



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Apr-13-2009 3:47 pm

Case Number: CGC-09-487213

Filing Date: Apr-13-2009 3:44

Juke Box: 001 Image: 02463856

COMPLAINT

STUDIOS, INC., A CALIFORNIA CORPORATION VS. PROWEST MEDIA CORPPORATION,

001C02463856

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

PROWEST MEDIA CORPORATION, a California Corporation;
THOMAS R. SETTLE, an individual; JOHN B.
RUTHERFORD, an individual; and DOES 1-10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JIM FRENCH STUDIOS, INC., a California Corporation

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN FRANCISCO COUNTY SUPERIOR COURT
400 McAllister Street

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Carl Lippenberger (SBN 66606)
LIPPENBERGER, THOMPSON, WELCH, SOROKO & GILBERT LLP
201 Tamal Vista Blvd.
Corte Madera, CA 94925

DATE: APR 13 2009

(Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

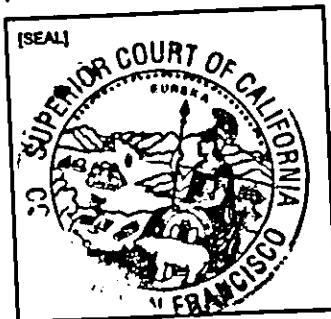
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



CASE NUMBER:
(Número del Caso):

CGC-09-487213

D. STEPPE

Deputy
(Adjunto)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Carl Lippenberger, (SBN66606)
LIPPENBERGER, THOMPSON, WELCH, SOROKO & GILBERT LLP
201 Tamal Vista Boulevard

Corte Madera, CA 94925

TELEPHONE NO.: (415) 927-5200

FAX NO.: (415) 927-5210

ATTORNEY FOR (Name): Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME:

CASE NAME: JIM FRENCH STUDIOS, INC. v. PROWEST MEDIA CORPORATION

FOR COURT USE ONLY

FILED

San Francisco County Superior Court

APR 13 2009

GORDON PARK-LI, Clerk

BY: *[Signature]* Deputy Clerk

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other P/PI/D/W/D (23)

Non-P/PI/D/W/D (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-P/PI/D/W/D tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☒ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Four

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 13, 2009

Carl Lippenberger, (SBN66606)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

APR 13 2009

GORDON PARK-LI, Clerk
BY: *[Signature]*
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

SEP 11 2009 - 9AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SUMMONS ISSUED

JIM FRENCH STUDIOS, INC., a California Corporation,

Plaintiff,

v.

PROWEST MEDIA CORPORATION, a California Corporation; THOMAS R. SETTLE, an individual; JOHN B. RUTHERFORD, an individual; and DOES 1 - 10, inclusive,

Defendants.

Case No.: **CGC-09-487213**

COMPLAINT FOR

1. DEFAULT UNDER SECURITY AGREEMENT, POSSESSION OF COLLATERAL, AND JUDICIAL FORECLOSURE
2. BREACH OF GUARANTY
3. MONEY HAD AND RECEIVED
4. ACCOUNT STATED

Plaintiff Jim French Studios, Inc., for its complaint against defendants Prowest Media Corporation, Thomas R. Settle, John B. Rutherford, and Does 1 through 10, inclusive, and each of them, alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Parties

1. Plaintiff Jim French Studios, Inc. ("French") is, and at all relevant times was, a California Corporation in good standing, duly organized under and existing by virtue of the laws of the State of California. French is, and at all relevant times was, qualified to do business within the State of California. French is the successor-in-

1 interest to Colt Industries, also known as Colt Studios, Inc.

2 2. Defendant Prowest Media Corporation ("Prowest") is, and at all relevant
3 times was, a California Corporation, duly organized under and existing by virtue of the
4 laws of the State of California.

5 3. Defendant Thomas R. Settle ("Settle") is, and at all relevant times was, an
6 individual and, upon information and belief, is a shareholder, officer and director of
7 Prowest.

8 4. Defendant John B. Rutherford ("Rutherford") is, and at all relevant times
9 was, an individual and, upon information and belief, is a shareholder, officer and
10 director of Prowest.

11 5. Upon information and belief, Settle and Rutherford collectively own all of
12 the issued and outstanding stock in Prowest.

13 6. The true names and/or capacities, whether individual, corporate, associate,
14 or otherwise of defendants Does 1 through 10, inclusive, are currently unknown to
15 French, who therefore now sues said defendants pursuant to *California Civil Code*
16 Section 474 by such fictitious names. French will amend this complaint to insert their
17 true names and/or capacities upon ascertainment, or alternatively, conform the
18 pleadings to proof at the time of trial. French is informed and believes, and thereon
19 alleges, that at all times relevant herein each such fictitiously named defendant was and
20 is responsible in some manner for the occurrences herein alleged, and that French's
21 injuries and/or damages were and are directly and/or proximately caused thereby.
22 French is informed and believes, and thereon alleges, that each such fictitiously named
23 defendant is directly and/or indirectly liable on one or more of the causes of action set
24 forth herein.

25 7. At all relevant times herein mentioned, defendants Settle, Rutherford and Does 1
26 through 10, and each of them, were the agents, alter egos, employees, subsidiaries, joint-
27 venturers, shareholders, directors, officers, members and/or partners of each of the other
28

1 defendants and, in doing the things alleged herein, were acting within the course and scope of
2 that agency or employment or relationship or were otherwise responsible for the wrongs
3 alleged herein.

4 8. French is informed and believes, and thereon alleges, that in committing the acts
5 complained herein, Defendants, and each of them, acted in concert and conspiracy with each
6 other.

7 **Factual Allegations**

8 9. On or about May 1, 2003, in San Francisco, California, Prowest and DOES 1
9 through 5 (the "Prowest Defendants") executed a Promissory Note promising to pay French
10 the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) as the purchase
11 price for certain assets that French sold to Prowest. A true and correct copy of the Promissory
12 Note is attached hereto as Exhibit "A" and incorporated by reference.

13 10. As an inducement to enter into the Promissory Note, on or about May 1, 2003, in
14 San Francisco, California, the Prowest Defendants executed a Security Agreement by which
15 the Prowest Defendants gave French a security interest in certain Collateral to secure the
16 payment of the amounts due under the Promissory Note. The Collateral is described in Exhibit
17 "B" attached hereto. On or about June 23, 2003, a financing statement was filed in the office
18 of the Secretary of State to perfect the security interest, and this financing statement has been
19 maintained to date with an appropriate continuation statement.

20 11. On or about January 1, 2005, in San Francisco, California, the Prowest Defendants
21 executed a First Amendment to Promissory Note that modified the terms of payment under the
22 Promissory Note. A true and correct copy of the First Amendment to Promissory Note (the
23 "Amendment") is attached hereto as Exhibit "C" and incorporated by reference.

24 12. As an inducement to enter into the Amendment, on or about January 1, 2005, in
25 San Francisco, California, Settle, Rutherford, and Does 6 through 10 (the "Guarantor
26 Defendants") executed a Guaranty Agreement ("Guaranty Agreement"), guaranteeing the
27 absolute, complete and punctual payment of all payments due under the Amendment. A true
28

1 and correct copy of the Guaranty Agreement is attached hereto as Exhibit "D" and
2 incorporated by reference. French reasonably relied on the representations made by the
3 Guarantor Defendants, and each of them, in the Guaranty Agreement.

4 **FIRST CAUSE OF ACTION**

5 **DEFAULT UNDER SECURITY AGREEMENT, POSSESSION OF COLLATERAL,**
6 **AND JUDICIAL FORECLOSURE**

7 **Against the Prowest Defendants**

8 13. French incorporates by reference each and every allegation set forth in paragraphs
9 1 through 12, as though fully set forth herein.

10 14. The Prowest Defendants have defaulted on the Promissory Note and the
11 Amendment (the "Promissory Note, as Amended") and the Security Agreement by failing to
12 pay amounts due, and as a result, the Prowest Defendant's remaining obligation has become
13 due, and there is now due, owing, and unpaid from the Prowest Defendants the principal sum
14 of \$1,242,198, together with interest on that sum from and after February 13, 2009.

15 15. French has performed all conditions, covenants, promises and obligations in
16 accordance with the Promissory Note, as Amended, and the Security Agreement.
17 Alternatively, if French has not fully performed all conditions, covenants, promises,
18 obligations and requirements to be performed by it under the Promissory Note, as Amended,
19 and the Security Agreement, French's performance was excused and/or waived by reason of
20 the Prowest Defendants' acts, omissions or other conduct, including, but not limited to, the
21 Prowest Defendants' prior breach, consent, unclean hands or waiver.

22 16. Although, pursuant to the Security Agreement, the Prowest Defendants have
23 remained to the present time in possession of some of the Collateral, as a further result of the
24 Prowest Defendants' default, French is entitled to immediate possession of the Collateral.
25 French has demanded possession from the Prowest Defendants, but they have wrongfully
26 refused to give him possession.
27
28

1 17. As a result of the default by the Prowest Defendants, French is entitled to enforce
2 his security interest by judicial foreclosure of all of rights of the Prowest Defendants in the
3 Collateral through public sale by the proper judicial officer.

4 **SECOND CAUSE OF ACTION**

5 **BREACH OF GUARANTY**

6 **Against the Guarantor Defendants**

7 18. French hereby incorporates by reference each and every allegation set forth in
8 paragraphs 1 through 17 as though fully set forth herein.

9 19. The Guarantor Defendants, and each of them, breached the Guaranty Agreement
10 by, *inter alia*, failing to pay that amounts due and owing under the Amendment when the
11 Prowest Defendants failed to do so.

12 20. French has performed all conditions, covenants, promises and obligations in
13 accordance with the Guaranty Agreement. Alternatively, if French has not fully performed all
14 conditions, covenants, promises, obligations and requirements to be performed by it under the
15 Guaranty Agreement, French's performance was excused and/or waived by reason of the
16 Guarantor Defendants' acts, omissions or other conduct, including, but not limited to, the
17 Guarantor Defendants' prior breach, consent, unclean hands or waiver.

18 21. As a proximate result of the Guarantor Defendants' breach of the Guaranty
19 Agreement, French has suffered damages in the amount of \$1,242,198, together with interest
20 on that sum from and after February 13, 2009, plus attorney's fees and costs incurred in
21 collecting this sum.

22 **THIRD CAUSE OF ACTION**

23 **MONEY HAD AND RECEIVED**

24 **Against All Defendants**

25 22. French hereby incorporates by reference each and every allegation set forth in
26 paragraphs 1 through 21 as though fully set forth herein.

1 23. Within the last four years, at San Francisco, California, Defendants, and each of
2 them, became indebted to French in the sum of \$2,200,000 for money had and received by
3 Defendants for the use and benefit of French.

4 24. Plaintiff has repeatedly demanded payment from Defendants, and each of them.

5 25. Defendants have paid only part of the amount due to French, leaving a balance due
6 of \$1,242,198, together with interest on that sum from and after February 13, 2009, plus
7 attorney's fees and costs incurred in collecting this sum.

8 **FOURTH CAUSE OF ACTION**

9 **ACCOUNT STATED**

10 **Against all Defendants**

11 26. French hereby incorporates by reference each and every allegation set forth in
12 paragraphs 1 through 21 as though fully set forth herein.

13 27. From May 2003 to the present, Defendants' account on the Promissory Note, as
14 Amended, the Security Agreement, and the Guaranty Agreement has been stated by French to
15 Defendants, and each of them, on correspondence that has been presented to Defendants, and
16 each of them, from time to time. None of the Defendants have ever objected to or disputed
17 any of the amounts stated in that correspondence.

18 28. Further, from time to time, French has stated in writing to Defendants, and each of
19 them, the collective outstanding balance due and owing as of the dates of those written
20 statements. French received no objections to these accountings.

21 29. Defendants, and each of them, owe French \$1,242,198, together with interest on
22 that sum from and after February 13, 2009, plus attorney's fees and costs incurred in
23 collecting this sum.

24 WHEREFORE, plaintiff French prays for judgment against Defendants, and each of
25 them, as follows:

- 26 1. For damages according to proof, but in no event less than \$1,242,198;
27 2. For prejudgment interest from and after February 13, 2009;
28

1 3. For possession of the Collateral;

2 4. For an order directing public sale of the Collateral to foreclose all of the Prowest
3 Defendants' rights therein and to apply the proceeds in the following order:

4 a. To the costs of taking, holding and selling the Collateral, and reasonable
5 attorney's fees and legal expenses incurred by the French in doing so;

6 b. To the costs of suit in this action, as may be awarded by the court;

7 c. To the satisfaction of damages and interest thereon under the agreement;

8 d. To the satisfaction of obligations secured by any subordinate security interest
9 in, or other subordinate lien on, the Collateral, and to the satisfaction of any subordinate
10 attachment lien or execution lien if proper notice and/or demand is received before distribution
11 of the proceeds is completed.

12 5. For attorney's fees and other related costs of suit, as provided by the Promissory
13 Note, as Amended, the Security Agreement, and/or the Guaranty Agreement and/or by statute
14 or common law;

15 6. For costs of suit;

16 7. For such other and further relief as the court may deem proper.

17 DATED: April 13, 2009

LIPPENBERGER, THOMPSON, WELCH, SOROKO &
GILBERT LLP

18 By Carl Lippenberger
19 Carl Lippenberger
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

PROMISSORY NOTE

\$2,200,000.00

San Francisco, California
May 1, 2003

FOR VALUE RECEIVED, PROWEST MEDIA CORPORATION ("Maker") a California corporation, promises to pay to COLT INDUSTRIES ("Payee"), or to order, at 8001 Woodrow Wilson Drive, Los Angeles, California 90046, or such other place as the holder of this Note ("Holder") may from time to time designate in writing, the principal sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) with simple interest on the unpaid principal balance of this Note, from the date of this Note until this Note is paid in full, at the annual rate of six percent (6%).

Principal and interest shall be payable in sixty (60) monthly installments of Forty-Two Thousand Nine Hundred Fifty-five Dollars and Thirty-Seven Cents (\$42,955.37) per month, beginning on August 1, 2003, and continuing thereafter on the first day of each month thereafter until July 31, 2008, when all sums remaining unpaid under this Note shall be due and payable. Each payment shall be credited first to accrued interest, and then to principal and interest shall then cease on the portion of principal credited. All payments shall be made in lawful money of the United States, without offset or deduction of any kind.

Maker may prepay this Note without premium or penalty and any partial payment shall be credited first to accrued interest, then to principal.

It would be impractical to fix the amount of Holder's extra expense involved in handling a delinquent payment if any installment under this Note is not paid when due. Accordingly, Maker agrees to pay to Holder a late payment charge equal to three percent (3%) of the installment due if all or part of any installment is not received by Holder within ten (10) days after the date on which it is due. Maker agrees that this charge is a reasonable estimate of extra expenses Payee shall incur.

If, and as often as, this Note is placed in the hands of an attorney for collection or to defend or enforce any of Holder's rights under this Note, Maker shall pay to Holder its reasonable attorneys' fees and all court costs and other expenses incurred in connection therewith.

This Note is secured by the Security Agreement between Maker, as Debtor, and Payee, as Secured Party, dated as of this date, and a declining term life insurance policy issued by _____ on the life of John Rutherford, the sole shareholder, officer and director of Maker.

The holder of this Note shall be entitled to declare the entire outstanding principal balance hereof, together with all accrued and unpaid interest hereunder, immediately due and payable in full upon the occurrence of any of the following events:

(A) Failure to make any payment hereunder on the date such payment is due under the terms of this Note.

(B) Maker makes a general assignment for the benefit of its creditors.

(C) Any case is commenced by or against Maker under any bankruptcy or insolvency laws, which is not dismissed within sixty (60) days after filing.

(D) Any writ of attachment, garnishment, execution or other legal process is issued against any property of Maker if such writ, garnishment, execution or other process is not fully vacated within sixty

EXHIBIT A

(60) days. [Note: Maker could have a disagreement with creditor regarding insignificant property.]

(E) Maker hereunder seeks, consents to, acquiesces in or fails to cause to be vacated or stayed within sixty (60) days (or vacated within sixty (60) days of any such stay) the appointment of a receiver, trustee or conservator of all or any substantial portion of Maker's property.

(F) Maker materially breaches any obligation owed to the Holder under that certain Asset Purchase Agreement among the Maker, Holder, Jim French and John Rutherford dated April __, 2003.

Maker hereby waives diligence, demand, presentment for payment, notice of nonpayment, protest and notice of protest, and specifically consent to and waive notice of any renewals or extensions of this Note, whether made to or in favor of Maker or any other person or persons. The pleading of any statute of limitations as a defense to any demand against Maker is expressly waived by Maker.

No single or partial exercise of any power granted to Holder under this Note shall preclude other or further exercise thereof or the exercise of any other power. No delay or omission on the part of Holder in exercising any right under this Note shall operate as a waiver of such right or of any other right. The release of any party liable under this Note shall not operate to release any other party liable hereunder.

PROWEST MEDIA CORPORATION, a
California corporation

By John Rutherford, President and Secretary

Schedule 1(a)

Collateral

All rights of ownership in and to the Colt Brand and name, including the names Colt Studio, Cadre, Buckshot Productions, Colt Men, Best of Colt Men, Spurs, Olympus, Colt Calendar Men, Legendary Bodies, LT Collection, TNT Productions and Rip Colt; all Colt magazines, Colt calendars, and Colt videos, films, and DVDs, and all masters, submasters and original footage thereof; the Colt Website; all current and expired customer lists, including names, addresses, telephone numbers, e-mail addresses, and hardware and software; all telephone numbers, including 800-445-2658, 818-985-5786; 818-985-9170 and 888-333-2658; fax number 818-985-2145; the alarm code for the Premises; all post office boxes, including, without limitation, Post Offices Boxes 1608, 1009 and 1933, Studio City, CA 91614; Colt wholesale and retail mail order business; all Colt calendar images other than Jim French/State of Man images in all formats; all office equipment; all negatives of all published images in all Colt magazines, Colt calendars, on the internet and published in or on all other forms; all inventory of all Colt magazines, calendars, videos, films, DVDs and merchandise; all copyrights for all Colt magazines, calendars, DVDs, videos and films; all Colt trademarks and goodwill associated with the previously listed assets; all model releases and related documents for each Colt video, film and DVD; and two vehicles, a 1995 white Chevrolet SV (VIN 1CNDU05d457129769), free and clear of all liabilities, and a 1996 green GMC SV (VIN 101KDM18W8TB506175), subject to a lease with a balance due of \$8,934 as of May 1, 2003, and assignment of the lease from Seller to Buyer; and all other Assets as added to this list by Seller and/or Buyer on or before the Closing Date, including in Schedule 1.1(b).

FIRST AMENDMENT TO PROMISSORY NOTE

\$2,200,000.00

San Francisco, California
January 1, 2005

FOR VALUE RECEIVED, PROWEST MEDIA CORPORATION ("Maker") a California corporation, promises to pay to JIM FRENCH STUDIOS, INC., formerly known as COLT INDUSTRIES (AKA COLT STUDIO, INC.) ("Payee"), or to order, at 8001 Woodrow Wilson Drive, Los Angeles, California 90046, or such other place as the holder of this Note ("Holder") may from time to time designate in writing, the remaining balance of the principal sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) due under this Note as of this date, which Maker and Payee agree is \$1,835,444.63 on July 15, 2009, with simple interest on the unpaid principal balance of this Note, from the date of this Note until this Note is paid in full, at the annual rate of seven percent (7%).

Principal and interest shall be payable in thirteen (13) monthly installments of Twenty-Five Thousand Dollars (\$25,000), beginning on December 15, 2004 and continuing thereafter on the fifteenth day of each month thereafter until and including December 15, 2005; twelve (12) monthly installments of Thirty-Five Thousand Dollars (\$35,000), beginning on January 15, 2006 and continuing thereafter on the fifteenth day of each month thereafter until and including December 15, 2006; twelve (12) monthly installments of Forty Thousand Dollars (\$40,000), beginning on January 15, 2007 and continuing thereafter on the fifteenth day of each month thereafter until and including December 15, 2007; three (3) monthly installments of Forty-Seven Thousand Five Hundred Dollars (\$47,500), beginning on January 15, 2008 and continuing thereafter on the fifteenth day of each month thereafter until and including March 15, 2008; five (5) monthly installments of Forty-Seven Thousand Five Hundred Dollars (\$47,500), beginning on May 15, 2008 and continuing thereafter on the fifteenth day of each month thereafter until and including September 15, 2008; nine (9) monthly installments of Fifty-Five Thousand Dollars (\$55,000), beginning on October 15, 2008 and continuing thereafter on the fifteenth day of each month thereafter until and including June 15, 2009; and one installment of \$129,604.42 on July 15, 2009. Each payment shall be credited first to accrued interest, and then to principal and interest shall then cease on the portion of principal credited. All payments shall be made in lawful money of the United States, without offset or deduction of any kind.

Maker may prepay this Note without premium or penalty and any partial payment shall be credited first to accrued interest, then to principal.

It would be impractical to fix the amount of Holder's extra expense involved in handling a delinquent payment if any installment under this Note is not paid when due. Accordingly, Maker agrees to pay to Holder a late payment charge equal to three percent (3%) of the installment due if all or part of any installment is not received by Holder within five (5) days after the date on which it is due. Maker agrees that this charge is a reasonable estimate of extra expenses Payee shall incur.

If, and as often as, this Note is placed in the hands of an attorney for collection or to defend or enforce any of Holder's rights under this Note, Maker shall pay to Holder its

EXHIBIT C

reasonable attorneys' fees and all court costs and other expenses incurred in connection therewith.

This Note is secured by the Security Agreement between Maker, as Debtor, and Payee, as Secured Party, dated as of June 10, 2003, and a declining term life insurance policy issued by Empire General Life Assurance Company on the life of John B. Rutherford, a shareholder, officer and director of Maker, and the Guaranty Agreement between Payee and John B. Rutherford and Thomas B. Settle, the shareholders, officers and directors of Maker, dated as of this date.

This Note or interest on this Note may be hypothecated, transferred or assigned by Holder without the prior written consent of Maker, but subject to written notification by Holder to Payee of any hypothecation, including the name, address and telephone number of any party to whom this Note is hypothecated and the terms of hypothecation on or before the date of any hypothecation. This Note is negotiable.

The holder of this Note shall be entitled to declare the entire outstanding principal balance hereof, together with all accrued and unpaid interest hereunder, immediately due and payable in full upon the occurrence of any of the following events:

(A) Failure to make any payment hereunder on the date such payment is due under the terms of this Note.

(B) Maker becomes insolvent, generally is not paying its debts as such debts become due, or makes a general assignment for the benefit of its creditors.

(C) Any case is commenced by or against Maker under any bankruptcy or insolvency laws, which is not dismissed within sixty (60) days after filing.

(D) Any writ of attachment, garnishment, execution or other legal process is issued against any property of Maker with then current fair market value in excess of fifty thousand dollars (\$50,000) if such writ, garnishment, execution or other process is not fully vacated within sixty (60) days thereof.

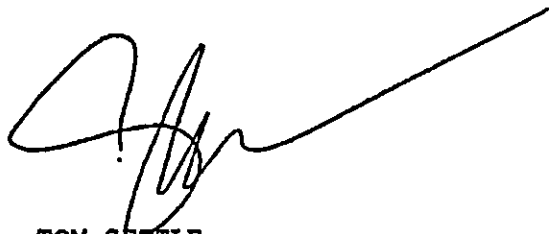
(E) Maker hereunder seeks, consents to, acquiesces in or fails to cause to be vacated or stayed within sixty (60) days (or vacated within sixty (60) days of any such stay) the appointment of a receiver, trustee or conservator of all or any substantial portion of Maker's property.

(F) Maker materially breaches any obligation owed to Holder under that certain Asset Purchase Agreement among Maker, Holder, Jim French and John Rutherford, dated May 13, 2003.

Maker hereby waives diligence, demand, presentment for payment, notice of nonpayment, protest and notice of protest, and specifically consents to and waives notice of any renewals or extensions of this Note, whether made to or in favor of Maker or any other person or persons. The pleading of any statute of limitations as a defense to any demand against Maker is expressly waived by Maker.

No single or partial exercise of any power granted to Holder under this Note shall preclude other or further exercise thereof or the exercise of any other power. No delay or omission on the part of Holder in exercising any right under this Note shall operate as a waiver of such right or of any other right. The release of any party liable under this Note shall not operate to release any other party liable hereunder.

PROWEST MEDIA CORPORATION, a
California corporation

A handwritten signature in black ink, appearing to read 'Tom Settle', with a long horizontal stroke extending to the right.

TOM SETTLE
Chief Financial Officer

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (the "Agreement") is made as of January 1, 2005, by JOHN B. RUTHERFORD and THOMAS R. SETTLE (individually, a "Guarantor" and collectively, the "Guarantors")) in favor of J. FRENCH STUDIOS, INC., formerly known as COLT INDUSTRIES ("Payee"), a California corporation.

RECITALS:

On June 10, 2003, Prowest Media Corporation ("Maker"), a California corporation in which Guarantors own all of the issued and outstanding stock, entered into a Promissory Note with Payee (a copy of which is attached as Exhibit A) pursuant to which Maker agreed to pay Payee the sum of \$2,200,000.00 pursuant to the terms of the Promissory Note. Guarantors each guarantee and promise to pay to Payee all payments due under the Promissory Note in accordance with the terms of this Agreement.

Effective as of this date, pursuant to Maker's request, Maker and Payee have executed an Amended Promissory Note on the terms and in the form attached as Exhibit B, and as consideration therefor, this Agreement is executed and delivered to Payee to induce Payee to enter into the Amended Promissory Note.

NOW, THEREFORE, in consideration of the foregoing, it is agreed by the parties hereto as follows:

1. Guaranty. Guarantors hereby guarantee to Payee the absolute, complete and punctual payment of all payments due and owing by Maker to Payee under the Amended Promissory Note, including all expenses of collection, including, without limitation, all court costs, attorneys' fees and other collection costs incurred with respect thereto. This Agreement is an absolute, unconditional and continuing guaranty of payment of the entire amount of the Amended Promissory Note and any renewals, consolidations, modifications, amendments, or extensions thereof. The obligations of Guarantors hereunder will not terminate until the entire amount of the Amended Promissory Note has been paid to Payee in full.

2. Consents. Guarantors hereby consent to the following events and agree that their liability hereunder will not be released, reduced, impaired or affected by the occurrence of any one or more of the following events: (a) Payee's obtaining collateral from Maker or any other person to secure payment of the Amended Promissory Note; (b) the assumption of liability by any other person (whether as a guarantor or otherwise) for payment of all or any portion of the Amended Promissory Note; (c) the release, surrender, exchange, impairment, loss, termination, waiver or other discharge of any collateral securing payment of the Amended Promissory Note; (d) the subordination, relinquishment, discharge or impairment of Payee's rights relating to the Amended Promissory Note; (e) the full or partial release from liability of the Guarantors, or either of them, or any other person now or hereafter liable for payment of all or any portion of the Amended Promissory Note; (f) the insolvency, bankruptcy, reorganization, discharge, waiver or other exoneration of Maker or any person or entity now or hereafter primarily or contingently liable for payment of the Amended Promissory Note; (g) the renewal, consolidation, extension,

modification, rearrangement, or amendment of the Amended Promissory Note from time to time or of any of the documents evidencing or securing the Amended Promissory Note; (h) the failure, delay, waiver or refusal by Payee to exercise any right or remedy held by Payee under the Amended Promissory Note or any other document evidencing or securing the Amended Promissory Note; or (i) the invalidity, unenforceability or insufficiency of all or any portion of this Agreement, or any other document evidencing or securing the Amended Promissory Note.

3. Enforcement. Payee may, at Payee's option, proceed at any time and from time to time to enforce this Agreement directly against the Guarantors or either of them.

4. Authorizations and Waivers Relating to Actions of Payee.

(a) Guarantors authorize Payee, before or after revocation, without notice or demand, and without affecting Guarantors' liability under this Agreement, from time to time:

(1) to renew, extend, accelerate, compromise, and otherwise change the time for payment of the Amended Promissory Note; and to modify any other terms of the Amended Promissory Note, including changing any applicable interest rate;

(2) to take and hold security for the payment of the Amended Promissory Note; to perfect or refrain from perfecting its interest in any security, whether or not the security is required as a condition to entering into the Amended Promissory Note.

(3) to settle, release, compromise with and substitute any one or more of the endorser, guarantors, and other obligors of this Guaranty or the Amended Promissory Note; and

(4) to assign this Agreement, in whole or in part.

(b) Guarantors, and each of them, waive any right which Guarantor may have to require Payee:

(1) to proceed against Maker or any other person or entity liable on the Amended Promissory Note;

(c) Guarantors, and each of them, waive all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Agreement and the incurring by Maker of new or additional Amended Promissory Note to Payee or the extension or nonpayment of the Amended Promissory Note.

(d) Guarantors, and each of them, assume responsibility for being and keeping informed of the financial condition of Maker and of all other circumstances bearing on the risk of nonpayment of the Amended Promissory Note, which diligent inquiry would reveal, and Payee shall have no duty to advise Guarantor, or either of them, of information known to it regarding that condition or any such circumstances.

(e) At its election, Payee may exercise any right it may have against Maker without affecting or impairing Guarantors' liability under this Agreement, except to the extent that the Amended Promissory Note is paid.

(f) Guarantors, and each of them, waive any defense arising from the absence, impairment or loss of any right of reimbursement, contribution, or subrogation, or any other right of Guarantors, or either of them, against Maker or any security, whether resulting from the election by Payee or otherwise. Guarantors, and each of them, waive any defenses arising from any cause whatsoever, including, without limitation, Payee's act or omission, resulting in the cessation of Maker's liability to Payee under the Amended Promissory Note, either in whole or in part.

(g) Guarantors, and each of them, waive, to the fullest extent permitted by law, all rights and benefits:

(1) under California Civil Code section 2809, which provides that a guarantor's obligations shall not exceed or be more burdensome than the principal obligation;

(2) without limiting the generality of the foregoing or any other provision of this Agreement, under California Civil Code sections 2810, 2815, 2819, 2839, 2845, 2847-2849, 2850, 2899 and 3433, to the extent such provisions or any of them have any application to this Agreement or to the Guarantors.

(h) In addition, Guarantors, and each of them, waive, to the fullest extent permitted by law:

(1) any defense arising as a result of Payee's election of the application of United States Bankruptcy Code section 1111(b)(2) in any proceeding instituted under the Bankruptcy Code; and

(2) any defense based on any borrowing or grant of a security interest under United States Bankruptcy Code section 364.

Guarantors acknowledge that Guarantors have discussed with legal counsel the effect of the above waivers on rights and remedies Guarantors may otherwise have.

5. Attorneys' Fees. Guarantors hereby agree that in any action brought to enforce this Agreement, Guarantors will pay to Payee the reasonable attorneys' fees, court costs and other expenses incurred by Payee in enforcing Payee's rights hereunder.

6. Waiver. Except as otherwise expressly provided for under the Amended Promissory Note, nothing herein contained will limit Payee in exercising any rights held under this Agreement or under any other documents evidencing or securing the Amended Promissory Note. In the event of any default under this Agreement, Payee will be entitled to enforce any one or more of the rights held by Payee and such action will not be deemed a waiver of any other right held by Payee. All of the remedies of Payee under this Agreement, and any other documents evidencing the Amended Promissory Note are cumulative and not alternative.