UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

CASE NO. 97-3924
CIV-LENARD

v.

NATIONAL GEOGRAPHIC SOCIETY, a district of Columbia corporation, NATIONAL GEOGRAPHIC ENTERPRISES, INC, a corporation, and MINDSCAPE, INC., a California corporation,

DECLARATION OF ROCK WHEELER

Defendants.

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Rock Wheeler affirms as follows, under penalty of perjury:

1. I am a Coordinator in the Lectures and Public Programs Division of the National Geographic Society (the "Society"). I am responsible for researching the rights to photographs that the Division intends to use in its various programs and handling the resulting payments to the photographers who own copyright in those photographs. I make this declaration based upon personal knowledge.

2. The Society is the world's largest nonprofit scientific and educational organization, with 9.5 million members, and is dedicated to the diffusion of geographic knowledge in its broadest sense. The Society and its subsidiaries produce periodicals, television programs, maps and atlases, educational games, and like products.

3. The Society participates in numerous public service activities, including the Jason Project, an educational program whose goal is to excite and engage students in science and technology and to provide professional development for their teachers. The Jason Project was founded by explorer Dr. Robert Ballard and is sponsored by the Society, along with a consortium of private industry, scientific research facilities, museums, government and educational organizations. As a member of this worldwide network, the Society hosts an electronic theater with giant video screens and an interactive communications center that permits students to experience the thrill of exploration and research remotely, via telepresence -- live broadcasts incorporating technologies from robotics to satellite communications. At the time of the 1996 Jason Project voyage, the Society invited teachers, students in grades 3-9, and parents to participate in the Jason Project free of charge.[1]

4. On the April 1996 Jason Project voyage, "Adapting to a Changing Sea," a U.S. Navy nuclear submarine descended 600 feet below the ocean surface to study an ancient coral reef previously untouched by humans. At the Society's electronic theater in Washington, D.C., students interacted live with scientists aboard the submarine to learn invaluable lessons in reef ecology, climate change, marine biology and a host of additional subjects. Moreover, prior to the voyage itself, participating teachers attended professional development workshops rich in hands-on lessons in science, technology and geography which formed an integral part of the students' overall scientific curriculum.

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1. Today, the Society charges a nominal registration fee for the Jason Project. However, the Jason Project remains a non-profit, public service endeavor by the Society.

5. The Society produced a poster (the "Poster") in order to inform area educators of the April 1996 Jason Project voyage (attached as Exhibit 7 to the Affidavit of Jerry Greenberg dated September 28, 1998 (hereinafter "Greenberg Aff.")). The Poster, measuring 24 inches by 11 inches, contains text describing the voyage and several photographs depicting various aspects of marine life as well as the U.S. Navy submarine and the Society's electronic theater. Id. A photograph of a sea fan (the "Sea Fan"), taken by Jerry Greenberg ("Greenberg") and originally published in the July 1990 issue of National Geographic Magazine (attached hereto as Exhibit A), appears in the upper right-hand corner of the Poster. Greenberg Aff. Exh. 7. The Sea Fan is surrounded by a school of fish, and portions of the image are obscured by the lettering in the title of the Poster. Id. It occupies a space measuring approximately 3 1/2 inches by 3 inches. Id. A caption beneath the Sea Fan reads: "This colorful sea fan, a coral species, grows on healthy reefs off the Florida Keys. Jerry Greenburg." Id.

6. The Society printed approximately 7,000 copies of the Poster. Roughly 5,000 copies were mailed at no charge to teachers who had already expressed interest in the Jason Project, along with registration packets. The remainder of the copies were given away for free in Explorers' Hall at the Society's corporate headquarters in Washington, D.C. At no time did the Society ever charge a fee for the Poster.

7. In late 1995 and early 1996, I was a Coordinator in the Society's Audiovisual Division and was responsible for researching the rights to photographs that the Society used in the Poster and handling the resulting payments to the photographers who owned copyright in those photographs. Through inadvertence, the Society did not obtain the

right to use the Sea Fan from Jerry Greenberg ("Greenberg") before printing the Poster. When the Society discovered this oversight, I promptly wrote to Greenberg advising him of the use and offering him compensation. At that time, it was the Society's practice to pay $50 for the type of use involved in the Poster. Because we had inadvertently used Greenberg's photograph without obtaining advance permission, however, we offered him compensation in the amount of $500. Id. When Greenberg subsequently contacted me, he acknowledged that it was "to the Society's credit" that we had taken affirmative steps to inform him of the use and offer him compensation.

8. I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 15, 1998

Rock Wheeler

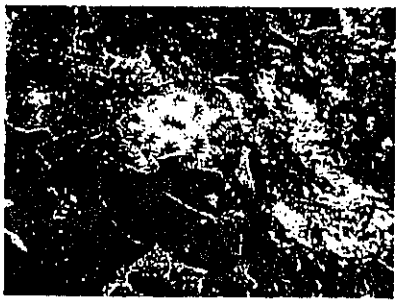
Exhibit A

RECYCLED PAPER









The ruddy glow of its branches reflects the health of a sea fan (right), which grows best in warm, clean water with a low nutrient level. A dying coral of the same species haunts the deep like a specter (facing page), perhaps the victim of parasites or polluted water.

Lifeless white limestone discolors a branch of elkhorn coral after the spread of white band disease (bottom left), whose cause remains a mystery. Produced by bacteria, black band disease, here infecting a star coral (center right), can kill a 200-year-old formation in two months. Experiments to stop the disease and treat infected coral so far have failed.

Known as golf ball coral, Favia fragum (bottom right) is smothered by algae, which then use the remains as a base for further growth.

Life on a reef is typically balanced, with a variety of corals coexisting with coral-eating parrotfish, algae, sea urchins, and damselfish. Normally corals have the ability to cleanse and heal themselves of disease and impact wounds. At Pennekamp the reefs may no longer be able to withstand the stresses of their environment.

"There are almost no butterflies left where the county sprays. The number of birds has declined because their food is killed in the process of killing mosquitoes."

Carl Nielsen notes the county is supposed to cut off the spray as planes fly over the park or over water, but, he says, "We pick up those pesticides in our water samples. Anything that lands on Key Largo ends up in the park."

Once water quality deteriorates, corals may not have the strength to recover from the stresses of people, boats, storms, silt, chemicals. Anything can push them over the edge.

That fatal "anything" can come from almost anywhere. Richard Curry, resource management coordinator for Biscayne National Park, reports, "We pick up paper plants' residues from the Midwest brought down by the country's sewer, the Mississippi River, mixed in the Gulf of Mexico, and carried here by the Gulf Stream. Every product that people make is found around our reefs—including far too many nutrients."

Agricultural runoff, garbage, sewage, and thousands of products that humans discard have seriously raised the level of nutrients in the water around the keys.

"Nutrient loading could make the Florida Keys reef tract the first in the world to be killed by humans," says Brian Lapointe, water-quality expert with the Florida Keys Land & Sea Trust. Calling the keys an "ecosystem dysfunction," he notes, "Coral reefs thrive only in a low-nutrient environment. Pollution is pushing Florida's