

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION: MORRIS COUNTY

DOCKET NO. MRS-C-87-04

UNIVERSITY COMMUNICATIONS, INC., d/b/a:

PEGASUS WEB TECHNOLOGIES and JASON : VOLUME II

SILVERGLATE, :

Plaintiffs, :

-v- :

NET ACCESS CORPORATION, :

Defendant. :

-and- :

KENNETH ELLMAN, :

Real Party in Interest and :

Indispensable Party :

VIDEOTAPED DEPOSITION OF: JASON SILVERGLATE

TUESDAY, AUGUST 8, 2006

ROSENBERG & ASSOCIATES

Certified Shorthand Reporters & Videographers

425 Eagle Rock Avenue - Suite 201

Roseland, New Jersey 07068

(973) 228 - 9100

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CIVIL DIVISION

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1 Deposition transcript of JASON SILVERGLATE,
2 100 Delawanna Avenue, Clifton, New Jersey
3 07014, taken in the above-entitled matter
4 before MARY VARGAS, a Certified Shorthand
5 Reporter, (License No. XI01737) and Notary
6 Public of the State of New Jersey, taken at
7 H.Q. Regus Group, One Gateway Center, Suite
8 2600, Room 26B, Newark, New Jersey, on Tuesday,
9 August 8, 2006, commencing at 10:41 a.m.
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1 ALSO PRESENT:
2
3 BLAKE ELLMAN, President
4 Net Access Corporation
5
6 VICTORIA ELLMAN, Net Access Corporation
7
8 ALEX RUBENSTEIN, Net Access Corporation
9
10 PHILLIP SILVERGLATE
11
12 MARIUS SCHOLTZ, Videographer
13 LegalMedia Solutions
14
15
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES:
2
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6 Newark, New Jersey 07012
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8 Attorneys for Plaintiff
9
10 FENG LI, ESQ., Associate In House Counsel
11 Offices of General Counsel
12 Net Access Corporation
13 1719 Route 10 East, Suite 111
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15 (973) 590-5110
16 Attorneys for Defendant Net Access Corporation
17
18 KENNETH ELLMAN, Pro se
19 Owner of the Security Agreement
20 and Network Access Agreement
21 Indispensable Party and Party in Interest
22 PO Box 18
23 Newton, New Jersey 07860
24 (973) 454-9027
25 Appearing as a Pro Se Defendant

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| <p>1 THE VIDEOGRAPHER: Good morning.</p> <p>2 Today is August 8, 2006. The location is One</p> <p>3 Gateway Center, Newark, New Jersey, Room 26.</p> <p>4 My name is Marius Scholtz, Certified Specialist</p> <p>5 of LegalMedia Solutions, Certified Video</p> <p>6 Specialist of LegalMedia Solutions of 42 Perona</p> <p>7 Road, Andover, New Jersey.</p> <p>8 This is the video deposition of</p> <p>9 Jason Silvergate, Case Number MRS-C87-04,</p> <p>10 entitled University Communications,</p> <p>11 Incorporated, doing business as Pegasus Web</p> <p>12 Technologies and Jason Silvergate, Plaintiffs,</p> <p>13 versus Net Access Corporation, Defendant, and</p> <p>14 Kenneth Ellman.</p> <p>15 The deponent is Jason Silvergate.</p> <p>16 The video deposition is requested by the</p> <p>17 plaintiff. Sorry. The video deposition is</p> <p>18 requested by the defense, Kenneth Ellman, of</p> <p>19 Net Access Corp.</p> <p>20 We are going on the record at</p> <p>21 approximately 10:41 a.m. Will counsel and all</p> <p>22 present please identify themselves for the</p> <p>23 record.</p> <p>24 MR. LI: Feng Li representing Net</p> <p>25 Access Corporation.</p> | <p>1 filed on July 28th, 2006 signed by the</p> <p>2 Honorable Kenneth C. MacKenzie.</p> <p>3 Would you please mark this.</p> <p>4 (Off-the-record discussion.)</p> <p>5 (Exhibit D-8 is marked for</p> <p>6 Identification.)</p> <p>7 THE VIDEOGRAPHER: I'd also like to</p> <p>8 add to the record that this is the</p> <p>9 continuation, I forgot to mention, of day two</p> <p>10 of the video deposition.</p> <p>11 EXAMINATION</p> <p>12 BY MR. ELLMAN (Cont'd):</p> <p>13 Q. Mr. Silvergate, I show you what's</p> <p>14 been marked as Defendant's Exhibit 8, a Court</p> <p>15 Order of the Honorable Kenneth C. MacKenzie. I</p> <p>16 show it to you and ask you if you've ever seen</p> <p>17 it before.</p> <p>18 A. No.</p> <p>19 Q. Can I ask you how you knew to come</p> <p>20 to the deposition today?</p> <p>21 A. My lawyer advised me of it.</p> <p>22 Q. What time did he tell you to get</p> <p>23 here?</p> <p>24 MR. COLEMAN: Don't answer the</p> <p>25 question. He's not answering any questions</p> |

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1 Corporation?

2 A. Only my attorneys.

3 Q. What law firm would that have been

4 at that time?

5 A. Podvey Meanor Sachs Cat --

6 whatever.

7 Q. Podvey Sachs law firm?

8 A. Yeah.

9 Q. The Security Agreement came up with

10 them?

11 A. Yes.

12 Q. Isn't it a fact that they

13 negotiated the Security Agreement with you and

14 myself?

15 A. Under duress.

16 Q. But they were a participant in the

17 three-way conversation?

18 A. Yes.

19 Q. And they were a participant in the

20 conversation not just with you, me and your law

21 firm, but with Blake Ellman and Alex Rubenstein

22 also?

23 A. Yes.

24 Q. You tape-recorded those

25 conversations?

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1 A. Yes.

2 Q. You tape-recorded the conversations

3 of everybody including your own attorney?

4 A. No.

5 Q. You never tape-recorded a

6 conversation with your attorney?

7 A. My attorney when we were speaking

8 to you, yes.

9 Q. Otherwise, you never tape-recorded

10 a conversation with your attorney?

11 A. No.

12 Q. Did you dis -- did Phillip

13 Silvergate discuss with you at all how he

14 could get priority over Net Access

15 Corporation's Security Agreement?

16 A. No.

17 Q. Never?

18 A. No.

19 Q. Do you know if Phillip Silvergate

20 ever filed the Security Agreement that he had

21 with you?

22 A. No.

23 Q. You borrowed money from Commerce

24 Bank. Am I correct?

25 A. Yes.

180

1 Q. Have you borrowed money from other

2 parties also?

3 A. No.

4 Q. Only Commerce Bank?

5 A. Well, and my father, but no.

6 Q. Commerce Bank and your father?

7 A. Correct.

8 Q. But you don't know how much you

9 borrowed from your father?

10 A. No.

11 Q. And you don't know how he paid it

12 to you?

13 A. No.

14 Q. Do you have an accountant for your

15 business?

16 A. Yes.

17 Q. What is the name of that

18 accountant?

19 A. Mark Ratish.

20 Q. Does he have an office?

21 A. Yes.

22 Q. Where would his office be located?

23 A. I don't know.

24 Q. Do you know what city?

25 A. No.

181

1 Q. Does he have a phone number?

2 A. Yes.

3 Q. Do you know his phone number?

4 A. No.

5 Q. Is he a Certified Public

6 Accountant?

7 A. Yes.

8 Q. Is he licensed in the State of New

9 Jersey?

10 A. I don't know.

11 Q. Does he maintain an office in the

12 State of New Jersey?

13 A. Yes.

14 Q. Have you ever met him at his

15 office?

16 A. Yes.

17 Q. Do you know what city you met him

18 in?

19 A. No.

20 Q. You went to his office, but you

21 don't know the city?

22 A. I just know it's right off of Route

23 4 somewhere.

24 Q. In New Jersey?

25 A. Yes.

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| | |
|---|--|
| <p>1 repetition of the question.</p> <p>2 Q. Did there ever come a time that you</p> <p>3 decided you just wanted to hurt Net Access</p> <p>4 Corporation?</p> <p>5 A. Hurt? I don't think there's any</p> <p>6 way to hurt Net Access Corporation.</p> <p>7 Q. Did there ever come a time when you</p> <p>8 felt you wanted to do some injury to Net Access</p> <p>9 Corporation?</p> <p>10 A. I don't think I wanted to do injury</p> <p>11 to Net Access Corporation. I wouldn't know</p> <p>12 how.</p> <p>13 Q. Did there ever come a time when you</p> <p>14 said, I just want to fuck these guys?</p> <p>15 MR. COLEMAN: I object to the form</p> <p>16 of the question.</p> <p>17 A. I don't know.</p> <p>18 Q. Did there come a time when you</p> <p>19 said, I'm not going to declare bankruptcy, but</p> <p>20 I just want to fuck these guys?</p> <p>21 MR. COLEMAN: Object to the form of</p> <p>22 the question.</p> <p>23 A. I don't know.</p> <p>24 Q. No recollection at all?</p> <p>25 A. No.</p> | <p>318</p> <p>1 Identification.)</p> <p>2 Q. I show you a transcription that's</p> <p>3 been marked as D-26. These are tape-recordings</p> <p>4 provided by you to Net Access Corporation,</p> <p>5 transcribed by AudioEdge Transcription, LLC,</p> <p>6 425 Eagle Rock Avenue, Roseland, filed with the</p> <p>7 Court. And I ask you to take a look on D-26</p> <p>8 there's a page 111.</p> <p>9 MR. COLEMAN: Mr. Ellman, I'm</p> <p>10 sorry. Did you say that this was filed with</p> <p>11 the Court?</p> <p>12 MR. ELLMAN: Yeah.</p> <p>13 MR. COLEMAN: What date was it</p> <p>14 filed with the Court?</p> <p>15 MR. ELLMAN: July 27th it says</p> <p>16 stamped "Received."</p> <p>17 MR. COLEMAN: What year?</p> <p>18 MR. ELLMAN: This year. It was</p> <p>19 also served here. I have the receipt served to</p> <p>20 your office.</p> <p>21 MR. COLEMAN: Oh, that was part of</p> <p>22 the package that was served here.</p> <p>23 MR. ELLMAN: Oh, yeah. Yeah, I</p> <p>24 served a whole carton of stuff.</p> <p>25 MR. COLEMAN: Okay.</p> <p>320</p> |
| <p>319</p> <p>1 Q. Were you angry at Net Access</p> <p>2 Corporation?</p> <p>3 A. Yes.</p> <p>4 Q. Were you angry at Blake and Alex</p> <p>5 and me?</p> <p>6 A. Yes.</p> <p>7 Q. What was the basis of your anger?</p> <p>8 A. I think that's been clearly</p> <p>9 expressed in this lawsuit.</p> <p>10 Q. And you feel the lawsuit is the sum</p> <p>11 and substance of that?</p> <p>12 MR. COLEMAN: Object to the form.</p> <p>13 A. I would say it's probably a good</p> <p>14 substance of it.</p> <p>15 Q. If there was a tape-recording made</p> <p>16 by you where you say, I have no intention of</p> <p>17 going bankrupt, I really want to fuck these</p> <p>18 guys, but I really want to fuck these guys,</p> <p>19 talking about Blake, Alex, me, Net Access.</p> <p>20 What do you think? Do you think that's true or</p> <p>21 it's a fabricated tape-recording?</p> <p>22 A. I don't know.</p> <p>23 MR. ELLMAN: I ask the stenographer</p> <p>24 to mark this page.</p> <p>25 (Exhibit D-26 is marked for</p> | <p>321</p> <p>1 MR. ELLMAN: And you did get that</p> <p>2 carton. Am I correct, Mr. Coleman.</p> <p>3 MR. COLEMAN: Yes, I did. Thank</p> <p>4 you.</p> <p>5 MR. ELLMAN: Yeah, okay. As a</p> <p>6 matter of fact, I prevailed on your secretary</p> <p>7 to sign my copy "Received" so there wouldn't be</p> <p>8 a dispute.</p> <p>9 MR. COLEMAN: She loves to give out</p> <p>10 autographs.</p> <p>11 Q. If you take a look over here, it</p> <p>12 says, "Mr. Silvergate." Over here. What does</p> <p>13 that say, please.</p> <p>14 A. Hold on a second.</p> <p>15 Q. Oh, okay. Could you please read</p> <p>16 that on page 111?</p> <p>17 A. Page 111?</p> <p>18 Q. Right, says, "Mr. Silvergate."</p> <p>19 Could you read that?</p> <p>20 A. "Well, Colin, just so you know, I</p> <p>21 have no intention of going bankrupt, but I do</p> <p>22 really want to fuck these guys."</p> <p>23 Q. What did you mean by that, "I</p> <p>24 really want to fuck these guys"?</p> <p>25 A. Meaning I want to win my lawsuit.</p> |

1 Q. You think winning a lawsuit has to
2 do with fucking these guys?
3 MR. COLEMAN: Object to the form.
4 A. Yeah.
5 Q. Not about justice?
6 MR. COLEMAN: Object to the form.
7 A. It is justice. Tortious
8 interference, extortion, threatening. That's
9 justice. And I said right there, I was looking
10 to do the very thing that you were afraid I was
11 going to do the whole time. You consistently
12 said, "Oh, I'm afraid you're going bankrupt,
13 afraid you're going bankrupt."
14 Q. I was afraid you were going to go
15 bankrupt, you're correct. We were very
16 concerned that you might go bankrupt. But you
17 made it very clear on page 111 that you were
18 not going to go bankrupt, quote-unquote, I
19 really want to fuck these guys. Am I correct?
20 A. If that's what it says.
21 Q. That's your quote.
22 Well, the tape-recording was made
23 by you and provided by you. We didn't
24 tape-record any conversations with you.
25 Fortunately, you did.

1 Q. You are aware -- let me ask you,
2 you made tape-recordings of all the
3 conversations with myself -- well, many
4 conversations with myself, Blake, Alex, other
5 people. Am I right?
6 A. Correct.
7 Q. I'm not going to say all, but
8 many.
9 A. Some.
10 Q. Yeah. And at the time you made
11 those tape-recordings, the people who were
12 being recorded didn't even know they were being
13 recorded, did they?
14 A. Some did.
15 Q. Some did.
16 So when Colin Scott is on there
17 being tape-recorded, he knew?
18 A. Yes, I think so.
19 Q. Well, did you tell him?
20 A. He knew he was being tape-recorded,
21 but -- yeah, I'm pretty sure I told him.
22 Q. But you didn't tell Blake, right?
23 A. There's no need to.
24 Q. Didn't tell Alex, correct?
25 A. No.

1 Q. And you didn't tell me?
2 A. No.
3 Q. At the time you tape-recorded these
4 conversations, did you tell Mr. Podvey that he
5 was also being tape-recorded?
6 A. I don't believe so. Maybe. You'd
7 have to ask Mr. Podvey.
8 Q. I might.
9 MR. COLEMAN: Not in this case.
10 Q. Do you still believe today that
11 your dispute with Net Access Corporation was
12 not a business dispute, but was somehow to hurt
13 you?
14 A. A dispute with Net -- with NAC
15 wanting to hurt me?
16 Q. Personally.
17 A. Business wise.
18 Q. And what were they getting out of
19 hurting you?
20 A. They would ultimately -- I think
21 their goal was to get the business.
22 Q. Your customers?
23 A. Yes.
24 Q. And they would do this how?
25 A. Well, if we ended up filing for

1 bankruptcy or had to go insolvent, then our
2 equipment would have been located in your
3 facility. That would make easy poaching of our
4 customer base, 'cause a turned-off customer is
5 a worthless customer.
6 Q. You did believe NAC was actually
7 walking through the facility copying down the
8 names of your customers. Am I correct?
9 A. Yes.
10 Q. Names that were on your machines
11 put there by who?
12 A. I think we went over this last
13 time.
14 Q. Yes. Can you recollect what you
15 said?
16 A. I said it was put up there by my
17 staff.
18 Q. Currently, does Anthony Cennami
19 work for you?
20 A. No.
21 Q. How come?
22 A. He had some issues.
23 Q. What were his issues?
24 A. He has a -- he had a drinking
25 problem.

1 MR. COLEMAN: It's been a sparkling
2 day.

3 THE VIDEOGRAPHER: We're off the
4 record. This concludes the videotaped
5 deposition of Jay Silvergate, Volume II,
6 consisting of three tapes. The time is
7 approximately 5:17 p.m.

8 The original tapes of today's
9 testimony will remain in the custody of Marius
10 Scholtz of LegalMedia Solutions with address at
11 42 Perona Road, Andover, New Jersey. And we
12 are now off the record.

13 (The deposition concluded at 5:17
14 p.m.)
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24
25

1 CERTIFICATE
2

3 I, MARY VARGAS, a Certified Shorthand
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that prior to the
6 commencement of the examination, the witness
7 was duly sworn by me to testify to the truth,
8 the whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is
10 a true and accurate transcript of the testimony
11 as taken stenographically by and before me at
12 the time, place and on the date hereinbefore
13 set forth, to the best of my ability.

14 I DO FURTHER CERTIFY that I am neither
15 a relative nor employee nor attorney nor
16 counsel of any of the parties to this action,
17 and that I am neither a relative nor employee
18 of such attorney or counsel, and that I am not
19 financially interested in the action.
20
21
22

23 MARY VARGAS, CSR
24
25

DEFENDANT'S
EXHIBIT
DN-4

EXHIBIT ID
Blake-4
JK 1/18/07

TRANSCRIPT OF :

PHONE CONVERSATIONS :

DATE: Various Dates

SPEAKERS:

- BLAKE ELLMAN
- ALEX RUBENSTEIN
- JASON SILVERGLATE
- COLIN B. SCOTT, ESQ.
- KENNY ELLMAN, ESQ.
- ROBERT L. PODVEY, ESQ.

DEFENDANT'S
EXHIBIT
D-26
8-8-06

Diana Pawlikowski, AD/T 393
Charlene P. Scognamiglio, AD/T 473
AudioEdge Transcription, LLC
425 Eagle Rock Avenue
Roseland, New Jersey 07068

(973) 618-2310

DEFENDANT'S
EXHIBIT NO.
FOR IDENTIFICATION
8/21/06
DATE RPT: 7/10

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CONVERSATION

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1 MR. SCOTT: Well, you know, this could get --
2 you know, if we went down that -- we could -- I mean,
3 it could be messy. I would love to bring an ethics
4 violation against the dad.

5 MR. J. SILVERGLATE: Can we sue Net Access
6 Corp for violating the ethics?

7 MR. SCOTT: What's that?

8 MR. J. SILVERGLATE: Can we sue Net Access
9 Corp. -- can we sue Net Access Corp. for violating --

10 MR. SCOTT: No, no. No, no, no, no. I mean,
11 we could have a claim of business towards violation of
12 Fair Deal (indiscernible), but it's very difficult,
13 and, you know, to litigate that kind of thing is going
14 to cost you --

15 MR. J. SILVERGLATE: Yeah.

16 MR. SCOTT: -- a lot. I mean, we're talking
17 at least 50 grand, probably more.

18 MR. J. SILVERGLATE: Contingency basis?

19 MR. SCOTT: No. No. Business source don't
20 get litigated that way. Okay. Now here's what the
21 problem is, that if they turn you off, --

22 MR. J. SILVERGLATE: Uh-huh.

23 MR. SCOTT: -- then -- okay. Let's look at
24 two issues. A, do they have the right to turn you off;
25 and, B, if they don't have the right to turn you off,

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1 what do you do.

2 MR. J. SILVERGLATE: Well, now if I don't --
3 I mean, if I don't have the check for them by the end
4 of today, i.e. midnight or so, I'm in -- I'm breaching
5 the original contract.

6 MR. SCOTT: Well, that's the thing. So the
7 first question is, do you have to give them the check.
8 There is an argument to be made --

9 MR. J. SILVERGLATE: But also there's three
10 other checks out there that need to be paid, so I can
11 give them this check and they can, you know, -- and
12 there's other checks out there.

13 MR. SCOTT: Right. And then you would say --
14 well, basically what we'd be going for is we'd be going
15 back to the idea of just pay this check and then hold
16 out for the next check when we have time to come up --
17 to argue a better deal.

18 MR. J. SILVERGLATE: Or we can say, you know,
19 listen, your father agreed to this as legal counsel,
20 you're bound by law to it.

21 MR. SCOTT: Well, yeah. No. They're not --
22 I mean, that's a really tough claim. I mean, he just
23 said yes, you know, in passing. I mean, the fact is, I
24 think he was pulling the dickhead move of say what he
25 needs to say to get the check, and then tomorrow he

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1 says he doesn't understand and we have no way of
2 proving it absent your little contingency plan. But,
3 you know, we could make the argument that by them
4 signing the security agreement --

5 MR. J. SILVERGLATE: Uh-huh.

6 MR. SCOTT: -- that they had agreed to go
7 behind you and just because we didn't know what the
8 numbers were doesn't mean they can't be filled in
9 later.

10 MR. J. SILVERGLATE: Right.

11 MR. SCOTT: But the problem with that is,
12 that's a tough case. You know, the only reason why we
13 did it that way --

14 MR. J. SILVERGLATE: Well, Colin, just so you
15 know, I have no intention of going bankrupt, but I
16 really want to fuck these guys.

17 MR. SCOTT: Right. I think that what we need
18 to do is this. Okay. We have two options, I think.
19 Either come to an agreement where you'll subordinate
20 your debts that except for 50,000 or just pay the 50 --
21 just pay the 50,000-dollar check and give yourself some
22 more time to argue.

23 MR. J. SILVERGLATE: I say give myself more
24 time to argue.

25 MR. SCOTT: Okay. All right. Let's do that

1 then.

2 MR. J. SILVERGLATE: Okay.

3 MR. SCOTT: The only thing is, you know,
4 you're losing some leverage by giving them the check.

5 MR. J. SILVERGLATE: That means I'm sill
6 going to have 100,000 outstanding.

7 MR. SCOTT: When is the next one due?

8 MR. J. SILVERGLATE: 15 days.

9 MR. SCOTT: 15 day?

10 MR. J. SILVERGLATE: Yeah.

11 MR. SCOTT: And how much -- how much are you
12 going to run up in that 15 days of new charges?

13 MR. J. SILVERGLATE: An additional probably
14 80,000.

15 MR. SCOTT: Okay. So you know what? You'll
16 be in a better position.

17 MR. J. SILVERGLATE: Yeah.

18 MR. SCOTT: Because you'll actually --
19 they'll have more -- they can't do anything, and
20 they'll have more outstanding to you.

21 MR. J. SILVERGLATE: Right.

22 MR. SCOTT: So we're actually -- if you just
23 give them a check, they don't have a right to turn you
24 off.

25 MR. J. SILVERGLATE: No.

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1 MR. SCOTT: And then you can run up what is
2 on the account and you're in a better bargaining
3 position.

4 MR. J. SILVERGLATE: And in the meantime,
5 file the papers with my father saying that I owe him
6 \$210,000.

7 MR. SCOTT: Yep. Yeah.

8 MR. J. SILVERGLATE: Okay.

9 MR. SCOTT: In fact what I'll do is I'll even
10 record. So here's what we're going to do is, when you
11 give them the check you're going to give them something
12 confirming that the escrow agree -- this will confirm
13 that the security agreement is being held in escrow
14 pending resolution of certain matters.

15 MR. J. SILVERGLATE: Okay. I'll bring him by
16 my phone. You can tell him that.

17 MR. SCOTT: Okay.

18 MR. J. SILVERGLATE: All right. Ready?

19 All right, guys. Colin, go ahead.

20 MR. P. SILVERGLATE: Hello?

21 MR. SCOTT: Hello? Are your ready?

22 Mr. P. SILVERGLATE: Hold no. Hold on. Hold
23 on. Jay? He's not here.

24 MR. J. SILVERGLATE: Okay.

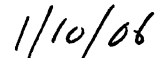
25 MR. SCOTT: All right. Although I was caught

C E R T I F I C A T I O N

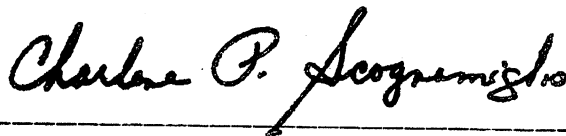
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