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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 HIDEYUKI MIZUMURA, Individually and)
10 d.b.a. B-SURE CO. USA)

11 Plaintiff,)

12 vs.)

13 HITACHI MAXELL LTD., a Japanese)
14 Corporation, WECCOP.COM, INC., a)
California Corporation, TETSUO KUSUZAKI,)
15 MAKIKO YOSHINAGA, and DOES 1 through)
50, Inclusive.)

16 Defendants.)

CASE NO. BC 257721

**FIRST AMENDED COMPLAINT FOR
RESCISSION BASED ON FRAUD AND
FAILURE OF CONSIDERATION;
FRAUD; BREACH OF CONTRACT
AND BREACH OF GUARANTY**

17
18
19 Plaintiff, Hideyuki Mizumura, individually and doing business as B-Sure Co. USA, alleges:

20
21 **FIRST CAUSE OF ACTION**

22 **(AGAINST ALL DEFENDANTS FOR RESCISSION BASED ON FRAUD)**

23
24 1. Plaintiff is a resident of the County of Los Angeles, State of California, and is, at all times
25 herein mentioned, doing business under the fictitious business name, B-Sure Co. USA, within said
26 state and county.

27 2. Plaintiff is informed and believes, and based thereon alleges that defendant Hitachi Maxell
28 Ltd. is a corporation organized and existing under the laws of Japan, and is, at all times herein-

1 mentioned, doing business within the State of California and elsewhere in the United States.

2 3. Plaintiff is informed and believes, and based thereon alleges that defendant Tetsuo
3 Kusuzaki (hereinafter referred to as "Kusuzaki") is, at all times herein mentioned, a resident of
4 Japan, and a Director of defendant Hitachi Maxell Ltd. and defendant WeCoop.com, Inc. (hereinafter
5 referred to as "WeCoop"). At all times herein-mentioned defendant Kusuzaki was doing business
6 within the State of California as an authorized representative of defendant Hitachi Maxell Ltd.,
7 defendant WeCoop, and for his own account.

8 4. Plaintiff is informed and believes, and based thereon alleges that defendant Makiko
9 Yoshinaga (hereinafter referred to as "Yoshinaga") was, at all times herein-mentioned, a resident of
10 the State of California, and President and Chief Executive Officer of defendant WeCoop.

11 5. Defendant WeCoop is, at all times herein mentioned, a corporation organized and existing
12 under the laws of the State of California, with principal place of business within the County of Los
13 Angeles of said state.

14 6. Plaintiff does not know the true names and capacities of defendants fictitiously named as
15 Does 1 through 50, and will seek leave of court to amend this complaint to state their true names and
16 capacities as soon as they are ascertained.

17 7. Plaintiff is informed and believes, and thereon alleges, that all defendants named herein,
18 including Does 1 through 50, were, at all times herein mentioned, agents and employees of one
19 another, and in doing the acts hereinafter alleged were acting in the scope of their authority as agents,
20 servants, and employees, and with the permission and consent of their co-defendants.

21 8. Prior to the acts complained of hereinbelow, plaintiff and defendant Kusuzaki were social
22 friends, and did business with each other for approximately twelve years, during which they
23 developed a relationship of trust and confidence in one another.

24 9. Prior to the acts complained of hereinbelow, defendant Yoshinaga was, and at all times
25 herein-mentioned is, defendant Kusuzaki's mistress in Japan, where they resided and worked. In the
26 course of said intimate relationship, defendants Kusuzaki and Yoshinaga conceived, conspired,
27 agreed and combined among themselves to perpetrate the fraud and money laundering scheme
28 hereinbelow specifically alleged. Pursuant to and in furtherance of said conspiracy, defendant,

1 individually, and in his capacity as director of defendant Hitachi Maxell, Ltd., and with the
2 knowledge, consent and participation of defendant Yoshinaga, represented to plaintiff in or around
3 May 2000, as follows:

- 4 A. That defendant Hitachi Maxell Ltd. had planned, and was authorized to, form a new
5 wholly-owned subsidiary by the name of WeCoop.com in Los Angeles, California,
6 whose business was to "manage a global community site on the Internet," and further
7 engage in "Internet business focusing on retail and service in the United States."
- 8 B. That defendant Hitachi Maxell Ltd. would fund the entire capital of WeCoop.com,
9 and provide it with adequate working capital in order for said subsidiary to become
10 successful in the United States.
- 11 C. That defendant Hitachi Maxell Ltd. intended that its subsidiary, WeCoop.com,
12 operate its business permanently within the United States of America, and that said
13 subsidiary should generate a gross income of at least \$2 million in the first year of
14 its operation, and was expected to reach a gross income in excess of \$8 million in the
15 fifth year of its operation, according to studies and investigations of defendant
16 Hitachi Maxell Ltd.
- 17 D. That Hitachi Maxell Ltd. would engage the services of plaintiff to plan and establish
18 its wholly-owned subsidiary, WeCoop.com, Inc. in Los Angeles, California as soon
19 as possible, in order that said subsidiary could commence business as of June 2000.
- 20 E. That, after the formation of WeCoop, plaintiff would serve as the consultant for
21 WeCoop permanently, and that Hitachi Ltd, also a Japanese corporation and the
22 parent of defendant Hitachi Maxell Ltd., would transfer its technical and trained
23 personnel to Los Angeles to staff WeCoop and to insure that WeCoop possessed the
24 level of competence necessary for its success.
- 25 F. That for the first year of WeCoop's commencement of business, defendant Hitachi
26 Maxell Ltd. would pay plaintiff a nominal consulting fee of \$3,000 per month for no
27 more than 60 hours of work per month for a period of one year. In addition to the
28 monthly consulting fee, WeCoop would pay plaintiff commissions of no less than

1 15% of the gross income from any and all businesses plaintiff procured for WeCoop,
2 from which plaintiff should earn income in the hundreds of thousands of dollars per
3 year. Furthermore, plaintiff would be paid his usually consulting fees after the first
4 year of WeCoop's operation; he would continue to earn commissions in the manner
5 hereinabove mentioned; and, as part of the consideration for plaintiff's continued
6 service as consultant to WeCoop, plaintiff would be granted a valuable option to
7 purchase the stock of WeCoop.

8 G. That any and whatever obligations of WeCoop to plaintiff would be guaranteed by
9 defendant Hitachi Maxell Ltd.

10 10. The foregoing representations were false, and were known by the defendants to be false
11 at the time they were made. Said representations were made for the purpose of inducing the plaintiff
12 to enter into the contracts, and to engage in the activities, alleged hereinbelow, all to plaintiff's
13 detriment. In truth and fact, the defendants did not intend that WeCoop would engage in any
14 business activities whatsoever after its formation. Defendants sole purpose of forming WeCoop was
15 to use WeCoop as a depository of funds defendant Kusuzaki misappropriated from defendant Hitachi
16 Maxell Ltd, which funds were intended by the defendants to be used by the defendant Kusuzaki and
17 his mistress, defendant Yoshinaga, in the United States. WeCoop was in fact 100% owned by an
18 entity named Maxell Software Engineering Co., Ltd., a Japanese corporation controlled by defendant
19 Kusuzaki which served as the Japanese depository of funds which defendant Kusuzaki
20 misappropriated from defendant Hitachi Maxell Ltd.

21 11. In truth and fact, defendants other purpose of forming WeCoop was to enable defendant
22 Kusuzaki to transfer his friends and affiliates in Japan, who were former employees of Hitachi Ltd.,
23 ostensibly for services to WeCoop, by falsely representing to all concerned, including the United
24 States government, that WeCoop was an affiliate of Hitachi Ltd., and by making applications in the
25 name of Hitachi Ltd., without its knowledge or consent, to the United States government for visas
26 enabling the inter-company transfer of such friends and affiliates in Japan to the United States for
27 service at WeCoop.

28 12. Plaintiff did not know of defendant Kusuzaki's real intention and purpose in the

1 formation of WeCoop at the time the foregoing representations were made. In reliance upon
2 defendant Kusuzaki's representations, plaintiff did enter into a written contract with defendant
3 Hitachi Maxell Ltd. under which plaintiff would provide 60 hours per month of "major
4 consulting/executive tasks" to WeCoop for a period of one year from June 1, 2000 for a nominal fee
5 of \$3,000 per month. A copy of said consulting agreement between plaintiff and Hitachi Maxell Ltd.
6 dated June 1, 2000, marked Exhibit A, is attached hereto and incorporated herein by reference. In
7 further reliance upon defendant Kusuzaki's representations, plaintiff entered into a similar consulting
8 agreement with WeCoop on July 1, 2000, after WeCoop's formation, a copy of which, marked
9 Exhibit B, is attached hereto and incorporated herein by reference. Such reliance was justified in
10 that (a) plaintiff relied upon a twelve-year relationship with defendant Kusuzaki during which he
11 developed trust and confidence in defendant Kusuzaki; (b) defendant Kusuzaki, in his capacity as
12 Director of defendant Hitachi Maxell Ltd., did execute a written guaranty of all of WeCoop's
13 obligations to plaintiff; and (c) defendant Kusuzaki was in fact a respected senior director of Hitachi
14 Ltd., and then Hitachi Maxell Ltd., for many years; and (d) both Hitachi Ltd. and Hitachi Maxell
15 Ltd. were, and still are, highly respected business entities in Japan, and elsewhere in the world.

16 13. The facts misrepresented by the defendant were material in that, but for such
17 representations, plaintiff would not have committed himself to the aforementioned contracts and
18 obligations, and would not have engaged in the activities more specifically described hereinbelow
19 on the demands of defendants Kusuzaki and Yoshinaga.

20 14. As of early May 2000 to April 2001, the date on which WeCoop unilaterally terminated
21 all contractual relationship with plaintiff,

22 A. Plaintiff engaged consultants and expended substantial time and funds in the
23 incorporation of WeCoop. Upon the formation of WeCoop, defendants Kusuzaki
24 and Yoshinaga appointed themselves directors and officers of WeCoop, and, in
25 exercise of their authority under such capacities, caused and directed WeCoop to
26 ratify all representations they made to plaintiff, and to join and participate with them
27 in the fraud and money laundering schemes. In furtherance of said unlawful purpose,
28 WeCoop allowed defendants Kusuzaki and Yoshinaga to misappropriate

1 substantially all of its funds, usurped plaintiff's office facilities, equipment, vehicles
2 and credit lines without compensating plaintiff therefor, used and abused plaintiff by
3 working him ten hours a day, including weekends, as personal chauffeur, butler,
4 servant and tour guide to defendants Kusuzaki and Yoshinaga, and in such capacities
5 other than that of a business consultant, all at the direction and control of defendants
6 Kusuzaki and Yoshinaga.

7 B. To plaintiff's surprise and disappointment, defendant Kusuzaki appointed defendant
8 Yoshinaga president and chief executive officer of WeCoop despite his knowledge
9 that defendant Yoshinaga had no knowledge or experience whatsoever in the Internet
10 business, or in the management or administration of the activities or businesses
11 which WeCoop was supposed to undertake. Furthermore, none of the friends and
12 affiliates of the defendant who were transferred from Japan to work at WeCoop knew
13 anything about the Internet business, or the technology necessary to operate such a
14 business. All said transferees would stay at WeCoop's offices with neither purpose
15 nor function, and would leave WeCoop and disappear shortly thereafter.

16 C. WeCoop had never engaged in any business whatsoever during the ten months
17 plaintiff served as its consultant. Furthermore, plaintiff had provided WeCoop
18 opportunities to market and sell certain Warner Brothers and Disney cartoon
19 character beach towels, which were popular in Japan, from which plaintiff would
20 earn substantial commissions for an unlimited duration. Defendants did not and
21 could not perform any of the commissions agreements as defendant had neither
22 knowledge nor training in such business, resulting in plaintiff's loss of his exclusivity
23 in the sale or distribution of said merchandise.

24 D. During said ten month period, substantial funds were transferred from Maxell
25 Software and Engineering Co., Ltd. of Japan to WeCoop purportedly to capitalize
26 WeCoop. Plaintiff is informed and believes, and based thereon alleges that
27 defendants Kusuzaki and Yoshinaga had misappropriated at least \$850,000 of
28 Hitachi Maxell Ltd.'s funds for their personal benefit.

1 E. WeCoop did cause the transfer of friends and affiliates of defendant Kusuzaki from
2 Japan to California for service at WeCoop by misrepresenting to the United States
3 government that the applications for inter-company transfer visas were made by
4 Hitachi Ltd., that the transferees were current employees of Hitachi Ltd. when in fact
5 they have quit their employment at Hitachi Ltd. at the time the visa applications were
6 made.

7 F. Plaintiff was prevented from serving WeCoop as its consultant, as WeCoop did not
8 engage in any business for which consulting services could be utilized.

9 15. On April 1, 2001, defendant WeCoop unilaterally repudiated all contractual relationships
10 with plaintiff by giving plaintiff written notice that his consulting services with WeCoop and all
11 agreements between plaintiff and WeCoop were terminated, effective immediately. At all times
12 prior to April 1, 2001, plaintiff had performed all services required of him by defendant WeCoop,
13 and remained ready and able to perform his obligations under his consulting and commissions
14 agreement with defendant Hitachi Maxell Ltd. and defendant WeCoop at all times.

15 16. Plaintiff intends service of summons and complaint in this action to serve as notice of
16 rescission of the consulting agreements he executed with defendant Hitachi Maxell, Ltd. and
17 defendant WeCoop, and hereby offers to restore all consideration furnished by defendants under said
18 contracts, on condition that defendants restore to plaintiff all benefits and everything of value which
19 defendants received from plaintiff, as a result of defendants' fraud, pursuant to *Civil Code Section*
20 *1691(b)*. Such benefits and things of value include, but without limitation to, the services rendered
21 and facilities provided by plaintiff to defendants in amounts according to proof.

22 17. As a direct and proximate consequence of such rescission, plaintiff was further damaged
23 in a sum in excess of \$5 million, according to proof, and is entitled to recover said sum from
24 defendants, and each of them, pursuant to *Civil Code Section 1692*.

25 18. In performing the acts herein alleged, defendants intentionally misrepresented to plaintiff
26 material facts hereinabove alleged to induce plaintiff to engage in acts which, unbeknownst to
27 plaintiff, facilitated a fraudulent scheme of defendants to transfer funds which defendants had
28 unlawfully gained for use by defendants Kusuzaki and Yoshinaga solely for their private benefits.

1 In doing so, defendants intended to, and did, deprive plaintiff of his money and property, thereby
2 justifying an award of punitive damages against the defendants, and each of them, according to
3 proof.

4
5 **SECOND CAUSE OF ACTION**
6 **(AGAINST DEFENDANT HITACHI MAXELL LTD. FOR RESCISSION BASED ON**
7 **FAILURE OF CONSIDERATION)**
8

9 19. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 of his first
10 cause of action as though fully set forth herein.

11 20. On or about June 1, 2000, plaintiff entered into a written contract with defendant Hitachi
12 Maxell Ltd. under which plaintiff agreed to provide no more than 60 hours of specified consulting
13 and executive services to defendant WeCoop for a period of one year in return for a consulting fee
14 of \$3,000 per month. A true and correct copy of said consulting agreement, marked Exhibit A, is
15 attached hereto and incorporated herein by reference.

16 21. At the time said consulting agreement was entered into, defendant knew that plaintiff's
17 primary purpose in entering into said agreement, and that the subject matter of said agreement, was
18 for plaintiff to provide business consulting and executive services to defendant WeCoop, whom
19 defendant represented to be a lawful business enterprise and a member of the prestigious Hitachi,
20 Ltd. family of companies. Unbeknownst to plaintiff, defendant WeCoop was intended to be formed,
21 and was in fact formed, solely for the unlawful purpose of facilitating the fraud and money
22 laundering schemes of defendants Kusuzaki and Yoshinaga, as more specifically alleged above. In
23 total frustration of the purpose of said agreement, defendant WeCoop actually used plaintiff
24 primarily to perform services which, without plaintiff's knowledge or consent, furthered or
25 facilitated the fraudulent and money laundering schemes and unlawful purpose of defendants
26 Kusuzaki and Yoshinaga. Almost all services provided by plaintiff at the direction of defendant
27 WeCoop were unrelated to the subject matter of the consulting agreement. Plaintiff is informed and
28 believes, and based thereon alleges, that the defendant Hitachi Maxell, Ltd. discovered the fraudulent

1 scheme of defendants Kusuzaki, Yoshinaga and WeCoop in or around February or March of 2001.
2 Thereupon, in early April 2001, defendant WeCoop unilaterally and prematurely terminated all
3 contractual relationship with plaintiff without justification or excuse. At no time prior to said
4 termination did defendant WeCoop engage in any business activity other than the unlawful activity
5 of laundering funds which defendants Kusuzaki, Yoshinaga and WeCoop misappropriated or
6 fraudulently acquired.

7 22. By reason thereof, the consideration for said consulting agreement failed materially,
8 thereby entitling plaintiff to rescind said agreement pursuant to *Civil Code Section 1689(b)(2)*, which
9 allows rescission "if the consideration for the obligation of the rescinding party fails, in whole or in
10 part, through the fault of the party as to whom he rescinds", and *Civil Code Section 1689(b)(5)*,
11 which allows rescission "if the contract is unlawful for causes which do not appear in its terms and
12 conditions, and the parties are not equally at fault."

13
14 **THIRD CAUSE OF ACTION**
15 **(AGAINST DEFENDANT WECOOP FOR RESCISSION BASED ON FAILURE OF**
16 **CONSIDERATION)**
17

18 23. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 17 of his
19 first cause of action as though fully set forth herein.

20 24. On or about July 1, 2000, plaintiff entered into a written contract with defendant
21 WeCoop under which plaintiff agreed to provide no more than 60 hours per month of specified
22 consulting and executive services to defendant WeCoop for a period of one year in return for a
23 consulting fee of \$3,000 per month. A true and correct copy of said consulting agreement, marked
24 Exhibit B, is attached hereto and incorporated herein by reference.

25 25. At the time said consulting agreement was entered into, defendant knew that plaintiff's
26 primary purpose in entering into said agreement, and that the subject matter of said agreement, was
27 for plaintiff to provide business consulting and executive services to defendant WeCoop, whom
28 defendant represented to be a lawful business enterprise and a member of the prestigious Hitachi,

1 Ltd. family of companies. Unbeknownst to plaintiff, defendant WeCoop was intended to be formed,
2 and was in fact formed, solely for the unlawful purpose of facilitating the fraud and money
3 laundering schemes of defendants Kusuzaki and Yoshinaga, as more specifically alleged above. In
4 total frustration of the purpose of said agreement, defendant actually used plaintiff primarily to
5 perform services which, without plaintiff's knowledge or consent, furthered or facilitated the
6 fraudulent and money laundering schemes and unlawful purpose of defendants Kusuzaki and
7 Yoshinaga. Almost all services provided by plaintiff at the direction of defendant WeCoop were
8 unrelated to the subject matter of the consulting agreement. Plaintiff is informed and believes, and
9 based thereon alleges, that the defendant Hitachi Maxell, Ltd. discovered the fraudulent scheme of
10 defendants Kusuzaki, Yoshinaga and WeCoop in or around February or March of 2001. Thereupon,
11 in early April 2001, defendant WeCoop terminated all contractual relationship with plaintiff
12 unilaterally and prematurely without justification or excuse. At no time prior to said termination did
13 defendant WeCoop engage in any business activity other than the laundering of funds which
14 defendants Kusuzaki, Yoshinaga and WeCoop misappropriated or fraudulently acquired.

15 26. By reason thereof, the consideration for said consulting agreement failed materially,
16 thereby entitling plaintiff to rescind said agreement pursuant to *Civil Code Section 1689(b)(2)* which
17 allows rescission if the consideration for the obligation of the rescinding party fails, in whole or in
18 part, through the fault of the party as to whom he rescinds, and *Civil Code Section 1689(b)(5)* which
19 allows rescission "if the contract is unlawful for causes which do not appear in its terms and
20 conditions, and the parties are not equally at fault."

21
22 **FOURTH CAUSE OF ACTION**
23 **(AGAINST DEFENDANTS WECOOP, KUSUZAKI AND YOSHINAGA FOR FRAUD)**
24

25 27. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 8 of his
26 first cause of action as though fully set forth herein.

27 28. On or about early November, 2000 defendants Kusuzaki and Yoshinaga, individually
28 and as officers and directors of WeCoop, represented to plaintiff that beach towels bearing images

1 of Warner Brothers and Disney cartoon characters were very popular in Japan; that defendants were
2 influential in the business community in Japan and had maintained influence and connection with
3 numerous sources in Japan to whom they could sell similar merchandise in millions of pieces per
4 year; that defendants possessed the knowledge, training and experience in the marketing of similar
5 merchandise in Japan; that defendants would guarantee the sale of at least 500,000 pieces of such
6 towels per year; and that defendants would pay plaintiff a commission of \$2 per towel sold in Japan
7 pursuant to said exclusive right.

8 29. The foregoing representations were false, and were known by defendants to be false at
9 the time they were made. In truth and fact, defendants possessed neither knowledge, training,
10 experience, nor capability necessary for the marketing and sale of merchandise in Japan; defendants
11 did not know with any degree of certainty if they could rely on their sources in Japan through which
12 their merchandise would be marketed or sold, or that they could, through their sources, sell at least
13 500,000 towels per year. Defendants' real intention was to usurp and appropriate such exclusive
14 right to sell for defendants' purpose or benefit to the exclusion of plaintiff. Defendants made such
15 representations for the purpose of inducing plaintiff to rely thereon by engaging in the acts alleged
16 hereinbelow, all to plaintiff's detriment.

17 30. In reliance on defendants representations, plaintiff expended substantial time and money
18 to track down the manufacturer of said towels, hired consultants to assist him in negotiating with the
19 manufacturer for an exclusive right to sell, and finally obtained a verbal agreement with the
20 manufacturer under which plaintiff would be granted the exclusive right to sell such towels in Japan
21 on the sole condition that he procure purchase orders of at least 100,000 towels from Japanese
22 concerns.

23 31. Plaintiff informed defendants of his agreement with the manufacturer of such towels.
24 In furtherance of defendants fraudulent scheme, defendant represented to plaintiff that they would
25 procure purchase orders of at least 100,000 pieces from their sources in Japan, to enable plaintiff to
26 achieve the exclusive right to sell said merchandise. In return, plaintiff was required to agree, and
27 plaintiff did agree, to refrain from procuring purchase orders for said towels himself or from other
28 sources.

1 32. Plaintiff's reliance on said representations were justified in that defendant Kusuzaki was
2 known by plaintiff to be very influential in the business community in Japan, and that he appeared
3 to plaintiff to have a wide range of business connections throughout Japan. Plaintiff's reliance was
4 further justified by his special relationship with defendant Kusuzaki from 12 years of friendship and
5 business dealings, as afore-alleged.

6 33. In or around February 2001, defendant informed plaintiff that all of their contracts with
7 plaintiff, including said commissions agreement, were unilaterally terminated, at which time plaintiff
8 discovered that the defendants did not and could not procure purchase orders for 100,000 towels, or
9 for any amount, in that they had neither knowledge, training, nor experience in the marketing and
10 sale of such merchandise in Japan, nor did the defendants have any connections or sources in Japan
11 through whom they could market said merchandise.

12 34. Defendants representations were material in that if plaintiff had known of defendants'
13 true intent and the true facts, plaintiff would not have expended time and money to negotiate for the
14 exclusive right to sell said merchandise in Japan, or would have marketed the towels himself through
15 other sources to obtain the necessary purchase orders for the consummation of his agreement with
16 the manufacturer for the exclusive right to sell.

17 35. As a direct and proximate result of said misrepresentations, plaintiff was unable to meet
18 the conditions and requirement of the manufacturer for the exclusive right to sell said towels before
19 the manufacturer canceled its agreement with plaintiff. By reason thereof, plaintiff sustained
20 damages for the loss of such right and the potential income therefrom in excess of \$5 million, or
21 according to proof.

22 36. The acts of defendants were willful, fraudulent and were perpetrated with the intent to
23 deprive plaintiff of a valuable right and with full knowledge that plaintiff would sustain substantial
24 loss of income therefrom. Plaintiff should be awarded punitive or exemplary damages from
25 defendants, and each of them, according to proof.

26
27 **FIFTH CAUSE OF ACTION**
28 **(AGAINST DEFENDANT WELOOP FOR BREACH OF CONTRACT)**

1
2 37. Plaintiff incorporates paragraphs 1 through 8 of the first cause of action, and paragraphs
3 28 through 35 of the fourth cause of action as though fully set forth herein.

4 38. In or around November 2000, plaintiff entered into a verbal agreement with defendant
5 under which plaintiff agreed, at his own costs and expense, to negotiate for, and procure from the
6 manufacturer of the afore-mentioned beach towels the exclusive right to sell said merchandise in
7 Japan, and, upon the procurement of said exclusive right to sell, plaintiff would license, or allow
8 defendants to use such exclusive right for the purpose of selling and marketing the beach towels in
9 Japan. In consideration therefor, defendant agreed to market and sell said beach towels through all
10 of its sources in Japan, and will pay plaintiff a commission of \$2 for each towel sold in Japan for so
11 long as plaintiff maintained said exclusive right to sell. Pursuant to said agreement, defendant
12 verbally guaranteed the sale of a minimum of 500,000 such towels per year. Hereafter, said
13 agreement is referred to as "commissions agreement".

14 39. In reliance upon the commissions agreement, plaintiff expended substantial time and
15 money, including the hiring of a consultant, to negotiate with the manufacturer of said towels for the
16 exclusive right to sell said merchandise in Japan. As a result of plaintiff's efforts, plaintiff procured
17 a verbal commitment from the manufacturer to grant to plaintiff an exclusive right to sell such beach
18 towels in Japan for an indefinite duration, on the condition that plaintiff procure purchase orders for
19 at least 100,000 towels from sources in Japan.

20 40. Plaintiff informed defendant of his agreement with the manufacturer. Thereupon, the
21 commissions agreement was modified, by mutual agreement between plaintiff and defendant,
22 pursuant to which defendant promised to procure purchase orders from Japanese sources for at least
23 100,000 towels in order to enable plaintiff to obtain the exclusive right to sell. In return for such
24 promise, plaintiff agreed to refrain from marketing the towels himself, or through other sources or
25 means (the "modified agreement").

26 41. In reliance upon the modified agreement, plaintiff did refrain from marketing said towels
27 himself and from contacting his other sources for the marketing of said towels. Plaintiff had
28 performed all of his obligations under the commissions agreement and the modified agreement.

1 42. In breach of the commissions agreement and the modified agreement, defendant failed
2 to procure any purchase order from its sources in Japan, as promised and as guaranteed. In further
3 breach of these agreements defendant repudiated all of its obligations hereunder by its unilateral
4 termination of said agreements without justification or excuse.

5 43. As a result of defendant's breach, the manufacturer of said towels canceled its
6 commitment to plaintiff, resulting in plaintiff's loss of a valuable exclusive right to sell and
7 substantial income therefrom, and thereby sustained damages in excess of \$5 million, or according
8 to proof.

9 **SIXTH CAUSE OF ACTION**

10 **(AGAINST DEFENDANT HITACHI MAXELL LTD. FOR BREACH OF GUARANTY)**

11
12 44. Plaintiff re-alleges and incorporates herein by reference all allegations contained in his
13 1st, 2nd, 4th, and 5th causes of action as though fully set forth herein.

14 45. On or about June 2, 2000, defendant Hitachi Maxell Ltd., in consideration of plaintiff's
15 agreement to perform consulting services to its alleged subsidiary, defendant WeCoop, issued a
16 written guaranty, dated June 2, 2000, under which defendant Hitachi Maxell Ltd. guaranteed the full
17 performance of defendant WeCoop of all of its obligations and liabilities to plaintiff. A true and
18 correct copy of said guaranty, marked Exhibit C, is attached hereto and incorporated herein by
19 reference.

20 46. By reason of the misrepresentations, breach of contract and failure of consideration
21 alleged in plaintiff's first, third, fourth and fifth causes of action, which are incorporated herein by
22 reference, defendant WeCoop became liable to plaintiff in excess of \$5 million, according to proof.

23 47. In breach of said guaranty, defendant Hitachi Maxell Ltd. unilaterally repudiated any and
24 all of its obligations to plaintiff, and further denied the existence and validity of its guaranty.

25 48. By reason thereof, plaintiff is damages in the sum in excess of \$5 million, according to
26 proof.

27 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
28 follows:

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- A. For an order declaring the consulting agreements alleged in the 1st, 2nd and 3rd causes of action rescinded;
- B. For damages in excess of \$5,000,000, according to proof;
- C. For punitive and exemplary damages, according to proof;
- D. For cost of suit incurred herein;
- E. For prejudgment interest accruing as of April 1, 2001; and
- F. For such other relief the court deems just and proper.

Date: March 20, 2002

Huang PC, Lawyers

By: 

Patrick K. Huang, Attorney for Plaintiff