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**IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION**

JOHN NEWTON, dba Pago Pago) HCCA No.: 29 – 15
Consultants, a Sole)
Proprietorship,)
Plaintiff,)
v.) PLAINTIFF’S CLOSING
AMERICAN SAMOA) ARGUMENTS
TELECOMMUNICATIONS)
AUTHORITY,)
Defendant.)

COMES NOW the Plaintiff, by and through his undersigned attorney,
and pursuant to the Court’s instructions, and files with the Court his closing
arguments.

a. Brief Introduction and Background Information.

This case is a contract dispute. It is a dispute between two parties
who have a history of collaboration over many years for the production of
telephone directories. A working relationship which resulted in the
production of six, attractive and well-published books of telephone listings

1 for American Samoa which became a source of pride not only for Plaintiff,
2 but also for the Defendant American Samoa Telecommunications Authority
3 (ASTCA).

4 Plaintiff, John Newton (Newton), is a publisher, among other things.
5 He has an extensive history in American Samoa as a publisher and
6 businessman and he is known not only in American Samoa, but in other
7 parts of the Pacific as well. Plaintiff was a long-time resident of American
8 Samoa beginning in 1996, and it was not too long ago that he moved off
9 island.

10 Defendant ASTCA is the original telecommunication services provider
11 in the Territory. It is a part of the American Samoa Government and it is
12 one of two telephone service providers on island. Over the years it has
13 provided telephone directories (phone books) to its customers as part of its
14 service and it continued to provide those directories until the year 2008.

15 This dispute is founded on a memorandum of understanding, *Plaintiff's*
16 *Exhibit 1*, hereinafter referred to as "the MOU" or "the Contract", which was
17 signed by the parties in 2010. ASTCA wanted to produce another telephone
18 directory that year and Newton, although was reluctant at first, eventually
19 agreed to work on the project. The Contract was executed for the purpose
20 of defining the relationship between the parties as they embarked on the
21 production of the 2010 telephone directory.

1 Recalling their relationship from the previous years, the MOU laid out
2 some of the material provisions of the parties' understanding. What each
3 party was obligated to perform, what they expected from each other, the
4 grounds for termination, and other important provisions necessary to a
5 contract of that nature. However, despite the several commitments that
6 each party made in the MOU, the most important was the cooperation that
7 was necessary between them, as it was apparent from the spirit of the MOU.

8 **b. Arguments**

9 I. Compliance

10 Throughout the trial that was held in this matter, it appeared that
11 both parties would agree that compliance is the main issue to be determined
12 by the Court. Newton brought this suit against ASTCA because he believes
13 the Defendant failed to provide the information it was obligated to provide
14 under the MOU. So the question then becomes: Did ASTCA provide the
15 telephone listings that it was supposed to provide pursuant to the parties'
16 Contract? Newton believes that the Court should answer that with a
17 resounding "No".

18 The MOU states in part:

19 **1. ASTCA's RESPONSIBILITIES**

20 Upon a mutually agreed upon date, ASTCA agrees to supply PPC
21 with its subscriber listings in digital format, either CSV (Comma
22 Separated Values) or Excel. To the extent available in ASTCA's
23 customer service records, the listings will include the subscriber
24 name, village where the telephone is located, a notation if the

1 line is a facsimile, and telephone number. The same shall be
2 grouped by residential landline subscribers, post paid cell phone
3 subscribers, government offices, and commercial subscribers to
4 appear in the classified or yellow pages section.

5
6 Along with the listings, ASTCA will also provide PPC with the
7 General Information section in MicroSoft Word format.

8
9 See *Memorandum of Understanding, Exhibit 1, Pg. 1, §1.*

10 A thorough examination of the Contract by anyone would lead to the
11 conclusion that this agreement is centered on telephone listings. Without
12 these listings, it would be impossible to produce a single telephone directory.
13 This was information that only ASTCA had access to and only ASTCA had the
14 ability to provide.

15 Right from the very beginning, ASTCA was *unwilling* to provide the
16 listings that it was suppose to turn over. The numerous emails submitted
17 and entered as evidence at trial showed not just a failure to perform based
18 on incompetence or neglect, but one which was almost intentional. For
19 example, after Newton's several attempts to inquire with ASTCA as to the
20 status of the listings, he offered JD Hall (JD) his assistance in the form of
21 suggestions on what should be done in order to help speed things up.
22 Newton understood that this was JD's first time working on such a project so
23 he believed his (Newton's) experience from the previous phonebook projects
24 would help. However, despite his offer of assistance, which he was not
25 required to do under the MOU, not only was there still no complete contract-
26 compliant information, he was labeled a complainer and someone who was

1 difficult to work with. One would believe that someone's insight and know-
2 how offered without cost would be appreciated, but that was not how ASTCA
3 saw it. ASTCA had preferred to do things at its own pace and its own way.

4 No cell phone listings were ever received. Under the MOU, information
5 relating to post-paid cell phones was to be provided. From the previous
6 dealings with ASTCA, Newton understood that cell phone listings were
7 always considered important. Cell phones are the fastest growing segment
8 of ASTCA's business but cell phone listings were never offered to or received
9 by Newton in any form.

10 The entire world is migrating away from landlines and moving to cell
11 phones and American Samoa is no exception. There are thousands of cell
12 phone users of all ages in the Territory. Cell phone listings have been of
13 utmost importance in ASTCA's telephone directories in the recent years and
14 yet it has shown reluctance, if not complacency, in not ensuring that cell
15 phone listings are made available to Newton for inclusion in the future
16 directories.

17 Commercial listings were never supplied in a contract-compliant file
18 type. (See *Exhibit 35, Certified Document 110.*) Commercial listings,
19 otherwise known as "Yellow Pages" and the revenues derived from the sale
20 of advertising in the Yellow Pages, is what makes it possible for ASTCA to
21 receive their telephone directories free of charge. No commercial listings
22 section was ever offered or sent to Newton in a contract-compliant file type.

1 While it appeared that the listings were created in the contract-compliant file
2 type, it was converted into a non-compliant PDF file type, which defies
3 explanation.

4 In the MOU, ASTCA specified Commercial Listings separately from
5 Residential Listings. This was something different from the previous
6 directories where the commercial listings were blended with residential and
7 other listings to form the White Pages. In an email from JD on October 23,
8 2013, he sent a PDF file named "certified listings Converted.pdf" attached to
9 an email with no content having a subject line reading "commercial". (See
10 *Exhibit 35, Certified Document 110.*) The Commercial Listings were never
11 received in a contract-compliant file type.

12 A finalized draft of the General Information section was never provided
13 to Newton. Despite three attempts by ASTCA to provide the General
14 Information section, the drafts they sent were never free of editor's notes
15 (red lines), the files were dated 2008, and no approval by legal counsel was
16 ever noted on any of the copies. During her deposition, ASTCA's general
17 counsel at the time, Gwen Tau'ili'ili-Langkilde, stated that general counsel
18 would review the general information section for approval before it was
19 released for publication. (See *Exhibit 37, Deposition of Gwen Tau'ili'ili-*
20 *Langkilde, December 23, 2022, at Pg. 45, Ln. 3 – Pg. 46, Ln. 14.*)¹ From the
21 previous directories, ASTCA knew that a directory could not be published

¹ Counsel Tau'ili'ili-Langkilde's deposition transcript was read into the record during trial.

1 without this important section. Newton never received a final approved draft
2 of the General Information section from ASTCA's legal counsel. It was only
3 on September 18, 2013 that Newton received an email from JD with a
4 General Information file which was dated 2008, was lacking legal counsel's
5 approval, and was still marked for editing. (See *Exhibit 35, Certified*
6 *Document 104*). The file was received after counsel Tau'ili'ili-Langkilde had
7 left her position as ASTCA's legal counsel.

8 Without every one of the listings and General Information groups
9 specified in ASTCA's Responsibilities, the production of a telephone directory
10 would have been impossible. Cell phone listings were always considered
11 important in previous directory publications. The Commercial Listings were
12 essential as the basis of the Yellow Pages. And the General Information
13 section was essential because it contained legal information as well as
14 emergency numbers.

15 Newton testified as to some of the industry terms that this Court
16 should be familiar with as a finder of fact:

17 a) "Camera-ready"

18 In the early days of lithographic printing (the process used to print these
19 telephone directories), printers required the client to present their content in
20 a manner known as "camera ready", because the content was photographed
21 and the negatives were used to make lithographic printing plates. As
22 technologies improved and electronic means of creating printing plates took

1 over, the term "camera ready" continued to be used to describe content that
2 was "ready to print. The term "camera ready" was used in previous
3 contracts for telephone directory production, between Newton and ASTCA,
4 metaphorically to mean "ready to print" (See Exhibit 32, Page 12,
5 Miscellaneous, first sentence).

6 During the initial meeting to discuss the terms of the MOU (Ex1),
7 Newton wanted to get away from the term "camera ready" and replace it
8 with Excel because that was much more meaningful in current terminology
9 and because that was how ASTCA had prepared their listings and supplied
10 those listings to Newton for all previous directories produced by Newton.
11 ASTCA's legal counsel inserted "either CSV" into the description meant to
12 replace "camera ready" (See Exhibit 1, §1, First sentence). In Newton's
13 proposed agreement, that line reads "CSV or MS Excel", which is meant to
14 be interpreted as CSV otherwise known as Excel. The difference between
15 "either" and "or" is huge and Newton admits that he overlooked this when
16 signing the MOU but thought it would not turn into such a big deal because
17 any reasonable person would recognize that CSV is simply the underlying
18 structure of Excel. Although CSV is easily converted to Excel, all formatting,
19 including bold type fonts, is not present in raw CSV. (See Exhibit 34,
20 Newton's proposed agreement, Attachment A, §2)

21 b) "Format"

1 First and foremost, it is important to note that there never were any
2 arguments, complaints, or even discussions regarding the format of listings
3 created by ASTCA and presented to Newton until the beginning of the 2010
4 MOU. All formatting issues were put to rest when Newton designed and
5 introduced Margaret to the Excel template that was used on all directories
6 produced by Newton for ASTCA.

7 There are many mentions of the word "format" in the testimony. The
8 word format can have two meanings; 1) The file type such as Excel or CSV is
9 a type of file format as is PDF. 2) The word format can also be used in the
10 description of how content will appear on the page. A printer can't
11 determine how the client would want the content, in this case, listings, to
12 appear on the pages of a book if the listings were not presented to the
13 printer in the client's desired format. ASTCA (the client) had the
14 responsibility to give Newton (the printer) listings in their desired format, in
15 a file format called Excel. Newton would then take these listings and import
16 them into a book-producing software in which the book pages can now be
17 laid out to meet ASTCA's requirements.

18 c) "PDF" (Portable Document Format)

19 During the term of the MOU, PDF Reader offered no option for
20 converting from PDF to Excel, so third-party software products attempted to
21 fill this need, but these third-party products produced very imperfect results
22 that could not be trusted to be correct. Counsel for the Defense showed

1 printouts of PDF files that looked like they were contract compliant, but
2 printouts of this nature are not the objective of the file submissions and PDF
3 files are only images of a page which can be printed out to look like the
4 page. Those images cannot be converted back to Excel or CSV. This is why
5 the MOU specifies only Excel or CSV and no other file format.

6 It is clear from the evidence that ASTCA failed to provide to Newton
7 the information that it was obligated to provide under the Contract and
8 ASTCA's failure resulted in the non-production of the telephone directories
9 by Newton. Judging from what transpired between the parties, ASTCA's
10 non-compliance may not have just been a simple neglect of their
11 responsibilities under the MOU, it was also a willing choice to not comply.
12 And as result, Newton could not perform.

13 II. 10% Accuracy

14 During trial, ASTCA raised the issue that Newton wanted the listings to
15 be "within plus or minus 10% accuracy." ASTCA cited *Exhibit 34*, which is a
16 document titled "TELEPHONE DIRECTORY PUBLISHING AGREEMENT" which
17 Newton produced and had provided to counsel Tau'ili'ili-Langkilde during
18 their initial meeting for the 2010 MOU. ASTCA argues that it had specifically
19 rejected the proposal for the "plus or minus 10% accuracy" at that meeting
20 and that Newton would get whatever information it had in its records.
21 However, ASTCA misconstrues Newton's point in wanting an accuracy gauge.

22 *Exhibit 34* states in relevant part:

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Attachment A Responsibilities of ASTCA

This attachment is in support and clarification fo the document titled Telephone Directory Publishing Agreement. All items in this attachment become a part of said contract.

1. ASTCA shall announce to PPC a count of all listings, within plus or minus 10% accuracy, no later than 180 days prior to target publication date.
 - The purpose of this count is to facilitate planning of the book size and quantities required, all of which impacts advertising rates.
 - It is understood that each paid telephone subscription is entitled to one book with some additional books required by government and business offices.
 - A list of these additional requirements will be produced by ASTCA and presented to PCC [sic] at the same time as the listing count.
 - Any books in addition to those determined by ASTCA to be allotted to each subscriber shall be sold at a price to be determined each year but no less than \$5.00 for each additional book.
 - The total quantity of books required each year shall be determined by adding together the total number of subscriber numbers with the additional requirements of business and government offices.

As the plain language of the document shows, Newton’s purpose in demanding an accurate count was not related to the reliability of the listings, but to the number of customers so that Newton had some fair understanding of how many directories would need to be printed once the final product was ready for publication. As the document states, the purpose is to facilitate planning of book size and quantities, all of which impact advertising rates.
(See *Exhibit 34, Attachment A, § 1.*)

1 Counsel Tau'ili'ili-Langkilde said in her deposition: "And so that was to
2 alleviate any dispute as to what John Newton would be entitled to and what
3 ASTCA would be responsible for. Basically, that he would only get or he
4 would get whatever data we have in our listings at the time." (See *Exhibit*
5 *37, Deposition of Gwen Tau'ili'ili-Langkilde, supra* at Pg. 68, Ln. 4 – 8.)

6 The attitude toward the accuracy of listings by ASTCA employees is
7 contrary to the objective of publishing a telephone directory. Everyone
8 should be striving for the very best accuracy possible. But, Newton was not
9 complaining about the accuracy as it relates to a single listing or even a few
10 listings, rather, Newton was complaining about large swaths of listings either
11 missing entirely or having missing parts of the individual listing. For
12 instance, one of the files sent to Newton by JD had listings for Senators but
13 no numbers for any senator. (See *Exhibit 35, Certified Document 100*).
14 Another file had 600 duplicate numbers many of which had more than one
15 name assigned to a single number. (See *Exhibit 35, Certified Document*
16 *23*). Yet still another file had no listings for many of the large companies,
17 and had no listings for any public schools, and no listings for the hospital.
18 (See *Exhibit 35, Certified Document 69*.) All of these accuracy issues are
19 inexcusable and ASTCA, as the custodian of this information, should have
20 been aware of this. And when these problems were pointed out by Newton,
21 they were either ignored entirely or considered just "more of Newton's
22 complaining". This is irresponsible on multiple levels.

1
2 III. Plaintiff Went Above and Beyond What Was Necessary Under the
3 Contract.
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5 Newton was diligent in his efforts to obtain the necessary files with
6 which to create the telephone book, offering many helpful suggestions and
7 instructions for which he was often thanked by JD, the newly appointed
8 ASTCA employee responsible for the actual preparation of the listings
9 specified in the MOU. Newton's helpful guidance and instructions were often
10 welcomed by JD, but as time went on JD expressed frustration with his
11 ability to produce the listing files by beginning to characterize Newton's
12 guidance as complaints.

13 JD said in his email of November 23, 2011, "The scripting to create the
14 visually formatted data that you want is not going to happen", suggesting
15 that Plaintiff had specified formatting. (See *Exhibit 35, Certified Document*
16 *67*). In fact, the formatting was always dictated by ASTCA.² This is a very
17 important point because Newton is often accused of complaining when he
18 attempts to direct JD to maintain ASTCA formatting specifications. JD was
19 newly hired and to Newton's knowledge never trained in the preparation of
20 listings. Newton's actions were only for the purpose of assisting JD so that
21 the project may move forward. Newton was never asking for anything not
22 specifically required in the MOU.

² As shown in *Exhibit 32, Independent Contractor Service Contract*, the 2002 contract, page 12, under miscellaneous, "All format changes or modifications must be approved in advance by the Executive Director."

1 Newton's persistence in his attempt to get the listings necessary to
2 publish the telephone directory is admirable as he got no response to his
3 many inquiries from ASTCA's legal counsel or its chief executive officer.

4 Tau'ili'ili-Langkilde stated in her deposition:

5 "I just told J.D., you know, stop. We don't need to give him
6 anything more or give him exactly what's in there; stop trying to
7 fix this because he's just never going to be satisfied." (See
8 *Exhibit 37, Gwen Tau'ili'ili-Langkilde's Deposition, supra*, at Pg.
9 74, Ln. 4 – 7.)

10
11 From counsel's statement, it appears that JD was discouraged from further
12 efforts to provide the information that was available in ASTCA's database.

13 Information that was covered under the MOU between the parties.
14

15 IV. ASTCA Never Acted to Terminate the MOU but Kept Leading
16 Plaintiff to Believe That the Promised Information Would be
17 Provided Soon.

18
19 At trial, ASTCA suggests that it was unhappy with Newton as their
20 relationship was "difficult". However, the evidence indicates that ASTCA did
21 nothing to terminate its relationship with Newton despite the fact that it had
22 the option to do so under their Contract.

23 The MOU states in pertinent part:

24 **3. DURATION OF AGREEMENT AND MUTUAL TERMINATION**

25 This MOU shall be effective upon signature by the parties, and
26 shall remain effective for a period of five (5) years or until a new
27 MOU, mutually agreed upon by the Parties, supersedes it. This
28 MOU may also be terminated by either Party, and such
29 termination shall occur in no less than three hundred and sixty

1 (360) days, in order for each Party to make alternative
2 arrangements.

3
4 (*Exhibit 1, Memorandum of Understanding, supra*, at Pg. 2, § 3.)

5 At all times Newton was always willing to work with JD and ASTCA so
6 that the phone books could be published. ASTCA continued to lead Newton
7 to believe that the promised materials to complete the phone directory
8 would be available "soon". A promise that was made numerous times over a
9 period of four years, but never came to pass. ASTCA just kept representing
10 their desire to complete the Contract with promises and by sending Newton
11 files that they knew were not complete and/or were not contract-compliant.
12 The following is a list of some of the emails promising delivery from *Exhibit*
13 *35*, with each Certified Document listed below:

- 14 • *Certified Document 13* – December 19, 2010. JD states:
15 "Thanks. I will review these before the end of this weekend and
16 produce directory files for you early next week."
- 17 • *Certified Document 14* – December 16, 2010. JD states: "I will
18 forward the data sets back to you either end of business today
19 or early in the morning tomorrow."
- 20 • *Certified Document 16* – February 3, 2011. Which had attached
21 2 files that were incomplete and unusable, and JD states: "...with
22 a few exceptions most of the changes to the directory records

1 are reflected in the a2z file.” The word “most” is a direct
2 admission that the files are not complete.

- 3 • *Certified Document 20* – March 20, 2011. JD states: “I’m almost
4 done writing a new program to fix and repair all of our
5 Residential Listings.” JD goes on to say, “...I will have to write a
6 similar program for the Business Listings.” There is no evidence
7 either of these things was ever done.”
- 8 • *Certified Document 40* – March 31, 2011. Here, JD makes many
9 promises that never came to pass. He says: “My best estimate
10 for completion of the business and government listings is two
11 and a half weeks...” He goes on to say: “We need all of this data
12 anyway to update our database once and for all.”
- 13 • *Certified Document 47* – April 28, 2011, in which JD attaches
14 two files and went on to say: “Included here are the certified
15 residential and the certified small business. I pulled out the
16 larger businesses for me to work on separately...”
- 17 • *Certified Document 48* – May 12, 2011. JD states: “Almost
18 complete with residential and businesses.”
- 19 • *Certified Document 65* – August 25, 2011. JD states: Thanks
20 John for the more detailed formatting information. I’m taking all
21 of this home with me so I can try and complete it over the
22 weekend.

1 These promises and incomplete or non-compliant files continued to be
2 received by Newton throughout the Contract period.

3 There is no evidence to show that JD had any previous experience in
4 producing telephone directory listings and therefore should not have been
5 expected to do this without previous training or assistance from the one
6 ASTCA employee who had been doing this for over 30 years, Margaret Willis.
7 Margaret was finally brought in during the third year of the Contract to help
8 JD produce the listings, which she did in short order, showing that there
9 should never have been any delay in listing production.

10
11
12 V. Why the ASTCA Listings Posted Online Was Insufficient to
13 Produce a Printed Book.

14
15 ASTCA argues that Newton was provided with all the necessary listing
16 information that he needed because he had posted that information online
17 on his website www.pagopago.com. However, not all of ASTCA's listing
18 groups required to make up a complete paper directory were ever posted
19 online. Furthermore, posting online does not require listings to be in any
20 specific order, format, or group because the internet search mechanism will
21 find a requested listing regardless of what order it is posted in. The posting
22 of listings online was required by the first contract between ASTCA and
23 Newton and nobody at ASTCA ever requested the discontinuation of these

1 | postings. (See *Exhibit 32, Attachment A, Pg. 13, WEBSITE.*) Plaintiff never
2 | asked for or received any payment or income as a result of these listings
3 | being posted on his website. This website has always been a free service to
4 | the community where much interesting information can be found. It is also
5 | important to note that without this internet posting, overseas people and
6 | businesses would find it nearly impossible to find local numbers.

8 | VI. Parol Evidence

9 | The parol evidence rule is stated as follows:

10 | Where the parties, without any fraud or mistake, have
11 | deliberately put their engagements in writing, the law declares
12 | the writing to be not only the best, but the only, evidence of
13 | their agreement. All preliminary negotiations, conversations and
14 | verbal agreements are merged in and superseded by the
15 | subsequent written contract... and unless fraud, accident or
16 | mistake be averred, the writing constitutes the agreement
17 | between the parties, and its terms and agreements cannot be
18 | added to nor subtracted from by parol evidence.

19 |
20 | *Yocca v. Pittsburgh Sports, Inc.*, 654 A. 2d 425, 436 (Pa. Supreme Court
21 | 2004). The rule protects the integrity of written contracts by making their
22 | terms the exclusive evidence of the parties' agreement. *Riverisland Cold
23 | Storage, Inc. v. Fresno-Madera Production Credit Assn.*, 55 Cal.4th 1169,
24 | 1171-1172 (2013). The parol evidence rule is not a rule of evidence nor is it
25 | a rule of interpretation or construction, but a rule of substantive law which
26 | defines the limits of a contract. *Galmish v. Cicchini*, 90 Ohio St. 3d 22, 27
27 | (Ohio Supreme Court 2000).

1 If a contract is unambiguous, it will be enforced as it is written.
2 *Universal CIT Corp. v. Daniel*, 243 SW 2d. 154, 157 (Tex. Supreme Court
3 1951). However, in the case where there is latent ambiguity, parol evidence
4 may be admitted to help explain the parties' intentions. A latent ambiguity
5 exists when the contract fails to specify the rights or duties of the parties in
6 certain situations and extrinsic evidence is necessary for interpretation or a
7 choice between two possible meanings. *Crown Management Corp. v.*
8 *Goodman*, 452 So. 2d 49, 52 (Fla. Dist. Court of Appeals, 2nd Dist. 1984).

9 The parties' contract here is not free of ambiguity. As the evidence
10 demonstrated, there are some grey areas in the MOU which were evident
11 from the parties' testimonies. More particularly, the difference of
12 interpretations relating to the accuracy of the listings which ASTCA was to
13 provide. It was ASTCA's position, through Tau'ili'ili-Langkilde's testimony,
14 that Newton had demanded that the listings be accurate within 10% of
15 whatever was in its database. According to ASTCA, Newton's constant
16 demands and complaints was based on this, which was something that they
17 did not agree to during the negotiation phase of the contract. See *Exhibit 34*.

18 However, Newton testified that the whole purpose of requiring a 10%
19 accuracy count did not have to do with the accuracy of the actual listings,
20 but more of the count of the customer listing so that he could gauge how
21 many telephone directories he had to publish. In reviewing *Exhibit 34*, it is
22 obviously clear that Newton's testimony was more on point as to what the

1 parties' intended for their contract. Newton was not making a demand for
2 close to super-accurate listings, rather he just wanted to know what the
3 customer count was so that he could publish the right number of phone
4 directories in order to satisfy the contract.

5 Therefore, ASTCA's excuse that no matter what information they
6 provided was never good for Newton is without any basis. Newton had
7 worked on six previous phone books so he understood the nature of the
8 information and what he had to do to put it in publishable form. His problem
9 with the listings he got was not their accuracy, it was their incompleteness.
10 As the many emails clearly show, Newton constantly followed up with JD for
11 the listings and would often make suggestions on how they could be put
12 together in a format that was consistent with what the MOU called for.

13 14 VII. The Parties' Working History

15 Newton and ASTCA have a working history together. The parties'
16 professional relationship goes back to 2001 when they first collaborated on
17 the production of telephone directories from 2001 to 2008. That history was
18 vital to their 2010 agreement as it was incorporated into their MOU as the
19 standard by which these new telephone directories were to be produced.³

³ See *Exhibit 1, Memorandum of Understanding, Section 2*, at Pg. 2. "PPC agrees to use its commercially reasonable efforts to produce the Telephone Directory each year, in a quality standard consistent with good telephone directory publishing standards as exemplified by the past six Telephone Directory publications." See also *Exhibit 1, Recitals* section at Pg. 1,

1 During his testimony at trial, Newton made mention of the previous
2 telephone directories and what his relationship with ASTCA was like in
3 getting those books produced. According to Newton, while there were some
4 issues with the previous project in trying to get the listings together, those
5 issues were minor and were easily resolved. Newton recalled his working
6 relationship with Margaret Willis who he had credited with getting the
7 information over to him on-time and without any real problems. When
8 called to the stand, Margaret Willis confirmed Newton’s testimony and
9 therefore discredited any testimony about Newton being hard to work with.

10 Former legal counsel for ASTCA, Tau’ili’ili-Langkilde, described Newton
11 as someone who was difficult to work with. According to her testimony,
12 Newton was demanding and often complained. Tau’ili’ili-Langkilde
13 mentioned that she felt sorry for JD because of the way Newton treated him.
14 ASTCA cited *Exhibit 35, Certified Document 68*, as the only example of
15 Newton’s alleged abusiveness towards JD. According to Tau’ili’ili-Langkilde,
16 she eventually told JD to stop.

17 Throughout trial, ASTCA made the effort to portray Newton as
18 someone who made things difficult. Someone whose demands made
19 performance impossible and when he did not get what he was asking for, he

“Whereas, from 2001 through 2008, ASTCA contracted and PPC, and PPC developed six editions of the Telephone Directory.”

1 would hand out a tongue lashing to JD who he was working with. But that is
2 not what the emails show.

3 The numerous emails offered and admitted as evidence shows Newton
4 as someone who was pushing for the completion of the phone directories.
5 Just months into the contract, Newton began to follow up on the listings by
6 email and from there he kept asking. In reviewing the emails, there is a
7 pattern that becomes obvious: while Newton kept asking for the information,
8 ASTCA (through JD) kept making promises that it will be provided soon.
9 Those promises amounted to nothing because in the end, there was never a
10 complete set of MOU compliant information provided which would have
11 allowed Newton to proceed with publication.

12 The obvious truth is that in their failure to supply the listings to
13 Newton, ASTCA is now blaming him for being someone who made things
14 difficult. There is no proof of that in all the evidence that was admitted in
15 this case.

16 **c. Conclusion**

17 For the reasons set forth herein, and the evidence presented during
18 trial, Plaintiff urges the Court to find the liability of ASTCA in their failure to
19 perform the responsibilities under the MOU and therefore they are in breach
20 of said contract.

21 Respectfully submitted,
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M. TALAIMALO UIAGALELEI
Attorney for Plaintiff