

FILED
DISTRICT OF WYOMING
CHEYENNE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

2001 AUG -6 AM 8:06

RICHARD D. COLLARD and MOUNTAIN)
 STATES CONSULTING, LLC, a)
 Wyoming Limited Liability Co.)
)
 Plaintiffs,)
)
 vs.)
)
 RONALD KAILEY, and TRIBAL)
 SOFTWARE, INC., a Wyoming)
 Corporation; and John Does 1 through 3,)
)
 Defendants.)

CLERK
U.S. DISTRICT COURT

Case No. 2:01-CV-00008
District of Wyoming

SUBPOENA DUCES TECUM

TO: Elfadit Azrag	OR	Elfadit Azrag
1098 S. Foothill Dr.		Hydrologic Consultants, Inc.
Denver, CO		143 Union Blvd., Suite 525
(303) 986-6386		Lakewood, CO 80228
		(303) 969-8033

YOU ARE HEREBY COMMANDED to, on or before the date of July 30, 2001 at 9:00 o'clock a.m., diligently search for, produce, and permit inspection and copying of, at the law offices of James Gallo, Gill & Associates, 1800 Glenarm Place, Suite 400, Denver, CO 80202, Certified copies of all documents and other tangible items designated in Exhibit "A" hereto that are in your possession, custody or control. The documents and other tangible items designated in Exhibit "A" may either be produced as they are kept in the usual course of business, or may be organized and labeled to correspond with the categories set forth in Exhibit "A" hereto.

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Pursuant to Rule 45(a)(1)(D), Federal Rules of Civil Procedure, you are hereby advised as follows:

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subdivision (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) Fails to allow reasonable time for compliance;
- (ii) Requires, in the case of a deposition or production prior to hearing or trial, a person to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person; or
- (iii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) Subjects a person to undue burden.

(B) If a subpoena:

- (i) Requires disclosure of a trade secret or other confidential research, development, or commercial information; or

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(ii) Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) Requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specific conditions.

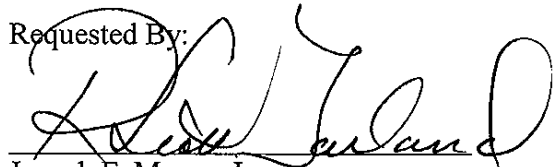
(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DATED the 19 day of July, 2001.

Requested By:



Joseph F. Moore, Jr.
Glenn W. Myers
R. Scott Garland
MOORE & MYERS
P. O. Box 8498
Jackson, WY 83002
(307) 733-8668
(307) 733-3220 FAX
Attorneys for Plaintiffs

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EXHIBIT "A"

A. **DEFINITIONS:** The following definitions should be used as an aid to understanding what information is required to be produced pursuant to the subpoena duces tecum to which this Exhibit "A" is attached.

1. "**Communication**" means the production, offer, delivery, receipt, or exchange of information or ideas by any **persons**, whether done orally or in the form of **documents**.
2. "**Documents**" mean any writing, whether hard copy or electronically recorded, whether an original or copy, and all words, numbers, and data stored electronically on hard disk, CD ROM, floppy disk, magnetic tape or other media. **Documents** also specifically include items, otherwise discoverable under applicable law, that are in the care, custody, or control of persons other than the Responding Party, such as their accountants, bookkeepers, investigators, or attorneys. "**Documents**" also includes, separately, each non-exact copy of the same original, for instance, those with hand written notations, interlineations, comments or editorial changes. "**Documents**" also includes all audio tapes, video tapes, digital recordings (audio or visual) and other perpetuated or recorded words or scenes.
2. "**Persons**" means an individual, or a group of individuals, or a business entity or group of business entities, or a governmental agency or group of governmental agencies.
3. "**Responding Party**" means the **person(s)** identified as the recipient of the subpoena to which this Exhibit "A" is attached.
4. "**You**" means Elfadit Azrag, his/her agents or employees, investigators, attorneys (including staff and paralegals), and any corporate or business entities owned or controlled by Elfadit Azrag.

B. **INFORMATION REQUIRED TO BE PRODUCED:**

(NOTE: REFER TO THE ABOVE DEFINITIONS FOR BOLD FORMATTED WORDS)

1. All **documents** containing, memorializing, referring to, relating to or incorporating by reference any **communication** from Ronald E. Kailey or Tribal Software, Inc., or any employees or agents of Ronald E. Kailey or Tribal Software, Inc., to **you**.
2. All **documents** containing, memorializing, referring to, relating to or incorporating by reference any **communication** from **you**, to Ronald E. Kailey, or Tribal Software, Inc., or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.
3. All **documents** containing, memorializing, referring to, relating to or incorporating by reference any and all **communication** from or to any **person** concerning any computer software, or any portions or components thereof, obtained from Ronald E. Kailey or Tribal Software Inc, or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.

4. All **documents** containing, memorializing, referring to, relating to or incorporating by reference any and all agreements or contracts between **you** and Ronald E. Kailey or Tribal Software Inc, or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.

5. All **documents** containing, memorializing, referring to, relating to or incorporating by reference any and all time expended by **you**, to create any computer software, or any portions or components thereof, for Ronald E. Kailey or Tribal Software Inc, or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.

6. All **documents** containing, memorializing, referring to, relating to or incorporating by reference all money or other form of consideration ever received by **you**, from Ronald E. Kailey or Tribal Software Inc., or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.

7. All **documents** containing, memorializing, referring to, relating to or incorporating by reference all computer software, or any portions or components thereof, received by **you** from Ronald E. Kailey or Tribal Software, Inc., or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.


8. All **documents** containing, memorializing, referring to, relating to or incorporating by reference all computer software, or any portions or components thereof, delivered by **you** to Ronald E. Kailey or Tribal Software, Inc., or any employees or agents of Ronald E. Kailey or Tribal Software, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following person(s) on the date(s) and by the means indicated below.

Robert T. McCue, Esquire
Ian B. Shaw, Esquire
Hathaway, Speight & Kunz, LLC
P.O. Box 1208
Cheyenne, WY 82003-1208
Attorneys for Defendants/
Counterclaim Plaintiffs

First Class U.S. Mail
 Telefax Only
 U.S. Mail and Telefax
 Hand Delivery
 Date: 7-20-01



R. Scott Garland

AFFIDAVIT OF SERVICE

State of CO

County of

Us District Court

Case Number: 2:01 CV 00008

Plaintiff:
**RICHARD D. COLLARD AND MOUNTAIN STATES
CONSULTING, LLC**

vs.

Defendant:
RONALD KAILEY AND TRIBAL SOFTWARE, INC.

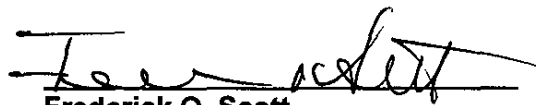
For:
**MOORE & MYERS
Po Box 8498
Jackson Hole WY 83002**

Received by Judicial Process, Inc. on the 23rd day of July, 2001 at 9:18 am to be served on **ELFADIT AZRAG, 1098 S FOOTHILL DRIVE, DENVER, COLORADO.**

I, Frederick O. Scott, being duly sworn, depose and say that on the **25th day of July, 2001 at 10:28 am, I:**

INDIVIDUALLY served the within named person with a true copy of the **SUBPOENA DUCES TECUM** by personal, in-hand delivery to ELFADIT AZRAG at his/her usual place of employment located at 143 UNION BLVD SUITE 525, LAKEWOOD, CO within the County of JEFFERSON .

I certify that I am over the age of 18 and have no interest in the above action.



Frederick O. Scott
Process Server

Judicial Process, Inc.
191 University Blvd., Pmb 338
Denver, CO 80206
(303) 860-0322

Our Job Serial Number: 2001000759

Subscribed and sworn to before me on the 25th day of July, 2001 by the affiant who is personally known to me.

NOTARY PUBLIC
My commission expires 10/05/2002

My Commission Expires 10/05/2002