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DISTRICT OF WYOMING  
CHEYENNE

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CLERK  
U.S. DISTRICT COURT

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

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. )

ORIGINAL

Case No. 01-CV-008B

PLAINTIFFS' JOINT REPLY TO DEFENDANTS' MOTION  
FOR JUDGMENT ON THE PLEADINGS, AND MOTION TO AMEND COMPLAINT

COME NOW, Plaintiffs Richard D. Collard and Mountain States Consulting, LLC, by and through their attorneys, Moore & Myers, and file their reply to Defendants' Motion for Judgment on the Pleadings Regarding Statutory Damages and Attorneys Fees ("Defendants' Motion"), as follows:

1. Plaintiffs stipulate that, for the reasons stated in Defendants' Motion, an award of statutory damages and attorneys fees is unavailable to Plaintiffs in this action.
2. Plaintiffs further move the court for leave to amend Plaintiffs' prayer for relief following paragraph 46 of their Complaint as follows:

“WHEREFORE, Collard and Mountain States pray for relief as follows:

- a. [remains unchanged].
- b. [remains unchanged].
- c. That Collard be awarded monetary damages pursuant to 17 U.S.C. § 504(b), in an amount to be proved at trial.
- d. That Collard be awarded his full costs of litigation, pursuant to 17 U.S.C. § 505.
- e. That Collard and Mountain States be awarded such other and further relief as this Court deems just and appropriate.
- f. [deleted].”

3. In support of their Motion to Amend, Plaintiffs submit the following:

a. The Federal Rules of Civil Procedure, Rule 15(a) provide that leave to amend a pleading “shall be freely given when justice so requires.” Leave to amend is a matter that is within the discretion of the trial court, and is subject to reversal on appeal only for an abuse of discretion. 6 Wright and Miller, Federal Practice and Procedure: Civil §1484, at 418 (1971)

b. The principal factors considered in connection with an offer of amendment to a Complaint are whether it will cause delay and whether the adverse party will suffer prejudice. R.E.B., Inc. v. Ralston Purina Co., 525 F.2d 749 (10<sup>th</sup> Cir. 1975).

Lateness does not of itself justify the denial of the amendment. Id., at 1151. This is particularly true if the proposed amendments do not result in substantially different issues Id., at 752. Leave should be granted where the effect of the amendment is simply to refine the demands of the Plaintiff, as opposed to adding a new substantive legal claim or another party to the litigation. Id.; See also, Ammoco Production Co. v. Guild Trust, 636 F.2d 261, 262 (10<sup>th</sup> Cir. 1980).

c. Plaintiffs' proposed amendments do not add any new substantive legal causes of action, nor any additional parties to the litigation. Plaintiffs' proposed amendments' are simply refinements of existing demands, the statutory basis of which have been present and known to the Defendants since the outset of this litigation.

d. For example, Plaintiffs' proposed amendment to subparagraph "c" of the prayer for relief simply identifies the statutory basis for Plaintiffs' previous prayer for actual damages. Plaintiffs' proposed amendment to subparagraph "d" of the prayer for relief acknowledges the unavailability of an award of statutory damages and attorneys fees to Plaintiffs in the context of this case, but expresses the statutory basis for the Court's discretionary award to Plaintiffs of Plaintiffs' full costs of litigation. Plaintiffs' proposed amendment to subparagraphs "d" and "e" of the prayer for relief are simply the result of the above changes (i.e. the "catch all" damages prayer for relief gets moved from subparagraph "e" to "d", with former "e" being deleted).

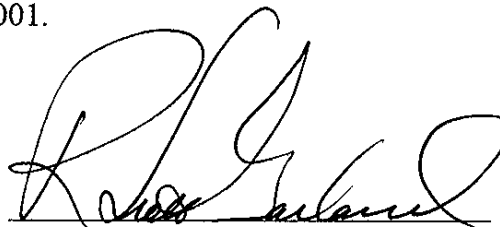
e. The litigation will not be delayed, nor will Defendants be prejudiced by the amendments.

f. A copy of the Amended Complaint is attached hereto and has been served on opposing counsel.

g. Pursuant to U.S.D.C.L.R. 15.1, the undersigned has conferred with opposing counsel, who has stated that Defendants will object to Plaintiffs' Motion to Amend.

WHEREFORE, Plaintiffs request leave to amend their Complaint as herein stated.

DATED this 20<sup>th</sup> day of September, 2001.




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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Plaintiffs' Joint Reply to Motion for Judgment on the Pleadings & Motion to Amend Complaint was served upon the following person(s) on the date(s) and by the means indicated below.

Robert T. McCue, Esquire	<input type="checkbox"/>	First Class U.S. Mail
Ian B. Shaw, Esquire	<input type="checkbox"/>	Telefax Only
Hathaway, Speight & Kunz, LLC	<input checked="" type="checkbox"/>	U.S. Mail and Telefax
P.O. Box 1208	<input type="checkbox"/>	Hand Delivery
Cheyenne, WY 82003-1208	<input type="checkbox"/>	Date: <u>9-20-01</u>
Attorneys for Defendants/ Counterclaim Plaintiffs		



R. Scott Garland