



03-CV-00003-RPLY

The Honorable Robert Lasnick  
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NOV 21 2003 MR  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THENDIC ELECTRONICS COMPONENTS, )  
a foreign corporation, and GENESI SARL, a )  
foreign corporation, )  
Plaintiffs; )  
vs. )  
AMIGA INC., a corporation in the state of )  
Washington, )  
Defendant. )

NO. 003-0003

REPLY IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT:  
GRANTING SPECIFIC  
PERFORMANCE AND DISMISSING  
AMIGA'S COUNTERCLAIM

**COME NOW THE PLAINTIFFS**, Thendic and Genesi Sarl, (hereinafter "Thendic" when referring to both Plaintiffs) by and through their attorney of record, Richard Hughes and submits its Reply in support of summary judgment and dismissal of Amiga's Counterclaim(s).

Amiga's president, Bill McEwen has engaged in improper ex parte contact with this Court. Its letter dated November 10, 2003, requesting 60 days was not served on Plaintiffs counsel. Plaintiffs counsel became aware only by reviewing an email link to the file.

PLAINTIFFS' REPLY IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
JUDGMENT

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LAW OFFICE OF RICHARD J. HUGHES  
1424 FOURTH AVENUE, SUITE 909  
SEATTLE, WA 98101  
PH. (206) 903-0664  
FAX (206) 903-6144

1 Amiga responds by electing not to respond to the substance of the arguments set forth by  
2 Thendic. Rather, it requests for a 60 day continuance. Amiga, by way of its president Bill McEwen,  
3 can be described as either an eternal optimist or deceitful. As referenced in Thendic's Motion for  
4 Sanctions, previously filed with this Court, Bolton Peck has been awaiting payment of a judgment  
5 exceeding \$50,000 for more than a year. While representing Mr. Peck, Mr. McEwen repeatedly  
6 deceived Mr. Hughes by informing him that funding was just "around the corner" and once funding  
7 occurred resolution of the judgment would take place. To date, funding has not occurred. McEwen's  
8 most recent improper ex parte communication with the court, requesting even more time to obtain  
9 counsel, can only be viewed as the most recent misrepresentation in a litany of deception that spans  
10 approximately one full year.

13 McEwen has continually stymied progress and/or resolution as evidenced by his  
14 communications with Mr. Hughes. As far back as April 16, 2003, and sometime after Mr. Peck  
15 obtained judgment against Amiga, McEwen represented that "everything was fine and that it would be  
16 handled" after his investors and bankers returned from a meeting in St. Martin the previous day.  
17 McEwen stated that Mr. Hughes and his client would soon "hear about the final timing on the funding  
18 coming in the door." *See email from McEwen 4/16/03, Ex. 1.* A few days later, McEwen represented  
19 that due to a holiday in Europe and "issues with the web site," the matter [funding] could not yet be  
20 resolved, however McEwen further stated that "it [funding] all looks good, the money is ready..."  
21 *See email from McEwen 4/18/03, Ex. 2.* Later the same day, Mr. Hughes' office received another  
22 email message from McEwen stating that the funding was expected to come through on April 15,  
23 2003, again representing that the "money is coming, it is closing, and this will be settled." *See email*  
24 *from McEwen 4/18/03, Ex. 3.* Three days later, McEwen again stated that this "holiday in Europe"

1 was preventing him from shoring the necessary funds. *See email from McEwen 4/21/03, Ex. 4.* Not  
2 surprisingly, Mr. Hughes' office received yet another email two days later in which McEwen stated  
3 that he had not been able to reach the office as "the internet has been down all morning." Yet again,  
4 McEwen assured Mr. Hughes that the matter would soon be "settled and taken care of." *See email*  
5 *from McEwen 4/23/03, Ex. 5.* This string of emails, containing numerous misrepresentations, amounts  
6 to deceitful delaying tactics offering Mr. Hughes and his client, Mr. Peck, no assurance that the matter  
7 would be resolved.  
8

9  
10 On August 7, 2003, McEwen finally appeared for his deposition, at which time he was again  
11 questioned about the availability of funds.<sup>1</sup> McEwen testified that funding of between 5 and 10  
12 million was expected within a month. *Declaration of Hughes, Ex. 6 (Transcript of McEwen, P. 33 L.*  
13 *6-19).* Obviously funding never occurred. Thereafter, on September 19 2003, Cairncross &  
14 Hempelman, Amiga's then counsel, filed its Motion Requesting Withdrawal. Amiga's own counsel  
15 notified Amiga that it could face dismissal if new representation was not secured. *Declaration of*  
16 *Hughes, Ex. 7 (attached Motion for Withdrawal).* No response was forthcoming. In light of Amiga's  
17 aforementioned deceptive and dilatory behavior, it is wholly unrealistic to believe that Amiga's latest  
18 request for an extension is based on any real desire and/or ability to obtain counsel. Rather, it is a  
19 request for continuance based solely on the desire to buy time.  
20  
21

22 While Amiga's desire for funding may be sincere, its likelihood of success is patently  
23 insincere. After all, Amiga is 4 million dollars in debt, owes its employees significant back wages and  
24 works its employees out of their respective homes because it was evicted from its lease. The time has  
25

26  
27  
28 <sup>1</sup> The Court will recall that McEwen's deposition was delayed due to McEwen's alleged and wholly unsubstantiated  
health care issues and upon the advice of an unnamed equestrian. *See Motion for Sanctions*

1 come to stop the charade. No money will be forthcoming. No representation of an insolvent  
2 corporation with substantial legal liability is likely to occur.

3 Dated this 21<sup>st</sup> of November, 2003  
4

5   
6  
7

8 Richard Hughes, WSBA #22897  
9 Attorney for Plaintiffs  
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28 PLAINTIFFS' REPLY IN SUPPORT  
29 OF ITS MOTION FOR SUMMARY  
JUDGMENT

Page -4-

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Exhibit 1

## Autumn Countryman

---

**From:** "Bill McEwen" <billmc@starband.net>  
**To:** "Richard Hughes" <rjhughes@winstarmail.com>  
**Sent:** Wednesday, April 16, 2003 1:54 PM  
**Subject:** Update on Amiga

Meetings occurred all day yesterday in St. Martin (must be tough to have meetings there). I have not heard anything since Monday when they left to meet with the bankers and investors. On Monday I was told that everything was fine and that it would be handled on the return from the meetings.

I will send you news tomorrow, as soon as I hear about the final timing on the *funding coming in the door*.

Regards,

><> Bill McEwen ><>  
President/CEO  
Amiga, Inc.

**Advisory:** This email and the information it contains are a confidential and *privileged communication for the sole use of the intended recipient(s)*. Any unauthorized review, use, disclosure or distribution is prohibited. If you have received this message and are not the intended recipient(s), please notify the sender by telephone or reply email and destroy all copies of the original message.

Exhibit 2

**Autumn Countryman**

---

**From:** "Bill McEwen" <bill@amiga.com>  
**To:** "Richard Hughes" <rjhughes@winstarmail.com>  
**Sent:** Friday, April 18, 2003 9:59 AM  
**Subject:** Amiga Update

Richard:

Finally got in touch with the finance people. Everything looks good. With today being a holiday in Europe and the banks closed from today until next Tuesday I do not think that we will see money until the end of the week.

I learned that the investors attorneys in NY are closed today, so that was a little frustrating.

Anyway it all looks good, the money is ready, and we just need to get it into our account.

Sorry for the delays, but with the issues with the web site, and the many meetings that I have going on with finance groups right now, I have been rather out of touch this week.

So we are almost there, and look forward to getting all of this settled.

Regards,

><> Bill McEwen ><>  
President/CEO  
Amiga, Inc.

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Exhibit 3

## **Autumn Countryman**

---

**From:** "Bill McEwen" <bill@amiga.com>  
**To:** "Richard Hughes" <rjhughes@winstarmail.com>  
**Sent:** Friday, April 18, 2003 11:06 AM  
**Attach:** Amiga Update.eml; Update on Amiga.eml  
**Subject:** Amiga Update

Richard:

I responding to your last message. Here are the e-mails that I have sent to you with regards to the funding. Yes, everything was supposed to be done by the 15th. That is what I was told, and that is what I shared with you. Everything has taken a little longer than planned, and I was unaware that this was a holiday week for many in Europe where our Series A holder lives.

The money is coming, it is closing, and this will be settled.

I will call you shortly.

><> Bill McEwen ><>  
President/CEO  
Amiga, Inc.

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Exhibit 4

Richard Hughes

----- Original Message -----

From: "Bill McEwen" <bill@amiga.com>

To: "Richard Hughes" <rjhughes@winstarmail.com>

Sent: Monday, April 21, 2003 11:35 AM

Subject: E-Mail from Dr. Kouri

- > Today is still a holiday in Europe. He has stated that he will send you  
an
- > e-mail about the money by tomorrow on his return from the Easter holiday.
- >
- > Regards,
- >
- > <> Bill McEwen <>
- > President/CEO
- > Amiga, Inc.
- >
- > Advisory: This email and the information it contains are a confidential  
and
- > privileged communication for the sole use of the intended recipient(s).
- > Any
- > unauthorized review, use, disclosure or distribution is prohibited. If you
- > have received this message and are not the intended recipient(s), please
- > notify the sender by telephone or reply email and destroy all copies of  
the
- > original message.
- >
- >
- >

Exhibit 5

**Autumn Countryman**

---

**From:** "Bill McEwen" <bill@amiga.com>  
**To:** "richard hughes" <rjhughes@winstarmail.com>  
**Sent:** Wednesday, April 23, 2003 12:52 PM  
**Subject:** RE: E-Mail from Dr. Kouri

Richard:

I just got this message, as internet has been down all morning.

There is no way that I can make it to your offices by 2:00pm and I have no money or assets as my house is in foreclosure on the 1st of May and there is no way that I can pay it at this time.

I have placed a call into Dr. Kouri and have left a message for him to call you. We are just about closed with the series A holder so that we can take the investment that we have been waiting for.

As I am writing this Dr. Kouri just called me and stated that he will be calling you in a just a few minutes.

We will get this settled and taken care of just as quickly as money allows.

Regards,

><> Bill McEwen ><>  
President/CEO  
Amiga, Inc.

**Advisory:** This email and the information it contains are a confidential and privileged communication for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you have received this message and are not the intended recipient(s), please notify the sender by telephone or reply email and destroy all copies of the original message.

-----Original Message-----

**From:** richard hughes [mailto:rjhughes@winstarmail.com]  
**Sent:** Wednesday, April 23, 2003 8:49 AM  
**To:** Bill McEwen  
**Subject:** Re: E-Mail from Dr. Kouri

Bill: I still have not heard anything. I expect you to be in my office today at 2:00 p.m. regarding supplemental proceedings and I expect you to bring with you copies of your financial information. Obviously, should you bring a check for the amount due, we will not need to bother with your deposition today.

Exhibit 6

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT AT SEATTLE  
 3  
 4 -----  
 5 THENDIC ELECTRONICS  
 6 COMPONENTS, a foreign  
 7 corporation, and GENESI  
 8 BARI, a foreign corporation,  
 9 Plaintiffs,  
 10 -vs- No. 003-003  
 11 AMIGA INC, a corporation  
 12 in the State of Washington,  
 13 Defendant.  
 14 -----  
 15 DEPOSITION UPON ORAL EXAMINATION OF  
 16 BILL McEWEN  
 17 -----  
 18 11:00 a.m.  
 19 August 7, 2003  
 20 324 Second Avenue  
 21 Suite 500  
 22 Seattle, Washington  
 23  
 24 Susan Cannon, CCR 1601 Fifth Avenue, Suite 860  
 25 Court Reporter Seattle, WA 98101

1 A P P E A R A N C E S  
 2  
 3  
 4 APPEARING FOR THE PLAINTIFFS:  
 5 RICHARD J. HUGHES  
 6 Attorney at Law  
 7 LAW OFFICE OF RICHARD J. HUGHES  
 8 1424 Fourth Avenue  
 9 Suite 909  
 10 Seattle, WA 98101-2217  
 11  
 12 APPEARING FOR THE DEFENDANT:  
 13 DIANA S. SHUKIS  
 14 Attorney at Law  
 15 CAIRNCROSE & HEMPELMANN, P.S.  
 16 524 Second Avenue  
 17 Suite 500  
 18 Seattle, WA 98104-2323  
 19  
 20 ALSO PRESENT: BOLTON PECK  
 21  
 22 \* \* \* \* \*  
 23  
 24  
 25

1 EXHIBIT INDEX  
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 3 EXHIBIT NO. PAGE  
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 14 EXAMINATION INDEX  
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 22  
 23  
 24 BY MR. HUGHES: PAGES: 4 - 58  
 25

1 BILL McEWEN, having been first duly sworn upon  
 2 oath by the Notary, testified as  
 3 follows:  
 4  
 5 EXAMINATION  
 6 BY MR. HUGHES:  
 7 Q. Can you state your name?  
 8 A. Bill McEwen.  
 9 Q. What's your address?  
 10 A. 24403 256th Avenue Southeast.  
 11 Q. Have you ever had your deposition taken before?  
 12 A. Yes.  
 13 Q. And aside from one which I think you were  
 14 present with Amy Adams -- it was actually two supplemental  
 15 discoveries, one to me and one to Amiga, have you been  
 16 deposed aside from that?  
 17 A. No.  
 18 Q. I'm just trying to catch up on some documents  
 19 that I just got provided by your counsel so I apologize for  
 20 that.  
 21 Are you currently taking any medication  
 22 that would limit or affect your ability to answer truthfully  
 23 in this matter?  
 24 A. No.  
 25 Q. Are you under any mental or emotional condition

1 that had actually been drafted but the signatures had not  
 2 been penned yet?  
 3 A. That is another cell phone company, yes.  
 4 Q. And that's different from the cell phone  
 5 carrier; correct?  
 6 A. Correct.  
 7 Q. On that one I'm assuming that there has been at  
 8 least a drafting of the projected first shipment?  
 9 A. Yes.  
 10 Q. I'm trying to find out what that is.  
 11 A. For the second handset it's three million units.  
 12 Q. Is there also a Europe distribution?  
 13 A. Yes. We would be deployed on those handsets.  
 14 Q. That will be limited to Europe then?  
 15 A. That is their primary distribution. It's not  
 16 limited to, but that's where they primarily distribute at  
 17 this time. I should correct that. It's Europe and Asia.  
 18 Q. I appreciate it. And have we gone through the  
 19 current and foreseeable revenue streams for Amiga?  
 20 A. Current, yes. Future, no.  
 21 Q. Obviously you are in the business to make money  
 22 and make more business.  
 23 A. Correct.  
 24 Q. I understand that business options and business  
 25 opportunities are -- that one would like to see them

1 A. Nothing has been executed yet.  
 2 Q. Have there been negotiations?  
 3 A. Yes.  
 4 Q. Have there been any verbal agreements?  
 5 A. Not yet.  
 6 Q. I take you can't tell me who the other 20  
 7 vendors are?  
 8 A. I would be happy to, but it will end up on a  
 9 Net. I'm sorry.  
 10 Q. What are Amiga's outstanding debts?  
 11 A. Primarily employees.  
 12 Q. And do you know what the employee debt is  
 13 currently?  
 14 A. One moment.  
 15 Q. And you have to answer the question. You can  
 16 ask her afterwards.  
 17 MS. SHUKIS: Just answer to the best of  
 18 your knowledge.  
 19 A. But it's dependent on the rounds that's  
 20 happening, what it is today or what it is next week.  
 21 Q. Today.  
 22 A. Today? 2.2 million dollars. 1.8 of that is to  
 23 the three officers of the company. The three founders I  
 24 should say.  
 25 Q. And that would be yourself?

1 ongoing.  
 2 A. Correct.  
 3 Q. But from what we have in front of us in terms of  
 4 a crystal ball -- that's why I say foreseeable -- are there  
 5 any other income streams other than what we have just gone  
 6 through that we can say are foreseeable with some degree of  
 7 certainty?  
 8 A. There are several more within Microsoft that we  
 9 are currently in development with, yes, just within that  
 10 organization beyond the Pocket Packs.  
 11 Q. Additional products?  
 12 A. Yes.  
 13 Q. Can you describe what those additional future  
 14 products are?  
 15 A. What I will say -- I will answer you a little  
 16 differently. Microsoft currently has 26 OEMs that license  
 17 their pocket PC software. So what Microsoft is doing is  
 18 introducing us as a solution to all of those manufacturers.  
 19 Q. So is it fair to say that you are hopeful that  
 20 Microsoft can act as a conduit between Amiga and the 26  
 21 other companies?  
 22 A. It's already happened. So I'm more than  
 23 hopeful.  
 24 Q. But you don't have any penned deals yet with the  
 25 others; is that correct?

1 A. Myself.  
 2 Q. Who else?  
 3 A. Fleecy Moss and Randy Hughes.  
 4 Q. Divided equally?  
 5 A. No. The company owes me over \$740,000.  
 6 Q. Which leaves us about a million. Would that be  
 7 divided equally?  
 8 A. Just about. Just about down the middle, yes.  
 9 Q. And you said something about next week. Do you  
 10 have projected employee debt?  
 11 A. In the round that -- well, I don't want to say  
 12 this because it will become public. The debt changes  
 13 dramatically after the round closes.  
 14 Q. After what round closes?  
 15 A. The round we are in right now, the funding  
 16 round.  
 17 Q. You are saying if Amiga obtains funds --  
 18 A. Not if. We are in -- there are term sheets  
 19 right now so we are in the final --  
 20 Q. Is there an agreement to fund Amiga?  
 21 A. Yes.  
 22 Q. That's a fully executed agreement?  
 23 A. No.  
 24 Q. So it's in a negotiation phase at this point?  
 25 A. Yes.

1 Q. So is there anything certain about Amiga being  
 2 funded in this negotiation phase? You don't have a signed  
 3 executed agreement?  
 4 A. Until it's in the bank, until it's in the bank.  
 5 We certainly believe that this is happening.  
 6 Q. Are you hopeful that it will be executed  
 7 shortly?  
 8 A. Yes.  
 9 Q. By when?  
 10 A. End of the month.  
 11 Q. What sort of funding are you talking about?  
 12 A. Plenty.  
 13 Q. What sort of amounts?  
 14 A. It's in the negotiation.  
 15 Q. What sort of amounts are you hoping to be  
 16 funded?  
 17 A. More than five million.  
 18 Q. Less than ten?  
 19 A. Yes.  
 20 Q. Of the 2.2 million of the Amiga employee debt,  
 21 does that include Mr. Peck's judgment?  
 22 A. It does.  
 23 Q. Aside from the hardware which we have gone into,  
 24 does Amiga and aside from the intellectual property which  
 25 we'll deal in the a moment, does Amiga have other assets?

1 Q. Prior to that, what account did it have?  
 2 A. Mt. Rainier National Bank.  
 3 Q. Before that?  
 4 A. That was it.  
 5 Q. Where is Mt. Rainier National Bank located?  
 6 A. The branch we were at was Black Diamond,  
 7 Washington.  
 8 Q. Is the Issaquah Bank's branch you are doing  
 9 business with out of Issaquah?  
 10 A. Yes.  
 11 Q. What's the name of the account?  
 12 A. Amiga, Inc.  
 13 Q. So aside from the computers and the software  
 14 that those computers run off of, the current account with  
 15 Issaquah Bank, its intellectual property, trademarks and  
 16 brand names, are there any other assets that Amiga has  
 17 currently?  
 18 A. Not to my knowledge.  
 19 Q. What intellectual property does Amiga possess?  
 20 A. All versions of the Amiga operating system.  
 21 Q. What versions are there? Just because I'm not  
 22 tech savvy.  
 23 A. Nor am I. Bolton, how many versions are there?  
 24 He knows better than I do.  
 25 MR. PECK: The first very first public one

1 A. Trademarks, brand name.  
 2 Q. Anything else?  
 3 A. No.  
 4 Q. It has to have I assume some bank account from  
 5 which to deposit the sales of the website?  
 6 A. Yes.  
 7 Q. Is it running a current balance?  
 8 A. I have not checked in the last week.  
 9 Q. Who is the bank with?  
 10 A. Issaquah.  
 11 Q. What? Issaquah Bank?  
 12 A. Yes.  
 13 Q. Do you have any idea what the balance has been  
 14 running?  
 15 A. About a hundred dollars.  
 16 Q. Is that the only bank account that Amiga has  
 17 open?  
 18 A. Yes.  
 19 Q. And how long has the balance of a hundred  
 20 dollars been averaging? Is that sort of its typical  
 21 balance?  
 22 A. Currently.  
 23 Q. Has that been the practice for several months?  
 24 A. The account has not been open. It's only been  
 25 opened for about a month.

1 was like 1.0, but it didn't --  
 2 A. Just give him the version numbers. You know  
 3 better than I do.  
 4 MR. PECK: 1.0 to 3.9 currently, spanning  
 5 1985 to 3.9 came out I believe it was 2001.  
 6 A. 2001. That would be right. Thank you.  
 7 Q. Back to you, do they turn over at any point in  
 8 time?  
 9 A. Turn over?  
 10 Q. We have 1.0. When did it become a 2; do you  
 11 know?  
 12 A. When the next release is ready. There is no  
 13 time schedule.  
 14 Q. Here is my question. Does it go 1.0 to 1.1?  
 15 A. It's varies as to -- since we took it over, it  
 16 went from 3.5 to 3.9. So it's dependent on what is  
 17 happening within the code base.  
 18 Q. In one jump it went from 3.5 to 3.9?  
 19 A. Correct.  
 20 Q. So you have all the Amiga operating systems,  
 21 whatever their numbers may be?  
 22 A. Correct.  
 23 Q. Have you developed 4.0 or has Hyperion developed  
 24 4.0?  
 25 A. Hyperion was the main contractor. We also

Exhibit 7

1 THE HONORABLE ROBERT S. LASNIK

2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 THENDIC ELECTRONICS COMPONENTS, a  
11 foreign corporation, and GENESI SARL, a  
12 foreign corporation,

13 Plaintiffs,

14 v.

15 AMIGA INC., a corporation in the state of  
16 Washington,

17 Defendant.

NO. 003-0003

**MOTION REQUESTING LEAVE TO  
WITHDRAW AS COUNSEL FOR  
DEFENDANT**

18 Diana S. Shukis, Stephen P. VanDerhoef, and Cairncross & Hempelmann, P.S., as  
19 attorneys of record for Defendant Amiga, Inc., request leave of this Court to withdraw as counsel  
20 of record in this matter. This motion is filed pursuant to GR2(f).

21 Attached is the Declaration of Diana S. Shukis, one of the attorneys for Defendant in this  
22 action. As stated in the declaration, this motion was served on Amiga, Inc. and Plaintiffs'  
23 counsel as indicated in the Certificate of Service filed herewith. Pursuant to GR2(f), the  
24 withdrawing attorneys have informed Amiga, Inc. that it is required by law to be represented by  
25 an attorney and that failure to obtain a replacement attorney by the date the withdrawal is

MOTION REQUESTING LEAVE TO WITHDRAW  
AS COUNSEL FOR DEFENDANT - 1

(00172405.DOC;1)

**COPY**

*Cairncross & Hempelmann, P.S.*  
Law Offices  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Phone: 206-587-0700 • Fax: 206-587-2308

1 effective may result in entry of default against it and dismissal of its counterclaim. To date,  
2 Amiga, Inc. has not objected or responded to the Notice of Intent to Withdraw.

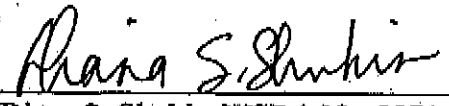
3 The withdrawal will be effective upon order of the Court.

4 All further papers shall be served upon Amiga, Inc. at the following address:

5 P.O. Box 887  
6 Ravensdale, WA 98051

7  
8 DATED this 19<sup>th</sup> day of September, 2003.

9 CAIRNCROSS & HEMPELMANN, P.S.

10 

11 Diana S. Shukis, WSBA No. 29716  
12 Stephen P. VanDerhoef, WSBA No. 20088  
13 Attorneys for Defendant