobile home. Clayton Act, sec 4; 15 U.S.C.A., sec. 15; Sherman Antitrust Act, sec. 1; 15 U.S.C.A., sec 1." [*Ware v. Trailer Mart, Inc.*, 623 F.2d 1150 (6th Cir. 1980)]

As in the case referenced above, the plaintiff (a former USMC Captain) was a bona fide would-be purchaser who sustained actual injury due to alleged antitrust law(s) violations. As in *Ware*, the controlling issue in grant of antitrust standing is not qualification under a narrow definition of "consumer" but rather the nature of the injury sustained by a consumer.

#### C. *Ware* Denies After-The-Fact Purchaser Imperative:

If the plaintiff's allegations of bona fide *de facto* and/or *de jure* competitor status in relevant markets with defendants are not sufficiently well pled and/or grounded to confirm antitrust standing, Mr. O'Brien's allegations of bona fide consumer status, as defined and required by the U.S. Court of Appeals, are sufficient for grant of standing and denial of any motion to dismiss the complaint on a Rule 12 basis.

"The Supreme Court recently held that 'a consumer whose money has been diminished by reason of an antitrust violation has been injured (in his...property) within the meaning of sec.4.' *Reiter v. Sonotone Corporation*, 442 U.S. 330, 99 S. Ct. 2326, 60 L.Ed.2d 931 (1979). In *Reiter* the plaintiff claimed wrongful monetary deprivation in that the price of a hearing aid she had purchased was artificially inflated by the defendant's anti-competitive conduct. The court found that she had properly alleged an injury in her 'property' under sec.4. Similarly, Captain Ware's status as a consumer does not alter the nature of his injury. He, too, has suffered monetary loss as a result of an alleged antitrust violation, an injury in his 'property' within the purview of the Clayton Act.' See *Gutierrez v. E. & J. Gallo Winery Co., Inc.*, 604 F.2d 645 (9th Cir. 1979)." [*Ware*, supra.]

"Trailer Mart attempts to distinguish *Reiter* by noting that Mrs. Reiter actually purchased the hearing aid at an illegally inflated price. Here, insists defendant, Captain Ware never intended to enter into the tying arrangement since he did not want to purchase a mobile home. We believe that this argument begs the question. He incurred this loss because of Trailer Mart's anti-competitive conduct in tying home site leases to trailer purchases. We therefore find that Ware has properly claimed an injury under section 4, and may, accordingly, sue to recover damages for the alleged violations of Section 1 of the Sherman Act." [*Ware*, supra.]

Plaintiff's facts and circumstances are very similar to those of Captain Ware noted above, and the argument that Mr. O'Brien lacks standing to bring this antitrust suit due to a lack of consumer standing is clearly overturned by reason, conventional semantics, and the expressed opinion and will of the U.S. Court of Appeals. Consumers (after-the-fact) and Consumers (before-the-fact) have both been validated by the federal courts for purposes of standing to bring antitrust litigation.

#### D. Plaintiff Was a Competitor in Computer Graphics Markets

(1) The Golf O'Brien Company founded in 1990 to develop and sell GOLF COACH, a computer software compilation processing golf statistics developed (copyrighted) by Mr. O'Brien in 1989, was a competitor in computer graphics markets for software that had statistical acquisition and/or presentation capability like Apple's *Claris Works* and Adobe's *Freehand* and *Premiere*. Why does the district court ignore this alleged fact? It must be taken as true according to the court's own doctrine on the veracity of pleadings prior to trial.

Because the FTC in 1994 declared that control of Adobe's *Freehand* program would be anti-competitive in related graphics markets, and ordered Adobe to permanently divest *Freehand*, and not to acquire stock in competitors in said markets, the effective circumvention of FTC orders by Adobe/H&Q as alleged in this complaint, gives reasonable and provable cause for damage claims by competitors of Adobe in computer graphics markets.

As alleged, The Golf O'Brien Company was a competitor of Adobe in at least one computer graphics market, and so makes rightful claim for antitrust injury based standing to sue Adobe/H&Q for damages sustained and for punitive damages, based on Adobe's manifest and flagrant disobedience to the letter and spirit of FTC orders via monopolistic conspiracy with H&Q and Macromedia, Inc.

#### E. Students are Consumers for Antitrust Purposes

(1) Oral Roberts University (ORU) was expensive in 1993-1994 when Mr. O'Brien enrolled as a full-time student, and paid full tuition to be trained in the field of Digital Video Editing and Productions (dve/p).

In at least two (2) classes (costing over \$200.00 per unit) *Adobe Premiere* was extensively used by the instructor and students (central to the course). Rental of Adobe's software via college tuition is qualified consumption of Adobe's product(s) and, even by a narrow definition, qualifies the plaintiff for consumer status re Adobe in the market(s) for educational (computer graphics) software. If the students at ORU had not been willing to pay tuition for use of Adobe's software, no Adobe software would have been purchased (at educational discount) by ORU departments, and profitably rented to the students.

(2) An Apple/Adobe "special" at ORU (1994) of credit-for-computer(and software installed) purchase (tie-in sale) uniquely enabled students, even with marginal credit ratings, to buy new Power PC's with *Adobe Premiere*, and other Adobe products, installed. Mr. O'Brien formally applied to Apple for this "special", but was denied credit for the purchase (no reason specified). This denial caused the plaintiff's academic and commercial competitors in Tulsa, OK who did buy new Apple computers to have advantages over the plaintiff who was thereby precluded from certain levels of competition.

Plaintiff believes, and avers, that the district court erred when it based its' dismissal of plaintiff's complaint squarely on the false premise that Mr. O'Brien "was not a participant in the market of the alleged wrongdoers."

#### F. *Res Judicata* Bar Not Applicable:

(1) Virtually all privately brought antitrust cases begin with a Rule 12(b)6 challenge by the defendants. Anticipating this tactic, plaintiff in this case addresses the issue beforehand.

Under the Federal Rules of Civil Procedure Rule 12(b)6, a complaint should be dismissed for failure to state a claim if taking all allegations in the complaint as true, "it appears beyond doubt that plaintiff can prove no set of facts in support of its claim which would entitle him to relief." *Sun Savings and Loan Ass'n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir. 1987); *Federal Sav. & Loan Ins. Corp. v. Musacchio*, 695 F.Supp. 1053, 1058 (N.D. Cal. 1988). As set forth below, Mr. O'Brien has, indeed, suffered antitrust injury and he does have standing to assert his claims. Moreover, the issue of standing is not precluded by prior orders of the Ninth Circuit Court of Appeals nor the Federal District Court, Eastern District of California.

If plaintiff's allegations in complaint are to be taken as true, as the preponderance of federal case law argues for, then plaintiff surely has, and will, state claims upon which relief can be granted by the court, and there exists reasonable probability that the plaintiff can prove a set of facts found amidst plaintiff's allegations demonstrating defendant's liability re alleged cause(s) of action.

Given Mr. O'Brien's truthful allegations in the former and related case at hand, and his qualification under the district court's Rules of Civil Procedure re plaintiff's cause(s) of action and allegations in support of same, Subject Matter Jurisdiction in federal district court must be considered well established in this proceeding. With Rule 12(b)6 challenges otherwise negated, the plaintiff addresses the only issue that has viability as a defense prior to trial: *res judicata* bar.

Collateral estoppel and/or issue preclusion under the doctrine of *res judicata* bars relitigation of issues actually adjudicated in previous litigation. *Moore v. Brewster*, 96 F.3d 1240, 1245 (9th Cir. 1996). To preclude relitigation of an issue under federal law: (1) the issue at stake must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated by the party against whom preclusion is asserted in the prior litigation; and (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the earlier action. *Trevino v. Gates*, 99 F.3d 911, 923 (9th Cir. 1996)

In this case (complaint) the "issue at stake" is not identical to the one(s) in the prior case. Mr. William R. Hambrecht has been replaced by the non-human person (c-corporation), Hambrecht & Quist, Inc. and ramifications for proven antitrust liability will be significantly different than if the former defendant had not been changed. Additionally, the cause of action in the present complaint has been refined and more clearly targeted, and new precedent and its analysis has been introduced such as to qualitatively change the legal theory under which the case proceeds.

The issue was not actually litigated "by the party" against whom preclusion might be asserted. Although Mr. O'Brien requested oral hearing(s) in the prior case, oral hearings were never conducted. The plaintiff, *pro se*, had numerous questions regarding complex antitrust issues, and the absence of oral hearing on the motions filed must be considered inchoate adjudication on the merits where issues were not actually litigated by the party.

The judgment in the prior case did not reference critical issues raised by the plaintiff including *de facto* and *de jure* competitor status and would-be purchaser as a consumer qualified for antitrust standing.

Although this case (complaint) is based, essentially, on the same set of facts and circumstances as the prior case, those factors are alleged in ways that are qualitatively different, and constitute entirely new allegations re the alleged cause(s) of action.

In *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 399 (1981) the U.S. Supreme Court declared dismissals based on Federal Rules of Civil Procedure Rule 12(b)6 to be "adjudication on the merits", and, thereby, qualified defenses predicated upon *res judicata* bar against similar subsequent litigation when any prior case, with same parties and cause(s), has been dismissed on Rule 12(b)6 grounds.

According to Rule 52(a), the only pretrial dismissals, other than those qualified under Rule 41(b), that obtain status as adjudication on the merits are dismissals based on Rule 12 and rule 56 grounds. [F.R.C.P. 52(a)]

Decisions for dismissal on jurisdictional, venue and/or statute of limits grounds do not qualify for *res judicata* preclusion of subsequent relitigation.

Concerning CIV-S-97-0140 GEB JFM, in the court's Order of Judgment on October 20, 1997 the district court stated the only ground upon which it based its' decision to grant defendants Motion to Dismiss the complaint. "Defendants assert Plaintiff's claims should be dismissed because he is not a proper party to bring an antitrust action." [Order of Judgment: October 20, 1997: page 1 / lines 22-24]

Mr. O'Brien stated a claim in CIV-S-97-0140 GEB JFM as an alleged "would-be purchaser" consumer upon which relief could have been granted by the court in light of the merits of the case. However, "would-be purchaser" consumer status, as alleged with *Ware v. Trailer Mart, Inc.*, 623 F.2d 1151 cited in support, was not discussed in the court's Order of Judgment, which held to a narrow construction of jurisdictional qualifications when comprehensive construction was required and warranted by the court's liberal construction doctrine re *pro se* pleadings. The court's Order of Judgment on October 22, 1997 granting defendants Motion of Dismiss solely on "proper party" (jurisdictional) ground is neither Rule 12, Rule 41(b) nor Rule 56 based. In fact, these rules were not even mentioned in the order.

"Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." [F.R.C.P. 52(a)]

Rule 41(b) exempts dismissals made on jurisdictional grounds from *res judicata* qualification.

Note: "Proper party" doctrine, flowing from federal precedent defining and/or qualifying competitor/consumer status for antitrust litigation purposes, effectively limits the class of private persons who can bring private antitrust action under Title 15, section 15. The phrase refers to jurisdictional qualification. Since dismissing court specified "not a proper party" as its only

specified cause for grant of defendants Motion to Dismiss, that dismissal must be seen based on jurisdictional ground and not ground(s) encompassed in the phrase "adjudication on the merits", ie. F.R.C.P. 12(b)6, 41(b) and 56.

Although it is true that many of the merits of plaintiff's case were noted in the Order of Judgment under analysis they were referenced only in the context of proving not "not a proper party" (consumer/competitor) and not in regard to the court's comprehensive criteria for antitrust standing (ie. proving any set of facts found in the allegations demonstrating defendants antitrust liability.) In effect, the court's "not competitor/consumer therefore no antitrust injury and, therefore, no antitrust standing" is judgment of standing purely on jurisdictional grounds.

Even within jurisdictional limitations on judgment, "would-be purchaser" consumer status, under certain circumstances as alleged by plaintiff, is sufficient for antitrust standing given other antitrust criteria met. Plaintiff's allegations for "would-be purchaser" consumer status were not judged "on the merits" of the allegations pled, and therefore further judgment is warranted, even on purely jurisdictional grounds.

Because similar prior complaint was dismissed on jurisdictional grounds, standing for litigation of subsequent complaint may be granted, because other (numerous) antitrust qualifications have been alleged adequately (taken as true), and a reasonable probability exists that plaintiff can prove, at trial, some set of facts alleged in the complaint that carry antitrust liability for the defendants.

## II. CAUSE OF ACTION

Plaintiff's sole-proprietorship, public charity and person were directly and proximately injured by the defendants when the latter monopolistically sought to increase their business revenues and/or increase the value of their securities by establishing and maintaining anti-competitive sales practices in the form of software sales (wholesale) causing software sales (retail) to be effectively tied to computer purchases (retail) from defendants' computer manufacturing company and its' agents. Defendants' conspiratorial (intentional) violation of antitrust laws, such as to (1) increase defendants' copyright/patent monopoly in noted software and hardware, and (2) restrain and/or control interstate competition in the emerging industry of Digital-Video-Editing/Production (dve/p) injured the plaintiff who was unable (for various reasons) to economically acquire defendants' computers.

In September of 1995, the plaintiff was a resident of Solvang, California, and owned/managed the *Golf O'Brien Company*, a software development company, and *SAVIORG*, a California public charity (both organizations founded in 1990). Mr. O'Brien was restrained from competing in dve/p markets (locally and interstate) because defendants breached antitrust laws. Plaintiff sustained business and personal injury as a direct result of the defendants' monopolistic influence and actions causing "tie-ins" of *Adobe Premiere* software and Apple/MacIntosh computers.

Plaintiff alleges a conspiracy involving defendants which breached the Sherman Anti-Trust Act and the Clayton Act (Title 15, United States Codes, sec. 1, 2, 14, 15 and 18) resulting in plaintiff's alleged antitrust injury above noted, and as specified following.

### III. BACKGROUND

On July 4, 1989 Apple Computer, Inc., hereinafter to be named "Apple", owned 16.9% of the voting stock of Adobe Systems, Inc., hereinafter to be named "Adobe", and thereby, as largest shareholder, effectively controlled Adobe. By July 14, 1989, Morgan Stanley, Inc. and Hambrecht & Quist, Inc., providing investment banking and securities brokering services to Apple, enabled that company to divest all of its' Adobe stockholdings. (see Exhibit A).

Mr. William R. Hambrecht, in (1994-1995) the CEO/COB of Hambrecht & Quist, Inc., also happened to be a founding Director on the Adobe board of directors.

Adobe's *operating income* ( *net income* figures are misleading in this matter due to high LBO and/or merger expenses ) grew from \$107. million in 1993 to \$242. million in 1995. This 225% growth in three years ( 75% annual growth rate ) can be explained by the radical increase in market power of the longstanding Adobe/Apple conspiracy and monopoly in the computer graphics industry. At time of cause of action, an increase of monopoly power and monopolist actions obtained in relevant markets for digital-video-editing/production via highly demanded but unchallenged sales of *Adobe Premiere* tied effectively, and by design, to Apple product(s), PC and Power PC computers. From 1996 to 1998, Adobe's *operating income* grew from \$228. million to a two year averaged \$257. million, representing a growth rate of about 5% per annum.

The radically reduced Adobe growth rate in (1996-1998) can be explained by (1) new and strong competition re *Adobe Postscript* from a Hewlett Packard, Inc. product, and (2) the demise of the Apple dve/p monopoly, and a corresponding establishment of competition in dve/p and related markets via release of fully enabled versions of *Adobe Premiere* into both Apple/PC and Windows/PC environments.

Adobe and Apple created and progressively increased a copyright/patent monopoly in "semi-broadcast-quality" ( not for TV or Film productions but adequate for in-house and inter company distributed multimedia productions) digital-video-editing/production software for computer systems costing less than \$20,000. (See "Video Professionals Flock to Digital Editing", at IV. CAUSE AND BACKGROUND WITH SPECIFICITY.)

In 1993-1995, *Adobe Premiere*, ( MAC:\$695.) was the only dve/p software capable of producing semi-broadcast-quality video, priced under \$1,000. per unit. Few, if any, industry analysts contest the fact that Adobe and Apple enjoyed an absolute monopoly in defined relevant markets in 1993-1995.

In 1993, J.P. Morgan & Company joined Morgan Stanley, Inc. and Hambrecht & Quist, Inc. as a major holder of Adobe, and/or Apple stock. Mr. William R. Hambrecht, CEO/COB of Hambrecht & Quist, Inc., henceforth herein to be named "H&Q", was respected in the securities business and influential in the peerage of leading securities company CEO's and COB's, including the leaders of the other above mentioned companies.

Throughout 1993-1995, Mr. Hambrecht continued in an active, influential role on the Adobe board of directors, while serving on the board of H&Q, a full service brokerage house holding and/or dealing in large blocks of securities issued by competitors of Adobe and Apple.

In 1994, Adobe came under significant antitrust pressures from the Federal Trade Commission (FTC) over its' proposed merger with Aldus Corporation, hereinafter to be called "Aldus", another graphics oriented software company, which owned and/or controlled numerous software copyrights/patents that had significant potential for strengthening the Adobe/Apple monopoly in dve/p markets and in other graphics related markets.

At the peak of the FTC antitrust threat to Adobe/Aldus, in July of 1994, Adobe discontinued distribution of *Adobe Premiere For Windows* ( WIN: \$295. ), the abbreviated, "non-broadcast-quality" Windows version of *Adobe Premiere*, and announced that a new Windows version would be released in November/December, 1994. This new version of *Adobe Premiere For Windows*, although less abbreviated and less non-broadcast-quality than its' predecessor, was, nevertheless, to be a producer of non-broadcast-quality dve/p. The new Windows version was named *Adobe Premiere*, exactly like its' semi-broadcast-quality big brother, *Adobe Premiere*, the Apple/MacIntosh version that had been dominating the industry and consistently generating great revenues for Adobe and Apple, since 1991.

In July-August 1995, Mr. O'Brien did not know that *Adobe Premiere* (WIN: \$695.) was different than *Adobe Premiere* (MAC: \$695.), and, after seven months of extreme personal sacrifice, plaintiff had enough money to buy a used Windows/PC and a new copy of *Adobe Premiere* (WIN: \$695.). Plaintiff purchased the computer, but, at point of purchase, Mr. O'Brien learned that the Windows version of *Adobe Premiere* was not productive of the semi-broadcast quality dve/p needed for plaintiff's professionally produced multi-media projects.

Plaintiff, unable to buy an Apple/MacIntosh computer and a copy of *Adobe Premiere* (MAC: \$695.) was precluded from competition in dve/p.

The Federal Trade Commission (FTC) released Adobe and the Aldus Corporation from all but one relatively minor antitrust charge in 1994, and permitted the merger of the companies before the beginning of 1995. In late 1995, FTC virtually overturned all sanctions against Adobe following Adobe's extensive, inter agency implementation of *Adobe Acrobat* as the standard for federal government computer file transfers.

The leniency of FTC antitrust prosecution and judgment of Adobe in 1994/ 1995 must be seen as contributive to concurrent injury sustained by the plaintiff and, indeed, an entire class of dve/p professionals and would-be professionals, at the hand of Adobe and its' friends at the time.

#### IV. CAUSE AND BACKGROUND WITH SPECIFICITY

"Video Professionals Flock to Digital Editing"

(Published in NewMedia August, 1995)

"Until recently, customers of digital video editing systems were almost always found at high-end video agencies creating broadcast TV ads and music videos. Short segments that require plenty of fast cuts and special effects are still the best fit for these nonlinear systems, but with maturing technology, lower prices and cheaper multi-gigabyte video-friendly storage, nonlinear editing is spreading to the larger world of video editing professionals.

Today, digital video systems are being used at local news stations, corporate A/V departments, even at the wedding video shop down at the mall. Making the switch from rolling tape means more creative control, easy special effects and significant savings in editing time. Considering the dropping prices of the latest systems, these benefits translate fairly quickly into savings.

Digital video is still most strongly entrenched in the music video and TV commercial trades, which are often combined in the same businesses. A typical nonlinear shop is Eyestrain Productions, a small Los Angeles firm that has done high-concept commercials as well as music videos for customers like MCA Records. For Eyestrain, purchasing a PC-based Video Machine and Digital Player/Recorder (DP/R) from Fast Electronic was a pretty easy economic decision.

"We used to go to an offline facility for an EDL [edit decision list] and then take that to an online editing bay to be assembled," said Eyestrain partner Paul Oakley. "If we really worked a deal, we could get a Betacam source to D2 master for \$3,000 to \$4,000. We realized that for under \$15,000, we could buy a Video Machine and DP/R board plus all the Fast options and hard drives, and have an in-house system capable of handling 90 percent of what we need to do."

Alone, the Video Machine controls analog sources and performs conventional A/B roll editing. With the DP/R board installed, it can mix input from both digital and analog sources simultaneously in real time. Video Machine's more than 400 two-dimensional effects are usually sufficient even for Eyestrain's substantial needs.

"We can get an hour of online somewhere if we need to insert a 3-D effect," said Oakley, "but normally our online and offline time are all the same now. It makes us much more competitive."

Most digital editing systems are based on the Apple Macintosh, including Data Translation's Media 100, Avid's Media Suite Pro and Composer series, Radius' VideoVision Studio and the recently announced VideoVision Telecast. Price cuts have brought the Media 100 down to \$8,995 and the Media Suite Pro to \$7,995. And Radius is expected to lower the \$15,845 price tag on its VideoVision Telecast as well. Note, however, that these prices are only for starters: By the time you add all the bells and whistles, you can spend anywhere from \$20,000 to \$40,000 for these systems. The high-end Avid Composer and ImMIX VideoCube and TurboCube systems range from \$40,000 to \$60,000.

While Avid's Composer is the reigning system in Hollywood, the ImMIX VideoCube is a favorite in TV newsrooms. "We digitize all the taped segments of our 15-minute Morning Business Report on the VideoCube," said Bruce Eibe, manager of electronic news gathering at WPBT in Miami. "We then feed it out live to air, switching between the anchor sitting at the studio desk and the VideoCube." The VideoCube uses a Power Macintosh 7100 as a front end

but provides its own processor, memory and disk storage. "The system lets us make changes very quickly," said Eibe. "We've actually changed things as late as a minute to air."

The British Broadcasting Corp. uses the VideoCube. Douglas Tishman, managing director of WestEnd Editorial, a division of National Video Center, the New York City firm handling the project for the BBC, says that the BBC would not be able to produce the weekly one-hour roundup of the O.J. Simpson trial highlights without the VideoCube. The system's ability to rearrange video clips instantly and try out effects in real time is essential.

"We're essentially summing up 40 hours' worth of testimony each week," said Tishman. "It's an around-the-clock process that uses every human resource I have at my disposal. Doing it this way leaves us barely any time for creativity. Doing it any other way would leave no time for creativity."

Using a digital system for offline editing can dramatically reduce the costly time spent in an editing suite, according to Dave Bawarsky, president of Video Quiklab, a multimedia services facility in Fort Lauderdale, Florida. Bawarsky, who uses the PC-based EMC Primetime system for offline editing, also says updates are much easier. "In the past, people have had to scrap programs like **training tapes when things changed,**" said Bawarsky. "If you've got an EDL, you can just redigitize the material, insert a new technique or procedure and extend the life of the program."

Video editing requirements for most interactive applications are not as steep as those for tape output. Neil Fox, who heads the multimedia services department for TRW, the Cleveland-based auto parts, data processing and aerospace/defense manufacturer, uses the Adobe Premiere software package for many of his interactive training projects. When a recent employee orientation CD-ROM required historical footage, Fox digitized the 25-minute clip using the built-in capability of his Quadra AV Macintosh and edited it as QuickTime movies with Premiere. Fox said it cost only one-tenth as much and took a fraction of the time required by traditional video editing methods.

"You don't need broadcast quality video for CD-ROMs," said Fox. "You just need something that will play back at quarter-screen resolution at 15 frames per second."

Premiere is bundled with a number of systems, including Radius' VideoVision Studio, but now Radius will also bundle a more traditional high-level editing package called Radius Edit with its Telecast hardware. It's difficult to provide a single software interface that can please both video professionals moving over from analog tape as well as video newcomers.

At Magnet Interactive Studios Inc. in Washington, D.C., editors can use Avid Media Suite Pro or Radius VideoVision Studio with Premiere. Seth Lee Savarick, who is working on The Wall: A Living Memorial CD-ROM about the Vietnam veterans' memorial, prefers Premiere.

"I come from a print background and wasn't accustomed to doing A/B roll editing," said Savarick. "I found Premiere very comfortable, while the Avid seemed quirky. But we have a producer here who has a traditional video background, and she finds Premiere quirky."

According to Savarick, the nonlinear aspect of digital editing offers a unique level of creative freedom. "Working this way, I was able to spontaneously tweak and change things as I was putting them together," he said. "If I had been on an online system, where time is money, I would have had to know exactly what I wanted to do before I went in."

Such experimentation may not lead directly to greater profits, but once you master the new software, it does tend to foster better video editing. In the long run that can add up to quite a competitive edge.--Donna Barron

Adobe Systems

(800) 833-6687

Avid Technology

(800) 949-2843

Data Translation

(508) 460-1600

Editing Machines Corp.

(EMC) (202) 362-3102

Fast Electronic

(415) 345-3400

ImMIX (916) 272-9800

Radius (800) 227-2795

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In 1994-1995 defendants, in conspiracy to uphold and/or increase their monopoly in digital-video-editing/production markets, and to intentionally restrain competition in same, directly and proximately injured plaintiff's business, public charity and person.

The Adobe/Apple monopoly/conspiracy was supported and exploited by the major shareholders of Adobe/Apple stock, J.P. Morgan Company, Morgan Stanley, Inc. and Hambrecht & Quist, Inc. These brokerage houses published analyses and recommendations, and otherwise used their great credibility and resources, inter securities industry and in national and international publics, to

influence related and unrelated buy/sell orders for securities. Detailed trading records of cited companies, especially in re their own stock values, point to a definite concurrence with the trading of Adobe and Apple such as to support allegations of conspiracy and/or antitrust liability.

Defendants *de facto* tying of Adobe software to Apple hardware precluded plaintiff's competition in dve/p fields for which he had been recently and professionally trained. Defendants, illegal tie-in, a violation of Title 15, sec. 14 of U.S. Codes, was made possible, sustained and increased by numerous antitrust law violations over the cited three year period including (1) conspiracy to monopolize, (2) monopolization, (3) illegal merger, (4) illegal tie-in sales, (5) price discrimination, deception and manipulation, and (6) illegal use of interlocking directorates.

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Background Note 1: "Adobe Systems, Inc. and Aldus Corporation have agreed to modify their merger plan so that they will divest Aldus' *Freehand* professional-illustration software within six months after the merger, as part of a settlement of Federal Trade Commission charges. The FTC alleged that the merger, announced in March and valued at approximately \$0.5 billion, could lead to higher prices and reduced innovation for professional-illustration software, *Freehand* will be divested to Altsys Corporation, which developed the software." [ FTC File No. 941 0059: July 27, 1994 ]

"This is the first instance in which the FTC has challenged a merger between software firms.(underscore added) This proposed merger would have combined the only two competitors in the \$60. million worldwide professional-illustration software market, a market in which Adobe and Aldus have competed vigorously on price and product development, the FTC documents state. This market has not seen new entry, but rather is characterized by high developmental and reputational barriers, and a large installed base that makes penetration difficult and time consuming, the staff added." [ Ibid., see Exhibit B ]

The underlined sentence above highlights the fact that in 1994 there was a great paucity of antitrust litigation re software firms. Such litigation was greatly needed by the plaintiff as well as the American people.

FTC remedied the threat to competition in "professional-illustration software" markets in 1994, but overlooked the threat in professional digital video editing/production markets. FTC could have, and perhaps should have, required the Aldus product *Pagemaker* be divested as another condition for the merger, because it gave *Adobe Premiere* more range of application and graphical capability and, therefore, more dominance in the dve/p monopoly.

Plaintiff alleges that defendants agreed to the *Freehand* divestiture because the code could easily and effectively be returned to Adobe's domain and/or control via Macromedia Inc., Adobe's "bedfellow" in the dve/p monopoly. (Grounds for another conspiracy charge?)

Loss of *Pagemaker* would have been devastating to defendants' expansion plans as subsequent events revealed. *Freehand* made its proprietary way to Macromedia, Inc. from Altsys, Inc. by

February of 1995, which was the month plaintiff made his way to Salvation Army in Santa Barbara... to survive.

It is clear from the above quotes [ see Exhibit C ] that divestiture of *Freehand* was important in reducing and/or containing Adobe/Apple monopoly in the broad field of "computer graphics" and, specifically, dve/p markets.

When Altsys, Inc. received back all rights to *Freehand*, pursuant to the FTC order cited and then leased those same rights to Macromedia, Inc. (by early 1995), Adobe effectively circumvented FTC orders. *Macromind Director* is a Macromedia, Inc. product that was (1992-1995) considered integral and essential in the production of semi-broadcast-quality digital video using *Adobe Premiere*, *Adobe Photoshop* and optional packages.

Each of these above noted software products allowed their copyright holders and/or manufacturers to benefit from monopoly advantages in dve/p and other graphics markets. To maintain and increase these integrated monopoly powers, *Freehand* had to be owned or effectively controlled by either Adobe or Macromedia. Although FTC compelled Adobe's release of *Freehand*, Macromedia quickly healed that wound to the monopoly by acquiring the exclusive rights to *Freehand* from Altsys, Inc., thus effectively circumventing FTC action intended to curtail Adobe's monopoly power in graphics markets.

Background Note 2: If Adobe acquired any Macromedia, Inc. or Apple Computer, Inc. stock between July 1994 and March 15, 1996 it violated the FTC order(s) noted above. Ascertaining this fact is beyond plaintiff's means at time of drafting this complaint, but extensive investigation is anticipated, in the near future, with help from the United States Department of Justice.

Because Adobe initiated a joint venture with H&Q during the time frame noted above, it not only co-acquired stock with its' partner, it also (to a significant extent) shared partner's total economic power which included partner's stock ownership, independent of the joint venture. If H&Q owned stock in one or more companies whose graphics software products were used in Apple/MacIntosh machines then (to a significant extent) Adobe, as the joint venture began and continued, acquired more economic power in the market(s) relevant to the FTC order(s) noted above.

Background Note 3: Where H&Q held "control group" percentages (typically, 5% or more) of stock issued by Adobe's competitors, Mr. Hambrecht's influence upon and/or establishment on those companies' Boards of Directors is also of critical importance to the cause (and proof) of these pleadings re Title 15, sec. 18 liability. Mr. Hambrecht's influence must be seen as integral in formation of policies and execution of actions that Mr. O'Brien alleges causative of his antitrust injury. Again, the precise determination of the extent of alleged antitrust liability lies with authoritative investigation.

These facts and circumstances are alleged herein because they corroborate plaintiff's allegations that defendants breached Title 15, sections 1 and 2 at time of cause of action.

Plaintiff was injured when defendants' tie-in was found to be too expensive to allow plaintiff's purchase of certain tools and equipment necessary to compete in dve/p markets for:

- a) motion picture production and script sales
- b) software development and sales
- c) public charity funding solicitations and program presentations

## V. *PER SE* ANTITRUST TYING

Mr. O'Brien alleges a per se violation of ( Title 15, USC, sec. 14 ) by the defendants separately and/or collectively.

"To establish a per se tying violation, plaintiff must show the existence of two separate and distinct products or services and an agreement conditioning the sale of the tying product on the purchase of the tied product, that the seller possesses sufficient economic power with respect to the tying product to restrain free competition appreciably in the market for the tied product, and that the seller has thereby foreclosed a not insubstantial amount of interstate commerce in the tied product." (*Allen-Myland, Inc. v. Intern. Business*

*Machines*, 693 F.Supp. 262 (E.D.Pa. 1988), page 262, #3.)

1. Tie-in sales of the following separate and distinct products constituted *de facto* and *per se* illegal tying by defendants: *Adobe Premiere*, defendants' software product, was (is) a well-known, digital-video-editing/production application manufactured by Adobe and wholesaled to retailers who marketed and sold it to consumers on an interstate/ international basis. Apple's computers (and peripherals) are globally demanded, and wholesaled to retailers who market and sell them to consumers on an interstate/international basis.
2. The tying product's copyright, functional uniqueness and high demand in relevant markets, coupled with high demand for the tying products' unique capabilities in the *tied* products' markets, is proof of "sufficient market power" to restrain competition appreciably in the market(s) for the tied product.
3. Although no formal agreement existed between seller and buyer of the tying product, none was required to institute the alleged illegal tie-in. "Computer company's sale of alleged tying and tied products separately did not preclude application of per se rule against tying..." (Ibid., page 263, #5.)

"Even when allegedly tied products are sold separately, the per se rule may apply if the option ( to buy another tied product ) is not viable." (Ibid., page 263, #6.)

"The majority and concurrence recognized that a Seller, possessing significant market power with respect to Product A, may cause anticompetitive harm by tying as follows: by reducing the price of Product A slightly (or by otherwise not fully exploiting its power with respect to Product A), the Seller may induce the Buyer to accept the tie; by doing so, the Seller may build a strong market position in Product B; and that position in Product B, in turn, may increase its power to charge high prices in respect to Product A." [*Grappone, Inc. v. Subaru of New England, Inc.*, 858 F.2d 792 (1st Cir. 1988)]

*Adobe Premiere* (WIN) was introduced in January-March, 1995, at a suggested retail price of \$495.00 to be increased to \$695.00 in April and thereafter.

*Adobe Premiere* (MAC) was listed at \$695.00 in 1993 and was, therefore, slightly less in cost at \$695.00 in 1994 due to inflation (note also the decrease in *marginal cost* year-to-year), and appreciably less in cost at \$695.00 in 1995 for the same reason. This fact helped consumers in 1994-1995 to accept the tie of *Adobe Premiere* (MAC) with Apple platforms which became significantly more expensive with the introduction of the Power PC series. In 1996, both *Adobe Premiere* (MAC) and (WIN) sold for \$795 in the new CD-ROM versions.

Thus, the Court's revelation, quoted above, has a graphic example in the instant case, and it can be confidently alleged that defendants' 1993-1995 sales plans had the form and substance of classically anti-competitive ploys.

## VI. JURISDICTION

The plaintiff alleges jurisdiction for this case in UNITED STATES DISTRICT COURT.

"The district courts shall have original jurisdiction of all actions arising under the constitution, laws, or treaties of the United States. ( United States Codes, Title 15, Sec. 1331 )

"...any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." ( United States Codes, Title 15, Sec. 15 )

## VII. VENUE

Plaintiff states the UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA (Los Angeles) is the correct venue for this proceeding because at least one of the defendants does business in the Central District of California.

"(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." ( United States Codes, Title 28, section 1391(c) )

## VIII. LIMITS ON ACTION

On the date of this complaint's filing in district court, plaintiff alleges this action is within the statute limits for any action under ( United States Codes, Title 15, Sec. 15 ) because the date of the cause of action alleged was on or about August 15, 1995.

"Any action to enforce any cause of action under section 4A, or 4C ( 15 USCS,

sec. 15, 15a, 15c ) shall be forever barred unless commenced within four years after the cause of action accrued." ( 15 USCS, sec. 15(b))

## IX. PRIVATE ANTITRUST STANDING

Plaintiff makes reasonable and provable claims upon which relief can be granted by the court of jurisdiction. ( Federal Rules of Civil Procedure: Rule 12(b)6 )

Plaintiff sustained alleged antitrust injury of a nature that antitrust laws were designed and legislated to prevent. Although plaintiff's literal competitor and/or consumer status, relative to the defendants' goods and services wholesaled and/or retailed, is vague and questionable, plaintiff contends that provable "would-be" competitor and/or "would-be" consumer status, coupled with other standing related allegations, satisfies the Court's test for antitrust standing in this case.

"Would-be competitor which did not show that it engaged in activity foreclosed by allegedly illegal tying arrangement or that it would have engaged in a particular business but for the alleged illegal tying arrangement did not establish adverse impact on competition from the alleged tying arrangement. Sherman Anti-Trust Act, sec. 1, 15 U.S.C.A. sec. 1" (Ibid., page 265, #27. )

Let it be noted in the above referenced case that although the plaintiff's claim failed the "adverse impact" test, the plaintiff did, nevertheless, have antitrust standing in the proceeding as a "would-be" competitor.

Mr. O'Brien is capable of concrete and specified proof that he was recently trained (professionally) to engage in the business(s) foreclosed by defendants' illegal tie-in, and that he, in fact, was "engaged in activity foreclosed by allegedly illegal tying arrangement" by virtue of financial and other investments, secured office contracts, secured suppliers contracts, equipment purchases and office set-up factors.

These provable factors demonstrate that "Antitrust plaintiff made the necessary showing of a genuine intent to enter the market of providing services..." and "Antitrust plaintiff had standing to challenge...by virtue of the plaintiff's participation in the business..." (Ibid., page 265, #34, #35.)

Another tact has been given authority by the federal courts whereby neither competitor nor consumer status has been essential for grant of antitrust standing.

In *Ware v. Trailer Mart, Inc.* the plaintiff, without literal competitor or consumer status, stated a claim upon which relief could be granted by the courts because the would-be consumer (of mobile home rental space used as the tying product by defendant) had sustained provable antitrust injury as a result of defendant's tie of space for mobile home purchase precluding rental of space. ( *Ware v. Trailer Mart, Inc.*, 623 F.2d 1151 )

A would-be purchaser is called "consumer" by the appellate court under circumstances cited in *Ware*: "The Court of Appeals, Boyce F. Martin, Jr., Circuit Judge, held that: (1) plaintiff's status as a consumer, i.e., one wishing to lease space in the park, did not alter nature of his injury..." (Ibid.)

"As a consumer, plaintiff army officer had standing to bring antitrust action against mobile home park complaining of tying..." (Ibid.)

Mr. O'Brien, in December 1994, January 1995 and August-December 1995, was a would-be consumer of the tying product alleged in this case. The purchase of same was compelled by plaintiff's professional dve/p commitment, and, therefore, it was virtually certain, given the financial ability.

In *Ware*, successful private antitrust plaintiff suffered only personal financial loss, not business loss (he was an army officer *sans* private business).

"( Plaintiff ) had suffered monetary loss as result of alleged antitrust violation, an injury in his 'property' within purview of the Clayton Act..." (Ibid.)

Although it is difficult to see how control of mobile home space only at Trailer Mart imparts sufficient economic power to restrain trade in mobile home space(s) on an interstate basis, the decision in favor of the plaintiff in *Ware* did, nevertheless, clearly validate a claim of *defacto* consumer status and/or give antitrust standing to a would-be consumer.

If plaintiff's consumer status is questioned on facts and circumstances pled, his would-be consumer status is undeniable on same.

## NECESSARY DAMAGES

"In order to establish a cause of action under either a per se or rule of reason analysis, (plaintiff) must demonstrate both that the antitrust laws were violated and that it suffered 'fact of damage' in consequence of that violation." *Pitchford v. Papi, Inc.*, 531 F.2d 92, 98-99 (3rd Cir. 1975), cert. denied, 426 U.S. 935, 96 S.Ct. 2649, 49 L.Ed.2d 387 (1976); *accord Response of Carolina, Inc. v. Leasco Response, Inc.*, 537 F.2d 1307, 1320 (5th Cir. 1976) ( plaintiff, must show a violation of the antitrust laws, the fact of damage, and some indication of the amount of damage)." (Ibid., page 298.)

Mr. O'Brien has alleged "fact of damage" to business, public charity, and person. Loss of business income, conservatively totals \$1.2 million dollars. Loss of personal income totals \$1.0 million ( fifteen (15) remaining earning years precluded ). Mental and physical disability, not

proximately but directly caused by alleged antitrust violations, are beyond financial estimate but can be relieved, in part, by the court's order of monetary damages.

"It is 'as unlawful to prevent a person from engaging in a business as to drive him from it.' 2 P. Areeda & D. Turner, Antitrust Law, sec. 335 c at 174 (1978); see also *Bubar v. Ampco Foods Inc.* 752 F.2d 445, 450 (9th Cir.); cert. denied, 472 U.S. 1018, 105 S.Ct. 3481, 87 L.Ed.2d 616 (1985); *Grip-Pak, Inc. v. Illinois Tool Eorks, Inc.* 694 F.2d 466, 474-475 (7th Cir. 1982); cert. denied, 461 U.S. 958, 103 S.Ct. 2430, 77 L.Ed.2d 1317 (1983); *Hecht. v. Pro-Football, Inc.* 570 F.2d 982, 994 (D.C. Cir. 1977), cert. denied, 436 U.S. 956, 98 S.Ct. 3069, 57 L.Ed.2d 1121 (1978). Generally, 'a potential competitor has standing if he can show a genuine intent to enter the market and a preparedness to do so. (plaintiff may be able to recover lost profits as a manufacturer even though it has not yet started manufacturing, if it had reasonable prospects of doing so which (defendants) snuffed out.)' *Bubar*, 752 F.2d at 450; see also *Grip-Pak*, 694 F.2d at 474-475." (Ibid., page 300.)

At time of cause of action, Mr. O'Brien was a software inventor and manufacturer/retailer with a software development/manufacturing/sales business in an office-building in Solvang, California. The cost of defendants' tied products ( far in excess of Marginal Cost ) was budgeted by plaintiff, but could not be defrayed due to a delay in proceeds from sale of Mr. O'Brien's inherited real property and from a financial crisis precipitated by the illegal actions of a local car dealer. ( See case: CIV-S-97-0250 LLK )

## X. SUMMARY

Today, *Adobe Premiere v 5.1 (MAC/WIN)* retails for \$329.00 in Santa Barbara, California.

Defendants committed per se antitrust tying according to court's established criteria for same. Using the cited criteria in IV. above, plaintiff affirms allegations that (1) an implied agreement existed "conditioning the sale of the tying product to the purchase of the tied product, (2) the seller possessed sufficient economic power with respect to the tying product to restrain competition appreciably in the market for the tied product, and (3) the sale foreclosed a substantial amount of interstate commerce in the instant case and historically in a multiplicity of similar circumstances.

Defendants conspired, as alleged, and as can be alleged with more specificity.

Defendants used at least one interlocking directorate, as alleged, and as can be alleged with more specificity.

Mr. O'Brien invented (copyrighted) computer programs encompassing the entire field of graphical processing of golf statistics on PC and/or Mainframe in 1989. In 1995, after many revisions of GOLF COACH, a software compilation developed by Mr. O'Brien in 1990 rendering copyrighted concepts, plaintiff was prepared and partially equipped to produce a commercially viable version of GOLF COACH in Solvang, California. However, the alleged Adobe/Apple monopoly tie-in precluded the inclusion of video inter GOLF COACH. Without

video GOLF COACH would have been virtually indistinguishable from previous versions which did not sell well.

In 1994, no companies were found in violation of plaintiff's GOLF COACH copyrights, probably because Mr. O'Brien was considered a viable businessman holding, and capable of exploiting, the copyrights. In April of 1999, after plaintiff had experienced life threatening disability (1996) and resulting economic demise, substantially due to defendants' antitrust violations, plaintiff's survey of the golf statistics processing industry (via internet) revealed at least twenty-five companies (worldwide) originating and trading in software containing golf statistics processing substantially similar to plaintiff's software.

In December 1994, plaintiff received an opportunity to develop a short video in order to sell an original script (potential market value \$500,000.) that had been donated to plaintiff's non-profit corporation, but was precluded from doing so by cost of alleged illegal tie.

Alleged antitrust violations directly caused alleged antitrust injury.

## XI. PRAYER

The plaintiff, Edward Michael O'Brien, respectfully asks the Court to grant him relief in the form of monetary damages for causes cited herein and for any and all other causes deemed appropriate by the United States District Court.

Plaintiff demands compensatory damages from the defendants in the amount of \$2.2 million, and asks the Court to grant same together with punitive damages of \$3.8 million for the cause of national and international consumer well-being to be served by the tempering, via requested punitive measures, of the ever present tendency of proven monopolists to exploit their positions unlawfully.

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Respectfully submitted by:

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Edward Michael O'Brien, *Pro se*

Dated: January 3, 1998