U. S. District Court No. 88-1127 G(M)). That is to say they have violated 28 U.S.C. 1446 (b), i.e. by Filing for Removal on August 1, 1988 (according to them), when Defendants had been Served with the State Court Action on June 30, 1988 (again admitted to by them). Such Filing was due no later than 30 days, or July 29, 1988. Hence, the Removal is untimely and objectionable, and is in fact objected to by Plaintiffs.

(l)Frankly, Plaintiffs' counsel is at a loss to understand why Defendants or their counsel have not Filed an Answer either in State Court or properly remove their Action to Federal Court with an Answer by July 29, 1988.

Plaintiffs' attorney even gave Defendants' attorneys proper Notice of the State Court situation(i.e. "Fast track" in San Diego Superior Court having applied, and "Fast track"'s automatic deadlines for Defendants' Answer, Demurrer, etc. being due).

Post, Kirby, Noonan, and Sweat claimed Mr. Kirby was busy in trials in Florida and requested several extensions to plead, but then only in Federal Court and not State Court. Furthermore, as discussed above in (k), they had already violated the 30 day Rule in any event(and State Court Responses were due in any event).

Additionally, on July 29, 1988, i.e., when the 30 days was up, I received a letter from Mr. Gregory Roper of Luce, Forward, Hamilton, and Scripps* representing Defendant Peter Saccerdote, claiming their Client would not accept "Substituted Service", apparently meaning that he had to be Served at Goldman Sachs or personally in California. Since Mr. Saccerdote is a Director of Maxwell and an employee of Maxwell, I think it is fairly obvious that he was properly Served at Maxwell.

*Plaintiffs' Exhibit N. Further, the Court should note, Exhibit(i) and it will be obvious in an instant why Mr. Saccerdote retained Luce, Forward, Hamilton, and Scripps, i.e. because of these Attorney/Client matters involv- ing RORACK.

Additionally, Mr. Kirby informed me that Defendant Thomas Hayward, also a Maxwell Director and employee, was refusing to answer the Complaint and/or accept Service at Maxwell, and would probably be represented by another Counsel.

(m) Therefore, this entire Complaint is still "Fast tracking", i.e. proceeding in San Diego Superior Court and on its deadlines upon Defendants. Whoever heard of a more bizarre legal strategy than to default on a $30,000,000 Complaint, and then try to get the Action transferred to Federal Court when it was too late to remove such in the first place?

(n) In addressing those legal issues supposedly raised by Dr. Alan Kolb in his Declaration for a supposed Motion to Strike Plaintiffs' Complaint pursuant to Rule 12 (f) and Sanctions pursuant to Rule 11 (beyond those objections made previously by Plaintiffs above), the Court will note the following: Dr. Kolb's Declaration is misleading in its Paragraph 4 as to the termination of RORACK occurring on January 1, 1987.

The Court can clearly see that even after such date, "The partners shall proceed with reasonable promptness and due diligence to liquidate and wind up the affairs and business of the partnership..." This could not be done without the present lawsuit, which relates to RORACK business in 1984 and thereafter in any event, i.e. the damages to RORACK.* Furthermore, as Dr. Kolb well knows, this precise point was made to him by Dr. O'Rourke and Attorney Al O'Rourke, repeatedly in several RORACK meetings at Maxwell over the last 10 years or more. Furthermore, even our suggestion to obtain independent legal counsel, an arbitrator or someone to "wind up" the affairs of RORACK has always

*Any arbitrator, trustee, Court appointed referee, etc. would also have clearly Filed this lawsuit, to recover RORACK assets, as "winding up the affairs of the partnership".

been met with "but that will cost money...No, let Chip (Al O'Rourke) do it...". When Attorney Al O'Rourke would praise Dr. Kolb's superior physics and mathematics abilities, Attorney O'Rourke was "absolutely right". When Attorney Al O'Rourke would even mildly suggest that either Alan Kolb or Karl Samuelian could be wrong about any business or legal matter, suddenly Attorney Al O'Rourke would become "that damn Chipper" or worse. Attorney O'Rourke has been "hired", "fired", "re-hired", etc. by Dr. Kolb and Raymond O'Rourke so many times now, Attorney O'Rourke feels like a "yo-yo". Alan's reference in his Paragraph No. 40 of his Declaration that he "knew a Chipper" is truly humorous, as if Alan had any doubts about who I was, and that he had ever met me before. In fact, Alan and I have had knowledge of one another on a family and personal basis for 30 odd years or more.

The Court will note that Alan evasively only states about his January 6, 1988 letter, which only disputes RORACK's or Raymond O'Rourke's or Albert O'Rourke's right to File the present Action on behalf of RORACK. Such does not state that Alan knew perfectly well from numerous letters and meetings that RORACK expected the return of RORACK's Maxwell shares,+ all monies due to it (which would have been credited back to Maxwell for the repurchase cost of Maxwell stock in any event), and that legal action was going to be taken pursuant to Paragraph 12 if such were not returned to RORACK by Maxwell.* In no event, could Dr. Kolb have prevented this lawsuit except by making certain that RORACK's assets, i.e., the Maxwell stock was returned to it.

As noted previously, what was Dr. Kolb going to do? He was only benefitting two or three times over by such lawsuit.

* Exhibit "O"

Both Attorney Al O'Rourke and Raymond O'Rourke have acted perfectly properly. Furthermore (as Alan also knows) both Ray and he agreed to continue RORACK past its expiration date in any event until these RORACK matters were resolved.*

(o) Dr. Kolb's Paragraph 7 is a mistatement in its entirety probably due to Post, Kirby, Noonan, and Sweat. In fact, there were numerous assets of RORACK besides the 13,500 shares of Maxwell stock, such being a Maxwell option of either 40 or 80,000 shares (Maxwell split two for one), thousands of shares of Optical Radiation and General Automation which were used mostly by Dr. Kolb for his own personal use, the Computrad Computer Codes (Dr. Kolb does not even seem to know that Computrad's other partner William McMaster has made hundreds of thousands of dollars using such upon Alan's "tiff" with him (as well as Dr. O'Rourke) both in computer trades and the actual value of the Computer Codes themselves**). Also, there were numerous cash assets of RORACK's, i.e., return of legal fees paid by Alan wrongfully to Parker, Milliken, Clark, O'Hara, and Samuelian, secret bank accounts run by Alan Kolb (i.e., the Lloyds Bank account), the Montgomery Street Associates assets, "managed" by Computrad, Yacht Charters Ltd., IMS, etc.

It is not the fault of Attorney Al O'Rourke that Dr. Kolb lists an old (and out of date) one page "Statement of Assets and Liabilities" which is so sketchy and incomplete (and out of date now) as to be totally useless. Such is not a 1988 RORACK Statement as Alan well knows, and as Alan also knows, all attempts by the O'Rourkes to get Alan and the O'Rourkes to obtain new financial statements have been squashed by Alan!

*Raymond O'Rourke and Albert O'Rourke and RORACK have Dr. Alan Kolb in agreement with them. They do not need "permission" of Karl Samuelian or Post, Kirby, Noonan, and Sweat. Once again, the Privity of Contract is only among the O'Rourkes and Dr. Kolb.

**Exhibit (d) quite clearly shows Alan's concern about Computrad.

(Plaintiffs' Exhibit P1 & P2)

The Court iself even on such Exhibit B of Alan's Declaration, can clearly see in black and white "Receivable Computrad $16,770.13" which is hardly not a "significant" asset as claimed by Alan.

Also on the second page of Exhibit B, the Court will clearly see in the middle of such page "Sale of Optical Radiation by Kolb ($9,152.82)." This was done by Alan Kolb unilaterally for himself, i.e., "to pay off some bills". Alan never returned the roughly 4,600 shares (?) or so wrongfully converted to his own use. Such stock later was worth as much as around $80. to $100. per share and may even have split two for one. This is the same Alan Kolb who claims Attorney Al O'Rourke and Raymond O'Rourke made "poor investment decisions in buying Maxwell".* Alan's further statements that Maxwell stock represented "86% of the value of RORACK"in paragraph 7 of his Declaration, is simply another one of Alan's numerous mistatements. Further, his statement that the receivable from the partners of RORACK to Computrad later "became worthless" is also patently ridiculous, as since noted above, both RORACK and Computrad are entitled to part of the profits generated by William (Bill) McMaster separately when Alan had his "tiff" with Bill McMaster several years ago and summarily told Bill McMaster to "stop all operations...since you've only been a disaster and have lost us so much money".

In fact something like $20,000. was lost originally in a soy bean commodity trade, pork bellies, etc. or other commodity or stock, and such loss was assumed would be recovered from the funds advanced to Computrad or promised to be so advanced by Frank Clark, Karl Samuelian, and their partners in Montgomery Street Associates.

*Apparently, since Alan himself was trying to "unload" his Maxwell shares "on the sly" at around $20. This in spite of his public pronouncements to "buy Maxwell". Plaintiffs only learned about this in the Pennystock News Magazine, i.e., around mid-1987.

This was around 1969 or 1970 originally. Alan went into a "total panic" as he so often does, and was afraid Parker, Milliken, Clark, O'Hara and Samuelian would have him removed as Maxwell's President or Chief Executive Officer. His actions can only be described as (like in a football game) if your opponent scores a touchdown in the opening kickoff and you simply decide to "call it quits" right then and there.

Moreover, Bill McMaster has repeatedly tried to "settle up" with what he had made using the Computrad codes. Alan refuses all meetings, since he would obviously have to "eat crow" in front of Bill. This has been going on for nearly 15 years already. Even more bizarrely, since Frank Clark's "legal fee" was supposedly earned even in this disaster (with part of such going to Karl Samuelian) with Montgomery Street Associates, Alan even paid off such legal fee over Ray O'Rourke's protest around 1984*, some 15 years "tardy". Moreover, Alan not only did not use any RORACK check or money, but his own personal account at Lloyds Bank, taking such as a tax deduction apparently, and thereby triggering an audit by the Internal Revenue Service of RORACK which continues to this day, with IRS agents supposedly having contacted Alan and the matter of taxes always "going into limbo" probably due to a call to Karl Samuelian or the IRS vice-versa.

(p) Alan's entire Paragraph No. 13 is another deliberate mistatement. There was no 50/50 vote about the S-Cubed merger into Maxwell. The entire 13,500 shares of Maxwell were demanded for Shareholder Dissenter Rights by RORACK, Raymond O'Rourke and Albert O'Rourke. Alan had irrevocably transferred <u>all</u> and not just 50% of such shares, nor had he retained any "strings" or

*Please see Plaintiffs' Exhibit 91+92. I believe Alan "sprang" what he had done on Ray and me in 1984 or after the fact.

limitations on such transfer or irrevocable assignment (see Plaintiffs' Exhibit G). Plaintiffs by formal letter in early 1984 accepted the written letter offer of Shareholders Dissenter Rights by Maxwell for the $21.25 for 13,500 shares of Maxwell within the time limit. Obviously, a written contract exists and is effective upon Maxwell.

The Statute of Limitations for such written contract and Maxwell's Breach of such obviously came under California Code of Civil Procedure, Section 337, with its four year limitation. Plaintiffs' entire State Court Actions were well within such, and in any event, Plaintiffs have never received a formal letter from Maxwell's Board of Directors stating that they would not honor such (or break such agreement) in any event. Plaintiffs were told by Alan Kolb and Karl Samuelian orally at first, and then Karl subsequently sent some written letters referring to the breaking up of the 13,500 shares into two blocks of 6,750, but these were their own acts against their own Partner and Client respectively and had nothing to do with Maxwell officially, except that Karl and Alan were telling the Maxwell Board that the "RORACK problem" was solved.* In fact, it was not "solved" and has continued.

As noted previously, there is no contract binding RORACK to Maxwell directly or in privity of contract. There is simply an agreement made under fraud and duress between Alan Kolb and Ray O'Rourke, and only Alan could claim any Breach of Contract, and then he would have no Cause of Action, since he hasn't been damaged in any way, but only made wealthier by RORACK's insistence that Maxwell pay RORACK what Maxwell owed it.

*The Court (seeing Exhibits H_1 and H_2) will even note that Alan's March 9, 1984 letter was withdrawn and substituted by a second letter of April 5, 1984, thereby indicating that the first letter (the one signed by Ray O'Rourke) had no legal effect, even above considerations of "Privity of Contract". A reasonable time to accept had lapsed, and Alan withdrew his own letter offer. Hence, arguably there is not even any agreement between Ray and Alan.

(q). Moreover, Alan's entire Paragraphs 13 and 14 are known to be misleading and mistatements by Alan. Even the Court can take judicial notice that Alan is hardly damaged by obtaining three or four times as many Maxwell shares as he had before, and Alan wanted the $143,000 to do exactly that or to have RORACK do such for him. It was only when Karl Samuelian "blew up" at Alan and told him about the SEC Rule 144 problem, and that the entire merger would collapse, and with it Karl's plans to pay back the political campaign bills of 1982 by such, that Alan suddenly claimed not to want the $143,000, three or four times as many Maxwell shares, etc.*

As noted previously Alan was in no position to do this under the terms of the RORACK partnership i.e. "do any act detrimental to the best interests of the partnership" (Paragraph 9 of the RORACK partnership which is Alan's Exhibit A of his Declaration).

(r) Alan's paragraph No. 16 is entirely untruthful as he well knows. Karl Samuelian, RORACK's own attorney!, simply "made an either/or proposition" (or a "gun to the head" demand) that Ray O'Rourke and RORACK either accept one check of around $143,000 for half of the RORACK-Maxwell shares or obtain nothing. Attorney Al O'Rourke simply took the $143,000, bought as many Maxwell shares as he could, and such was held in the Bateman Eichler, Hill Richards account referred to previously. When Attorney Al O'Rourke then demanded the other $143,000, Karl really "blew his stack", and has been angry every since. In short, Karl blames Al O'Rourke "I thought we were over and done with you...you were out of Maxwell, once and for all". Attorney Al O'Rourke is doing nothing improperly, since even this bogus "RORACK" agreement

*Alan will certainly recall that RORACK meeting at Maxwell (1985?) 1984 where like a "rat nibbling on the cheese", Alan even asked Karl if "I can't get what Ray got". This resulted in the only time, Ray or I have ever seen Karl "blow up" at Alan.

is an agreement only between Alan and Ray, and is not made with Maxwell as Karl well knows. Admittedly, Karl is stuck "between a rock and a hard place" but Attorney Al O'Rourke did not put him there.

(s) Alan's paragraphs No. 16, 17, 18, and 19 are simply Alan's attempts(or Karl Samuelian's attempts)to get out of this legal quagmire Karl had himself in. Alan refers to his April 5, 1984 letter (in Paragraph No. 19, page 7 of his Declaration) which states "I have on my own volition determined not to proceed with the perfection of Dissenters Rights with respect to my 1/2 of the 13,500 shares".

In the first place the "volition" was not Alan's, but RORACK's . In the second place there was no need to "perfect" any Shareholder Dissenter Rights. Attorney Al O'Rourke had already done such by formal letter accepting the written offer in the Maxwell merger Proxy and Dissenters Rights Offer letter.

Hopefully, the Court will understand Attorney Al O'Rourke's amusement at being "hated" for having made his own Client a lot of money, and becoming almost a "non-person", a little "Chipper" that Alan once knew in some "remote past".*

(t) In regard to Alan's Exhibit H, such is simply a letter initiating the RORACK new stock account held by Dr. O'Rourke (and Mary O'Rourke) as Account No. LJ26 5993-9560, and beginning the process of purchasing Maxwell shares. Originally Dave Evans had been informed by me that the 13,500 share block of Maxwell stock which he held in the old RORACK account would be getting the Shareholders Dissenter price of $21.25. Then Karl and Alan (as related above) had "put a gun" to the head of Dr. O'Rourke.

*This only shows once again, Alan's "Teutonic knight mentality".

Either Alan or Ray had put the 13,500 certificate of Maxwell shares or certificates (there might have been two or more, but I think only one) in a manilla folder, or possibly even Parker, Milliken, Clark, O'Hara and Samuelian had done such years before. At any rate the 13,500 Maxwell shares "block" eventually got up to Dave Evans at Bateman Eichler, Hill, Richards. I believe it was Dave Evans who sent such shares back to Maxwell. Dave had handled all the RORACK stock transactions over a 15 year period including Ray O'Rourke's and Alan's prior sales. I forget if Karl Samuelian also used Dave Evans in regard to several thousand shares of Maxwell sold by Ray O'Rourke back to "a buyer" or Maxwell in the late 1970's to cover RORACK's notes to Maxwell of several tens of thousands of dollars. I recall Karl saying something like "Our auditors are demanding payment or the notes will have to be written off, and that will affect Maxwell directly". In short, such Maxwell shares at that time had to be sold to cover this obligation, which Terrence Gooding had stated would never occur, because Dr. O'Rourke and RORACK would always be getting a salary sufficient to cover such notes, interest, etc. Alan claimed he had no money to cover such, and perhaps he didn't in fact.

At any rate, the pattern of Dave Evans' involvement was established as a kind of "middle man" or escrow agent for RORACK, Maxwell, etc.

Hence, when this 13,500 share matter came up, I had to write a letter to Dave Evans to explain to him what was going on and why the entire 13,500 share block was not getting the $21.25 treatment, but only 6,750.

Dave knew that the claiming of the 13,500 shares of Maxwell for Shareholder Dissenter Rights was creating a "legal nightmare" at Maxwell for Karl and Alan, but whether or not he understood the SEC 144 problem I do not know.

At any rate (as the Court can clearly) see such letter does not make any kind of agreement between RORACK, Dr. O'Rourke, Alan Kolb, Maxwell, etc. It is simply a letter which in its first paragraph states that Dave was to hold certain papers and then release such to Alan (I believe Exhibit E* principally, i.e., the March 9, 1984 letter between Alan and Ray), when the $143,000. check arrived at Bateman, Eichler from Maxwell.

Moreover, I had told Dave that I was going to take such check and protect at least RORACK's-Maxwell's share block of 13,500 shares to the extent I could. This is reflected quite clearly and certainly in paragraph No. 5 of such letter, which states that Dave is to buy back the 13,500 shares of RORACK-Maxwell stock on the open market. In fact, the 6,750 shares became almost the 13,500 again with such $143,000. check, i.e., with only a few thousand dollars on margin, the 13,500 shares still existed with a possibility of now getting the second $143,000. check and buying more Maxwell. Hence, the RORACK partnership would now own 27,000 shares of Maxwell stock** (plus later 5% stock dividend and any rights to a company buy-back, merger, acquisition, etc. at a price of $21.25 or above.) As is perfectly obvious, most people would have thought their lawyer was quite astute and sharp in such conversion, but supposedly not Alan.

This is obviously simply preposterous, as Alan is "throwing away" something like 50% of 28,500 shares (with the 5% stock

*Herein Plaintiffs Exhibit $H_1 + H_2$

**Plaintiffs in fact purchased up to 25,500 shares of the 27,000 to mitigate Dr. Kolb's liability.

dividend) at $21.25 plus legal interest, or around $700,000. to $800,000, which would give Alan around $350,000. to $400,000. for what he now holds as 6,750 shares at roughly $10 to $11 or around $70,000.!

Surely the Court will agree that it strains credulity for Alan to claim in his Declaration that this is the type of situation that he wants.

Furthermore(as Alan also knows) any heir or creditor of Alan's could conceivably argue that Ray and I owed such to them for not protecting this amount!*

In summation, this letter or Exhibit H in no way is a "contract" between Alan Kolb, Dr. O'Rourke, and Maxwell as claimed by Post, Kirby, Noonan, and Sweat or Alan.

As Attorney Al O'Rourke can already hear Post, Kirby, Noonan, and Sweat screaming about Attorney Al O'Rourke's wanting "a double slice of the pie"(or $21.25 treatment twice) such is exactly what I have always stated both to Alan and Karl in any event.

Attorney Al O'Rourke is not "nuts". Maxwell still has a duty to pay any desiring shareholder $21.25 for his Maxwell shares and the 5% stock dividend. Obviously, this includes each and every Maxwell shareholder right now, who are tired of being promised "pie in the sky", never have been told about the reasons for Maxwell's stock price collapse since the merger of S-Cubed into Maxwell(and have been suffering ever since)while Maxwell's management ballooned their salaries and benefits and squandered the corporate assets (including recently purchasing absolutely worthless equipment from IRT Corporation to "bail out" the IRT shareholders and Board members who are friends of Karl's and

*Either through RORACK or through Alan's Wills and Trusts, in which Ray is or was Alan's Trustee, such being drafted by Karl. Karl now claims that such was "changed" but has never informed us how such was changed precisely.

Alan's). Please see Plaintiffs' Exhibits P and P_1*.

Obviously, the company should be returning such millions of dollars back to the shareholders of Maxwell who have been suffering all these years, i.e. the $21.25 as a minimum.

(u) Alan's next deliberate mistatement comes in his paragraph No. 24, that he never "authorized" either Attorney Al O'Rourke or RORACK to initiate this lawsuit.

He has been included (as Dr. O'Rourke is) in a ( ) blank in the Complaint, i.e. RORACK (Raymond O'Rourke and Alan C. Kolb) for purposes of clarity and identification. RORACK is the plaintiff, and did not need Alan's approval for this lawsuit since he was not acting in the best interests of the partnership. Furthermore, Raymond O'Rourke, Albert O'Rourke, Yacht Charters Ltd., Computrad, and Lattice Electromagnetics Inc. do not need his authorization either. These Plaintiffs are totally separate from Alan.

Alan once again strains credulity in his supposed stance of not wanting 50% of any recovery. Alan knows perfectly well that his half will be kept in Trust for him by Attorney Al O'Rourke and given to his family or creditors as required by law. Alan's protestations are not sincere, but only a "public relations" stance so that he can continue to make Attorney Al O'Rourke and Raymond O'Rourke out as "villains" to the uninformed other Maxwell shareholders.

What does the Court think would happen if Alan were to tell the truth to such shareholders of Maxwell i.e. "Oh, you know you really don't have a 2/3's loss on your Maxwell stock, but probably a two or three times gain according to the "Al O'Rourke" formula (i.e., of Paragraph t above)... BUT You really don't want your

*Such include IRT's Chairman Clifford Brokaw III, former Chairman Sydney Fox, Director Robert P. Sherer, and Director Howard Levenson. Please see Exhibit (m).

money do you?...After all, Karl and I have some millionaire frie-
ds at IRT who want to make some political contributions..." or
some such similar statement.

I think the Court will agree if the Maxwell shareholders ever find out what has been happening to their investment "behind the scenes" they are likely to come after Alan and Karl with "tar and feathers" and a hoard of civil litigation lawyers.

(v) Alan's next untruthful statement is in his Paragraph No. 25 which states that the "100 letter campaign" is not somehow material or relevant, but only "harrassing".

As Alan well knows, Attorney Al O'Rourke and the O'Rourkes have written Alan and other political figures numerous letters about Maxwell's supposed "SDI breakthroughs". Essentially, such letters bluntly stated that there was no breakthrough, but only a deliberate hoax (similar to Helionetics) which was a public disgrace, a fraud upon the shareholders, and politically motivated, i.e., to put cash into the coffers of Republican candidates including George Bush and Governor Deukmejian. This happens to be a true fact as both Karl and Alan well know. However, Attorney Al O'Rourke is "not supposed to talk about such things". Such is "too sensitive" and therefore the 100 letters become "crazy" letters written by a "crank" or "nut".

Attorney Al O'Rourke does not have to apologize for Republican stock manipulation, SDI program disasters, etc. In fact, as Alan well knows, Maxwell being the "center-piece" of the "SDI experience" (i.e. on television programs) with its Checmate* "Rail gun" shown to all the world as a ballistic missile defense, when it was known to Alan and Karl, and to Governor

*And like the Phoenix "rising from its ashes" and over the "cooked up" body of Maxwell employee Robert Martin, Checmate now gets a second life as a "anti-tank gun" (See Exhibit (j)).

Deukmejian and to Vice President George Bush that "such would not kill a mouse at 50 yards" let alone a missile in outer space.

Attorney Al O'Rourke includes as his Exhibit FF a "SOS-S.D.I. news article for the Court's review.

(w) Alan's Paragraph No. 26 about my Western Union mailagram is another deliberate attempt to mistate what I have said. As related previously, such Statute of Limitations question quite clearly involves Alan's and Amalia Kolb's claiming Shareholder Dissenter Rights. The argument being that if they were to claim such Shareholder Dissenter Rights (unknown to Albert O'Rourke or RORACK) they would be operating (arguably) under a one year Statute of Limitations. The Court will note that it is they who are warned by Attorney Al O'Rourke, and not RORACK which had a four year Statute of Limitations for contract by written contract acceptance in any event, or for any breach action.

I was simply trying to protect Alan and Amalia and their family. How was I to know that Alan was not in fact preparing to get the Shareholder Dissenter Rights "on the sly"*, and even then not being astute enough to simply buy Maxwell shares and get two or three times as many shares as he had before. Both Amalia and I always have been friendly, and Amalia knows all about Alan's constant tirades against me as "that damn little Chipper", etc.

(x) Alan's Paragraph No. 27 and his Exhibit K is another of Alan's mistatements. Such letter was perfectly proper in trying to remind Alan that his actions were damaging RORACK in violation of the partnership agreement. Attorney Al O'Rourke has always tried to get this second $143,000 check to buy more Maxwell for RORACK, of which Alan was always an equal parner.

*Similar to Alan's past "covert" acts of paying Karl $5,000. in legal fees for RORACK, signing notes, and undertaking bonds for RORACK, changing Wills and Trusts, etc. without any acknowledgment let alone permission.

Such letter merely tried to "shake up" some action out of Alan.

(y) Alan's Paragraph No. 29 that his actions were perfectly proper and "caused no damage and had no legal consequence" to RORACK and Raymond O'Rourke are deliberate mistatements as noted above. RORACK could have had 27,000 shares or more, i.e., 28,500 roughly (with the 5% stock dividend) at a "buy-back" * value of above $21.25 or around $700,000. to $800,000. It is perfectly obvious that Alan's actions have caused RORACK enormous legal damage, and in fact the 25,500 shares of Maxwell held at Bateman Eichler, Hill, Richards for RORACK has now been "stolen" by Maxwell (or converted by Maxwell) down to 3,500 plus the 5% stock dividend, i.e. around 3,750 shares of Maxwell today.

All this while, both Alan and Maxwell knew exactly what was occurring at Bateman, Eichler, Hill, Richards and why. Both Karl and Alan and Peter Saccerdote and the other Directors of Maxwell tried to "squeeze out" this account and "be done with the O'Rourkes once and for all" during the October 1987 "crash". Alan knows this perfectly well.

(z) Alan's Paragraph No. 30 is another one of Alan's mistatements as the Court will clearly see.

In the first paragraph Attorney Al O'Rourke is reminding Karl and Alan that Dr. Richard Fitch and Joan Fitch were entitled to the Shareholder Dissenter Rights price of $21.25 for their roughly 21,000 shares of Maxwell. Dr. Fitch was Vice President and a Maxwell Director up until around 1986, but had never been told by Alan or Karl of his $21.25 Rights, was against the S-Cubed merger himself, as were other Maxwell Officers and Directors, but was told by Karl or Alan or both that the merger "must go

*This figure is arrived at "factoring in" the second $21.25 "second slice of the pie" by compulsory buy-back of Maxwell shares by Goldman Sachs or Parker, Milliken to all shareholders of Maxwell after 1984 i.e. even "double dippers" as RORACK.

through"..."or the entire Company will collapse". In fact, the only thing that would have collapsed were all of Karl and Alan's schemes behind the scenes, i.e., funding the Deukmejian Campaign. Further, as such letter quite clearly states the "RORACK" formula might apply to Dr. Fitch as well and he could have ended up with arguably 60,000 odd shares of Maxwell with a valuation of around $1,000,000.

Such letter also involves Alan and Karl's "behind the scenes" activities with Attorney Marc D. Adelman and Kenneth Adelman and Security Pacific National Bank in regard to Notices of Depositions made by Attorney Al O'Rourke on Karl, Alan, and other Maxwell Directors.* In regard to these, involving a Probate Case, i.e., the Estate of Ruth M. Davis (San Diego Superior Court Case No. P 139 114), Attorney Al O'Rourke and Ms. Davis when she was alive had instructed Security Pacific National Bank to purchase 200,000 shares of Maxwell stock, at around $10 to $12 per share and thereby obtain the $21.25 treatment as well. Alan and Karl went into a total panic about this, as now Maxwell would have been on the hook for around $4,000,000 and Security Pacific National Bank as well, since they had refused to carry out such Order with no justification whatsoever.**

Attorney Al O'Rourke wanted to know what game Karl and Alan were up to with Security Pacific National Bank(and known to be up to, by other Maxwell Officers and Directors and U.S. Government personell as well). Attorney Al O'Rourke properly Served all the Parties with Notices of Deposition. The date for such came and went with Maxwell stating that it would not comply with the Depositions. Obviously, they were in Contempt of Court.

*Through John Farber of the Department of Energy or other S.D.I. persons in Washington, D.C.

**Attorney Al O'Rourke believes Karl Samuelian "sabotaged" this deal as well. Karl denies such.

To get around this problem, Karl and Alan stated that they would meet with me and Ray in a RORACK Meeting. In return, I agreed not to hold them or other Maxwell officers and directors to personal depositions.

Both Karl and Alan denied any knowledge whatsoever of knowing or having met with Gray, Cary, Ames, and Frye or** Attorney Marc D. Adelman or authorized him to do any act whatsoever on behalf of Maxwell to prevent the purchase of the 200,000 shares of Maxwell stock.

In fact, as Karl and Alan both know, they had indeed authorized or caused to be authorized through San Diego Attorneys Hervey and Wood, a Motion to quash the subpoenas and for sanctions (and to prevent such purchase). Further, either they or Hervey and Wood had also authorized or joined in any number of unethical acts of Attorney Marc D. Adelman to embarrass Attorney Al O'Rourke(i.e. with Mr. Adelman's supposedly going to the San Diego District Attorney's Office and trying to get their staff to investigate or even prosecute Attorney Al O'Rourke for supposed "forgeries" of Ms. Davis' signature and telling all the San Diego judges of Superior Court the same thing).

Furthermore, Hervey and Wood brought a Sanctions Motion in regard to the depositions and in open violation of the Agreement referred to at the top of this page. Moreover, they even placed such as a civil action(i.e. Security Pacific National Bank vs. Estate of Ruth M. Davis) when the Ruth M. Davis matter was a probate matter! *

Attorney Al O'Rourke did not know a Company's officers and directors such as Maxwell's were authorized to injure the Company by preventing a share purchase which would have only

* Thereby creating two distinct cases continuing today, i.e., theirs and "in the matter of the Inter Vivos Trust of Ruth M. Davis", having nothing to do with one another.

** In spite of Karl's protestations, such Law Firm knew about RORACK as early as 1970, See Exhibit (n)

benefitted the Company by preventing the "Insider transactions" of Peter Saccerdote and other Maxwell directors and officers i.e. the public trading or "public float" of Maxwell shares which caused all the subsequent damage was around a few hundred thousand shares, and therefore if 200,000 shares were "frozen" or not available(since they were part of Ruth M. Davis' Estate) Mr. Saccerdote would have been prevented from playing his games.

Since Marc D. Adelman is the cousin of Kenneth Adelman, former director of the United States Arms and Disarmament Agency and someone whom both Alan and Karl know very well and do business with, it is extremely hard for Attorney Al O'Rourke to believe that neither of them knew Marc D. Adelman, or had authorized(or caused to be authorized through Hervey and Wood) Marc D. Adelman's actions, especially with his screaming in Court that he had been told that "Mr. Al O'Rourke and Dr. Raymond O'Rourke were involved in a "plot to take over Maxwell"*. The Court can clearly see a pattern of "game-playing" by Karl and Alan which they always do, and then when they are called upon such, they play the "Henry II scene vis-a-vis Becket" (i.e."Will no one rid me of these troublesome O'Rourkes...Oh, you did?.Well, I was only talking rhetorically ...I didn't really mean for you to do that").

(z_1) In regard to Alan's Paragraph No. 27 which Alan states "Specifically acknowledged that RORACK had no claim of any kind against Maxwell ", the Court will clearly see at line 13 of Page 10, the word "presuming". In fact, Alan is simply mistating what is said as he well knows. The statement is purely hypothetical.

(z_2) Alan's paragraph 29, 30, and 32 are simply more

*Please see Plaintiffs' Exhibit R

**In fact, even Gray, Cary, Ames and Frye have an Attorney/Client relationship through RORACK (See Exhibit n). Nevertheless, they too have attacked the O'Rourkes ¿3 with Karl's blessing.

of Alan's mistating RORACK and his obligations thereunder. There is nothing incredible at all about RORACK's ending up owning two times 19,500 shares or 39,000 shares (and with a 5% stock dividend of around 2,000 shares) instead of 13,500. Obviously, this makes good business sense and is in the best interests of the partnership.

(z_3) In regard to Alan's Paragraph No. 32, and Exhibit F, such is merely the same "rough draft" or first draft of a letter agreement never agreed to by Raymond O'Rourke and Alan in the first place. Furthermore, such letter quoted by Alan cites the "dilution factor" (i.e., roughly 40% caused by the S-Cubed merger which had as its first step the public stock offering which was a dilution as well, i.e., something like 700,000 or 800,000 shares were added to Maxwell's original amount of shares, thereby diluting roughly 40%).

(z_4) Alan's Paragraph No. 33 is another one of Alan's deliberate mistatements, i.e. since Alan believed he could unilaterally cease to do any RORACK operations, this would somehow terminate or make RORACK "inactive". The Court will note the falacy of Alan's argument, especially since he was using RORACK's assets unknown to Raymond O'Rourke and Albert O'Rourke to pay* legal bills to Parker, Milliken, Clark, O'Hara and Samuelian. Further laughable is Alan's assertion that because "the last financial statement which was ever prepared for partnership was the one dated March 1, 1980" (his Exhibit B). As Alan well knows and so does Karl, the ~~two~~ of them have refused to make any financial statement for RORACK for the 1980 to 1988 period, pay taxes, File returns, work with Bill McMaster on Computrad, etc.

* The Court will see Alan's actions in 1982 and 1983, which he concealed from Plaintiffs for at least two years on Exhibit Q1 & Q2

(z_5) Alan's Paragraph No. 34 is another mistatement, as the Court certainly knows a partnership is obligated to pay United States and State income tax if it has taxable income. In fact, RORACK may arguably have hundreds of thousands of dollars of tax liability both in regard to Maxwell's stock gains to RORACK, Computrad's income generated by William McMaster, Alan's various covert or non-disclosed "business activities" for which he generates income, etc. Alan's assertion that he had reported "any taxable events" is neither correct, and does not excuse RORACK from filing partnership tax returns as Alan and Karl certainly know very well. Frankly, who ever heard of a lawyer like Karl telling a Client like Alan to forget about RORACK in his tax return? Also, even Alan's Computrad Tax concern is evident in Exhibit (d).

(z_6) Alan's Paragraphs 36 and 37 are deliberate mistatements as well, since they imply that "mystical forces" of the U.S. stock market caused RORACK's damage and not the actions of Alan and Karl, Peter Saccerdote, Goldman Sachs, etc. As noted previously, the officers and directors tried to use this "Black Monday" stock market crash as a means of concealing their stock manipulation of Maxwell* and their ruining their own shareholders so that they could buy up such shares through the Company (i.e., even the Company's own purchases of Maxwell stock became available to these officers and directors as stock options!). Moreover, they were directly buying Maxwell shares for their own account as well knowing that what they would buy for $6. could be sold to Maxwell for $10. This is just another of their endless "game playing" and is an obvious violation of U.S. Securities laws and California laws as well (they just didn't think they'd get caught).

*Please see Exhibit (m) which is only the "tip of the iceberg".

(z_7) Alan's Paragraph No. 38 and its citation of the partnership of RORACK's Section 16 (c) i.e. equal votes of the partners is clearly over-ruled by Section 9. Section 16 (c) is a miscellaneous provision of the partnership. Section 9 is one of the main clauses of the partnership and quite clearly in black and white states that "No partner shall do any act detrimental to the best interests of the partnership or make it impossible to carry on the ordinary business of the partnership".

Clearly, this is what Alan claims to be able to do, i.e. to make impossible the full claim of Shareholders Dissenter Rights at $21.25 instead of merely half.

(z_8) Alan's Paragraph No. 39 is truly incredible in even being made, due to the advice of Karl Samuelian, Esq. or Post, Kirby, Noonan, and Sweat. What kind of Chairman of the Board of a public company (such as Maxwell) makes the statement that he was advised that there was personal liability in regard to the 1984 merger of S-Cubed into Maxwell upon him (by the lawyer of his partnership with his partner Ray O'Rourke) and yet did not disclose such in a Proxy Statement, shareholder letter, Annual Report, etc.? Simply put once again, both Alan and Karl are in a "legal quagmire" and do not know how to get out of such, and now Alan is making statements which another shareholder's lawyer could use against Alan personally.*

(z_9) Alan's Paragraph No. 40 is another one of Alan's deceptions. Both Alan and Karl knew exactly what was happening at Goldman Sachs and Bateman Eichler in regard to the RORACK or Raymond C. O'Rourke account at Bateman, Eichler holding the 25,500 odd shares of Maxwell on margin.

*And through Alan, also RORACK, Dr. Ray O'Rourke, Albert O'Rourke, whether we like it or not.

RORACK and Raymond O'Rourke have Causes of Action* against Bateman, Eichler, Hill, Richards and Goldman Sachs for simply liquidating five times as many shares as were required for the margin call approximately, crediting Raymond O'Rourke and RORACK with $6 to $8 per share and then re-selling such to Maxwell for $10 or above. Such is another example of stock market manipulation and fraudulent acts in violation of Section 10B-5 (10-B-5) of the 1934 U.S. Securities Act. Both Dr. O'Rourke and RORACK intend to file actions against these two firms as well, once again joining Alan through RORACK.

(z_{10}) In conclusion, Alan's Paragraphs No. 41 to 43 are simply an attempt by Alan to get him and Karl out of an awkward situation which they should have reported to the Shareholders. There is indeed a legal Cause of Action against Maxwell and such has been Filed by Plaintiffs who are proceeding with the Action in State Court and now have a $30,000,000 Default Claim against Maxwell! The Company could easily be liquidated "over-night" by Court Order, yet none of this has been disclosed to the Shareholders. Nor has the "IRT letter" been disclosed. See Exhibit(o).

Alan and Karl apparently were playing "Corporate chicken" with Plaintiffs, assuming that "little Chipper" (i.e. Attorney Al O'Rourke) would withdraw his lawsuit so as not to "publicly crucify" them. Indeed, Attorney Al O'Rourke even offered to withdraw his lawsuit if Maxwell returned to RORACK, RORACK's Maxwell stock (once again such would have been fully paid for at cost to Maxwell by RORACK, and Maxwell shareholders would not have been injured in any manner, i.e. such transaction would have been approved by the S.E.C.).

*These actions are also going to be Filed shortly.

At any rate, Alan and Karl allowed the 30 day Statutory Period to File an Answer to the Complaint to lapse. Such equally applied to any Removal Action to Federal Court.

Now, with some of the other Defendants becoming nervous about Alan and Karl's "Corporate chicken" game playing(i.e. Peter Saccerdote having hired Luce, Forward, Hamilton, and Scripps and Admiral Thomas Hayward apparently having hired some other law firm) suddenly Post, Kirby, Noonan and Sweat appear with this current Pleading.

Post, Kirby, Noonan and Sweat are certainly aware of California Code of Civil Procedure, Section 446, i.e., "when the Complaint is verified, the Answer shall be verified".

"In all cases of a verification of a Pleading, the Affidavit of the Party shall state that the same is true of his own knowledge...". Further, " it shall be by the Affidavit of a Party ...or his or her attorney".

Clearly, since Plaintiffs had Filed a verified Complaint, Defendants were under the obligation to File a verified Answer. They chose not to do such, because whatever Post, Noonan, Kirby, and Sweat state to the Court as being "untrue", such is in fact absolutely true, and known to be true to Defendants and each and every one of them. The Court will note that no one at Post, Kirby Noonan and Sweat has Filed any verified Attorney Affidavits against the statements of Attorney Al O'Rourke and Raymond C. O'Rourke, and how could they? How would you like to hear from your own client that the Client's Chairman of the Board and its Legal Counsel had not made known to the other shareholders, the fact that a proposed Merger was objected to by their own partners and

legal clients(i.e. the O'Rourkes) that such merger would be a total disaster, was not "arms length", and in fact such Merger caused almost the instant collapse of the Company for no other purpose than to create a "Republican warchest" to pay off campaign bills?

I think it is fairly obvious to Post, Kirby, Noonan and Sweat have privately advised Alan and Karl that there will be any number of Shareholder suits against them. Furthermore, since the Mr. Noonan of Post, Kirby, Noonan, and Sweat is apparently related to the Peggy Noonan of George Bush's campaign, I think it is safe to assume that George Bush has already been privately warned about the "Pandora's Box" of the "Republican warchest" already having been lifted. Perhaps Karl can enlighten the Court since George Bush is a good friend of his as well.

Moreover, the Court can clearly see the "strategy" of Post, Kirby, Noonan and Sweat. Instead of replying for Defendants, they have Alan Kolb reply for them, when he is not a Defendant, is not authorized by RORACK to so answer, deliberately mistates the Record about RORACK, is not a lawyer, merely "signs off" on legal papers prepared for him by Post, Kirby, Noonan and Sweat, etc.

As Alan well knows, he has done this repeatedly in the past to Raymond O'Rourke and other people he has had close business ties with. Alan certainly knows who Plaintiffs are talking about. Just because Alan is willing to "play martyr" and offer himself up as legal "cannon fodder" instead of Defendants, does not have any legal bearing or merit upon the improper, unethical, and illegal actions of Defendants.

(z_{11}) Furthermore, Alan is not competent to legally excuse the actions of Karl Samuelian(an attorney) which violate CCP, Section 340.6. Even if Alan does not object to Karl's activities, both Raymond O'Rourke and Albert O'Rourke do, and are in a distinct and separate attorney/client relationship with Karl, both in regard to RORACK and the other Plaintiff Companies and themselves as Plaintiffs. Alan's "mea culpa" is not Karl's.

(z_{12}) Furthermore, the Court must clearly see with what "crocodile tears" Alan makes such "mea culpa" or his Declaration Filed in this Case. At no time does he plead to the Court to let him "pull out his checkbook" and start reimbursing all of Maxwell's shareholders for the financial damage he, Karl, and the others have caused them . In fact, Karl and he continue to "loot" Maxwell.*

(z_{13}) Moreover, Plaintiffs have never tried to "rub salt in the wounds" of either Alan or any of the other Defendants. In fact, part of the Action in State Court involves a "Constructive Trust" to be placed on Maxwell's assets for the benefit of Maxwell shareholders. In particular, such would stop situations like the IRT Corporation affair referred to previously (where Maxwell is simply "throwing away" several million dollars on worthless equipment of IRT's to bail out the Defendants' friends and political contributors).

Even suggestions to Defendants that they "come clean" to Maxwell Shareholders at the Annual meetings, and work out a plan to get Maxwell's stock price back up above $21.25 have been opposed by Defendants all throughout 1987 and 1988.

As a practical matter, how is any shareholder to ever recover what he has lost on Maxwell without such cooperation?

*I.e., see Exhibit (o), the IRT letter.

(z_{14}) Further, as the Court will also note, Alan's Declaration only concerns the 1984 Merger of S-Cubed into Maxwell and his view of events since. Such Declaration does not state that Defendant Peter Saccerdote, Goldman Sachs, Bateman, Eichler, Hill Richards, etc. all manipulated Maxwell's stock price during and after "Black Monday" of October 19, 1987 on the stock market.

The reason Alan does not declare such, is that he knows this is exactly what occurred. Defendants simply thought they could get away with such schemes as they had gotten away with all their other schemes in the past.

No doubtDefendants will argue "we're paying for such stock". Such is not the point. Such stock belonged and still belongs to both Plaintiffs and other Maxwell shareholders who lost their stock because of the illegal stock market manipulations of Defendants. All they had to do was return the stock and they would not have been sued. These people are simply "white collar thieves" and should be exposed as such. Perhaps such is strong language for them to take, so perhaps they will respond to the Pleadings and/or return what they have stolen from Plaintiffs and others.

(z_{15}) Nor is Alan legally competent to be asking for attorneys' fees and sanctions since he is not a lawyer and not the lawyer in this Case representing Defendants. Moreover, one can only wince at Alan's statements that "Defendants have encountered substantial legal costs." In the first place, how would Alan even know about the legal expenses of Defendants, unless such were actually being paid for by Maxwell (as is probably the case).* Furthermore, Defendants would not have had any legal expenses had they

* This is again clearly "ultra vires" and concealed from Maxwell shareholders.

simply given back the Maxwell stock of RORACK's which they stole in the first place.

Moreover, as Alan well knows, it is doubtful whether Defendants Sean Maloy, Monty Hayes, and Myrna Jaro are even fully aware* what Alan and Karl are up to with Post, Kirby, Noonan and Sweat! Or that they are on the receiving end of a $30,000,000 Default Judgment. Most likely Alan and Karl have simply stated to them that the "lawyers of the company are taking care of the problem" or something similar. The Court itself is certainly aware that these Defendants should be represented by different attorneys who are not bound to Maxwell or to Karl or Alan such as Post, Kirby, Noonan and Sweat. What separate lawyer would allow his client to be in Default, to make no State Court appearances or Motions or Pleadings and to be now stuck with Post, Kirby, Noonan and Sweat trying to make the legal equivalent of a golfing "hole in one" while blindfolded to boot! Post, Kirby, Noonan and Sweat are simply trying to protect Karl Samuelian and Alan (and through them Governor George Deukmejian and Vice President George Bush as well). Hardly any concern whatsoever exists for Sean Maloy, Monty Hayes, and Myrna Jaro. Even presuming Maxwell could obtain a $30,000,000 bond for itself to appeal any Default Judgment, none of the other Defendants is in a position to do such and could be forced into bankruptcy.

Certainly Defendants have the option to File State Court Pleadings in San Diego Superior Court to try to set aside the Default pursuant to CCP, Section 585 and 585.5. As noted previously, Defendants' Petition to Remove was untimely and violated the 30 Day Rule of the Federal Rules of Civil Procedure and 28 U.S.C.

*And here once again, they are being ill served by Post, Kirby, Noonan, and Sweat.

1446 (b).

Moreover, as stated previously and yet here again, Plaintiffs have offered repeatedly to withdraw this Action upon return of their Maxwell stock. There is nothing "sanctionable" about Plaintiffs' activities. They simply do not wish to be swindled.

Furthermore, as the Court also knows, any legal expenses or sanctions would have to be plead by a Defendant and not a non-Defendant such as Dr. Kolb.

II-B PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS (CONTINUED AS TO LEGAL MATTERS)

III PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT.

Turning to the actual legal as opposed to Factual merits of Defendants' Pleadings, the Court will quickly see the following to be true:

(a) Dr. Kolb's Declaration states quite clearly and certainly in its very first paragraph that it is made in regard to a Motion to Strike and not to a Motion to Dismiss!

Hence, Defendants' Motion to Dismiss is not accompanied by the required Verified Pleading as required in State Court pursuant to CCP, Section 446. Defendants' Motion to Dismiss would itself be dismissed out of hand by the State Court.

(b) Nor is there any Notice of Motion to Strike or any Motion to Strike made by Dr. Kolb in any formal manner except the language used in his own first paragraph of his Declaration, i.e., "Motion to Strike pursuant to Rule 12 (f) of the Federal Rules of Civil Procedure.

(c) If Dr. Kolb wishes to make a Motion to Strike, he must do so properly with Proper Notice and Pleadings. Furthermore, he must

give some legal basis that Plaintiffs' Pleadings are unsigned, not properly verified, or "sham".

He cannot do this, as Plaintiffs' Pleadings are quite clearly properly signed and verified, and the actual merits of Plaintiffs' position are not "sham" in any manner, but involve the wrongful activities of Defendants known personally to Dr. Kolb.

(d) Nor has Dr. Kolb or any of the other Defendants properly removed this Case from State Court to Federal Court pursuant to 28 U.S.C. 1446 (b) within the 30 day time Rule, nor made any application to excuse the operation of such Rule, etc.

(e) Clearly, Defendants' Pleadings are mis-drafted, tardy, and of no legal effect in any event as to the on going San Diego Superior Court lawsuit which continues to "Fast-track" to the Defendants' detriment as noted previously. Defendants are simply in default on a $30,000,000 lawsuit and at least arguably "up the creek without a paddle".

(f) Plaintiffs nevertheless will address those legal issues raised by Post, Kirby, Noonan and Sweat in regard to the Statute of Limitations problem claimed by them, and other legal issues as well.

(g) As stated previously, there is no Statute of Limitations problem. This is a "red herring" raised by Post, Kirby, Noonan, and Sweat. Plaintiffs are not operating on any oral two year limit in regard to an oral contract pursuant to CCP section 339, in regard to the Acceptance of Shareholder Dissenter Rights back in 1984 by Plaintiffs. Maxwell made a formal written offer through their Proxy Statement in regard to the merger, and Plaintiffs responded by filing a written acceptance of such offer for all

13,500 RORACK shares of Maxwell. Quite clearly this was a written contract and comes under CCP section 337's four year Statute of Limitations. This is not even denied by Defendants, they simply choose to ignore such and misinform the Court about 2-year Statutes for oral contracts.

(h) Nor are Plaintiffs' barred by any Statute of Limitations for fraud pursuant to CCP section 340 (3) i.e. an Action within the one year Statute of Limitations. The "emotional distress" Cause of Action relates to Defendants' Actions in the October 1987 "Black Monday" stock crash and thereafter (i.e. simply swindling Plaintiffs at that time). Moreover, who would not be emotionally distressed to find out nearly the entire 25,500 shares of RORACK-Maxwell stock had been liquidated due to the "behind the scenes" activities of one's partner and lawyer and others?

(i) Furthermore, for the same reasons as in (h), Plaintiffs are clearly within the one-year Statute of Limitations in regard to a Cause of Action for Conversion for events occurring in and around October 19, 1987 and thereafter. Plaintiffs' RORACK stock has been unlawfully converted or swindled by Defendants, and since this lawsuit of Plaintiffs was filed within such one-year Statute, (i.e. on May 5,1988) there is no problem with any Statute of Limitations, As is asserted by Post, Kirby,Noonan and Sweat in their Section E or page 11 of their Memorandum of Points and Authorities.

Post, Kirby, Noonan and Sweat here cite numerous cases, just as in their Paragraph D in regard to Intentional Infliction of Emotional Distress, which raise issues about Causes of Action filed after the one-year Statute. However, Plaintiffs were well within the one-year Statute, and to confuse this issue (and the

Court) Post, Kirby, Noonan and Sweat would try to pretend that these wrongful acts of Defendants occurred in 1984 at the time of the merger and not in 1987 when they actually did occur!

There are two distinct areas in the Complaint, i.e. the wrongful acts of Defendants in 1984 and then again in 1987. Post, Kirby, Noonan and Sweat deliberately try to "lump all these together", recite impressive lists of cases which are not on point, etc.

(j) Further, Post, Kirby, Noonan and Sweat on their page 12 would try to "mix up" all of the wrongful acts of Defendants in violation of Section 10 B 5 of the U.S. Securities and Exchange Act, and the wrongful attorney acts of Karl Samuelian into one-year Statutes instead of four-year Statute of Limitations pursuant to CCP, section 340.6.

Moreover, even if some of the Defendants hypothetically could enjoy a one-year Statute of Limitations, the Attorney cannot enjoy such. Even if he hides or conceals a single material fact from his Client, he is liable under CCP section 340.6, and especially under 340.6 sub-section (3). In the Instant Case, Mr. Samuelian continues to conceal material facts from Plaintiffs, his own Client! In fact, he is even having "strategy sessions" with Post, Kirby, Noonan and Sweat involving the use of Plaintiffs' own partners' (RoRack) records and Declarations.

(k) Furthermore, since Defendants are also assisting Mr. Samuelian as his agents, they are also transactionally liable under this CCP 340.6 or 340.6 sub-section (3) to the four-year Statute of Limitations and any "tolling" of the Statute of Limitations until the concealments are made known by Mr. Samuelian to Plaintiffs. *

*Thereby subjecting Defendants to vicarious liability under 42 U.S.C. 1983 action (due to Karl's "government ties" to George Bush and Gov. Deukmejian, and 31 U.S.C. 3729, in addition to any Section 10 B 5. Securities violations liability.

(1) Next, Post, Kirby, Noonan and Sweat on their page 12, Section F, deliberately mistate what is occurring in regard to RORACK. RORACK and most of its assets, records, financial papers, etc. remain at Maxwell in Dr. Kolb's office.

Further, Alan has done any number of "concealments" in regard to RORACK(i.e. paying Parker, Milliken, Clark, O'Hara and Samuelian the $5,000 in 1982 (Exhibit Q1+Q2 of Plaintiffs) and then claiming such on his personal tax return. Furthermore, apparently Alan expects Plaintiffs to pay all of RORACK's tax liabilities, File all tax returns, etc. What attorney such as Albert O'Rourke(or any other person)would sign a Federal or State tax return involving RORACK in any manner as being declared to be true and accurate under penalty of perjury, while knowing Alan was up to "tax tricks" on his own? Obviously, one would have to be really "nuts".

Moreover, Post, Kirby, Noonan and Sweat simply mislead the Court in their Paragraph F of their page 12 and 13 that Alan's and Karl's wrongful actions in regard to RORACK's business records and taxes (once again assisted or ratified by the other Defendants especially Ms. Myrna Jaro), are somehow barred by CCP Section 338 (Section 4) and their analysis that all RORACK accounting is being taken care of properly.

In the first place, Plaintiffs' tax liabilities do not begin or end with the year 1984 in regard to RORACK. The Internal Revenue Service has or may assert any number of tax liabilities against RORACK and its partners and even its attorney, Albert O'Rourke for "supposed" failures to File Federal Income tax returns or pay taxes due to Alan's past, current, and future

concealments, apparently done with Karl's "private counsel". That such are harmful to RORACK and Plaintiffs is obvious. Obviously any Statute of Limitations would not begin to run until Alan revealed what he has been up to. Moreover, once assisted by Karl such clearly comes under CCP 340.6, and CCP 340.6 (3) in any event.

Throughout the 1980's agents of the Internal Revenue Service have contacted Attorney Al O'Rourke about RORACK. I have always referred them to Alan, since he has the records. What he has related to the I.R.S. is a mystery to me, and he refuses to answer my repeated inquiries. Both Karl and he have simply stated that Alan on his personal Income Tax "did all he was required to do" or similar words, during the RORACK meetings.

The last I heard from the I.R.S. was I believe in early 1988 when I once again referred them to Alan, prior to this lawsuit being Filed. I have yet to hear anything further.

To get out of this problem, Post, Kirby, Noonan and Sweat state that any such Cause of Action should have been made at the time of the supposed "Splitting" of the 13,500 shares of RORACK's Maxwell stock, i.e., back in 1984. If the RORACK partnership had come to an end then, all assets been distributed equally to the partners, all taxes paid, etc. perhaps such would be true. However, Alan did not do this, and has never Filed or paid any RORACK taxes whatsoever to my knowledge.

Moreover, it is entirely possible that the I.R.S. is not going to limit any capital gains tax to 1/2 of the RORACK-Maxwell shares or seek only 1/2 tax liability. It is entirely probable on the contrary, that they will be seeking tax liability

plus penalties and interest for the entire 13,500 shares or twice the $143,000., i.e., $286,000.!

The IRS knows that Dr. Raymond C. O'Rourke does not have this money or any ability to pay any substantial Federal Income Tax(i.e. who knows perhaps a $100,000 to $200,000 or more). However, there is a "cash loaded partner" of RORACK's who does have such means to pay, i.e. Alan Kolb. I have explained this to Alan repeatedly and Alan's eyes seem "to go into a trance" until his irritation starts spewing forth. As a tax lawyer myself, I can assure the Court that such a scenario is entirely possible, especially since Alan continues to "stall" or "put off" the I.R.S. by his unknown/to Plaintiffs' statements to the I.R.S., and his continual concealments.

(m) In regard to Post, Kirby, Noonan and Sweat's Paragraph No. G on their pages 13 and 14 of their Memorandum of Points and Authorities, they once again raise "red herring" Statute of Limitations issues.

In regard to the 1984 S-Cubed merger, the Discovery of Facts constituting a Cause of Action by Plaintiffs is not simply limited to Defendants' refusal to pay Shareholder Dissenter Rights or call off such merger. To this date, the wrongful and misleading language contained in Defendants' own exhibit C referred to by Dr. Kolb on his page 5 of his Declaration, i.e. "includes 13,500 shares held of Record by RORACK, a partnership in which Dr. Kolb has a 50% interest".*

This is absolutely misleading language in that it conceals from the other shareholders the fact that RORACK's other partner Dr. Raymond O'Rourke had demanded that such language be changed to

*Please see Exhibit (D). Once again, had the RORACK controversy been properly revealed on this page 31 (the Court will note that Dr. Ray O'Rourke, RORACK's other partner, is not even mentioned) the entire merger would have collapsed, with all Maxwell shareholders demanding the $21.25.

reveal that the forthcoming merger would be a total disaster and fraud upon the shareholders and that the entire 13,500 shares had been claimed for Shareholder Dissenter Rights.

Defendants have always refused to correct this misleading language and have never informed Plaintiffs why the Board or when the Board agreed that such language should not be changed or corrected or explained. Hence, the discoverable facts have yet to be revealed to Plaintiffs. Defendants have simply concealed once again from Plaintiffs, and furthermore such was done through Plaintiffs' own lawyer Karl Samuelian and Law firm so that CCP 340.6 and CCP 340.6 (3) once again arise in any event.

Moreover, the frauds and concealments are still occurring at Maxwell and among Defendants. They have simply "drawn the horses and wagons into a circle" and are preventing any Shareholder inquiry about the disastrous S-Cubed merger. They even refuse to supply lists of the Shareholders or make Plaintiffs or other complaining parties' complaints (i.e., Maxwell Shareholders Guenther Hoffman and Eve Morris or Richard Fitch) known to the Maxwell shareholders. For all Plaintiffs know, there is even a secret Maxwell File or Report on how Plaintiffs are to be deprived of their Shareholder Dissenter Rights and why.

Then once again, as noted previously, Plaintiffs have never received any formal refusal of the Board of Directors about the Shareholder Dissenter Rights or any other issues about RORACK.

Alan and Karl in RORACK meetings have refused such, but they are obviously disqualified members because of their Conflict of Interest to Plaintiffs and to RORACK. Attorney Al O'Rourke can recall communications (telephone?) left for him from Sean

Maloy and Monty Hayes that "Karl and Alan told you, you weren't going to get the Shareholder Dissenter Rights for RORACK" or something similar. However, this is not an official statement of the Board of Directors but merely Sean Maloy and Monty Hayes' trying not to involve themselves by blaming everything on Alan and Karl.

Hence, arguably there is not even the beginning of time commenced to run on the Statute of Limitations yet, whether such was one year, three years, four years, or even four minutes. Until a formal resolution of the Board of Directors of Maxwell is made explaining why Plaintiffs are not entitled to Shareholder Dissenter Rights and revealing each and every conversation, letter, or communication about such made to the Board by Karl and Alan, there will always be "concealed facts" in violation of Federal and State Securities laws, yet to be made known to Plaintiffs, and upon which Plaintiffs can base Causes of Action.

Further still, as Post, Kirby, Noonan, and Sweat well know, among Plaintiffs' Causes of Action are claims for securities fraud based upon acts in 1987 as well as 1984, i.e. Defendants fraudulent acts in manipulating the Maxwell stock price during and after the "Black Monday" October 19, 1987 stock market crash. These were in patent violation of Section 10 B 5 and California Corporations Code, Sections 25506 and 25500, 25501, 25502, 25504 or 25504.1.

Frankly, only the Officers and Directors of Maxwell and especially Peter Saccerdote, Karl Samuelian, and Alan Kolb would be so egoistic as to believe they could swindle their own shareholders and then pocket the money or stock for themselves. The Court will note that they do not even deny having done such!

They try to blame their acts and Plaintiffs' misfortune on "Black Monday" as if there were some "mystical connection" that caused Plaintiffs' damages. As related previously, Defendants simply let Mr. Saccerdote "pull the plug" on Maxwell's stock price, caused all the margin calls to be made, first claimed that there was a shareholders' repurchase plan in effect through Peter Saccerdote and the Los Angeles Office of Goldman Sachs, and then witheld such until after the "troublesome" O'Rourkes and RORACK and other Maxwell shareholders had been almost entirely liquidated. This was no "freak of nature" but a deliberate and unlawful plan in violation of the stock manipulation provisions of the U.S. Securities Act of 1934, i.e. Section 10 B 5 and its California equivalent.

Moreover, even arguing hypothetically that any Statute of Limitations had run on the 1984 matters in regard to Securities frauds, such is irrelevant anyway.

By contract, pursuant to CCP, Section 337, Plaintiffs still have a Cause of Action for the missing 1/2 of the RORACK-Maxwell shares or the second $143,000. check. Had either been placed in the RORACK Account at Bateman Eichler, there could have been no margin call as to RORACK's first 1/2 of Maxwell shares part of which were purchased on Margin, i.e., roughly 50%. Moreover, by telephone and letter to Alan and Karl, Attorney Al O'Rourke repeatedly explained this point to them, and that hewould hold Alan, Karl and Peter Saccerdote and the other Maxwell Directors liable for "Consequential Damages"*. Even on a pure Breach of Contract theory, these Consequential Damages apply as Maxwell and the Defendants were on legal notice that their wrongful actions were making worse their Breach of Contract as to the second $143,000.

*Please see Exhibit (g), i.e., "the man who saved Maxwell".

Alan even alludes to this in his own Declaration, i.e., in his Paragraphs 36 and 37 of his Declaration. He, of course, tries to maintain that he has no liability or responsibility or involvement. This is patent nonsense, since he is the other partner of RORACK, knew exactly what was occurring at the Bateman, Eichler Account both in regard to Raymond O'Rourke, RORACK, and himself(i.e. the purchase of Maxwell-RORACK shares for which he was obligated to make up, i.e. the missing 1/2).

Furthermore, his Declaration mistates that I told him that this was an "O'Rourke Family problem." I specifically told him by letter, phone message, messages through Karl, etc. that this was his problem as well and Maxwell's also. Once again, Alan and Karl deliberately concealed Peter Saccerdote's actions from me, Ray O'Rourke, and the other Maxwell shareholders. They were simply manipulating the market(and making a lot of money doing it)to the detriment of their fiduciary responsibilities to Maxwell shareholders. Once again the Court is referred to Exhibit (m).

Alan, Karl, and other Defendants know this to be true, so instead of addressing the issue, they simply have Alan claim that the whole Maxwell problem was an "O'Rourke Family problem," i.e., that Maxwell's price collapsed because of the RORACK-Maxwell stock held by Dr. O'Rourke at Bateman Eichler on margin for RORACK.

Hence, their "Conspiratorial Plan" is not even explained, (much less denied) and Plaintiffs do have a Cause of Action for securities fraud.

(n) In regard to Defendants' Paragraph H on their page 14 of their Memorandum regarding the Cause of Action for a Constructive Trust on Maxwell's assets, Plaintiffs reply as follows:

Post, Kirby, Noonan and Sweat somehow seem to think that an equitable remedy cannot exist among legal Causes of Action in a civil lawsuit. This is not true, however, as the Court well knows. In a fraud situation the Court can always protect the Plaintiffs' Rightsby granting injunctive or prohibitive relief, including a Constructive Trust.*

Defendants continue to squander the assets of Maxwell on their stock manipulations and political manipulations. The entire situation with IRT Corporation(i.e. the spending of millions of dollars of Maxwell's cash on useless equipment for no other purpose than to benefit IRT's main shareholders and Board of Directors and members of the Department of Energy and other U.S. agencies) is just the latest example. As noted previously there was the Bendix Precipitator Project, the Blue Green Laser Program, the X-ray Laser Program, the Checmate "Rail-Gun", etc. These were disasters one and all, and entirely predictable as Dr. Kolb well knows.

In fact, Maxwell employees state the obvious i.e. "Management butters their bread on both sides, with jam and jelly and a cherry on top"! The Court need only look at the horrendously over priced salaries of Maxwell's Directors and Officers (i.e. the Defendants) to see in an instant what is occurring with Maxwell's assets. Alan's, Monty's, and Sean's salaries are at least five times more than a competitive salary. Karl Samuelian has become a millionaire on Maxwell alone. Furthermore, all of their Washington friends(i.e. all those military staff officers of General Abrahamson of the Office of the Strategic Defense Initiative) have been "wined and dined to the hilt" by Monty and Alan for several

*Specifically, either a State or Federal Court operating under 31 U.S.C. 3729 can use a Constructive Trust to protect both the U.S. Government's assets at Maxwell, and those of the shareholders as well.

years now, just so that no "hard technical questions" or investigations about Maxwell could occur. Further, this policy had the direct imprimatur of Vice President George Bush, Governor George Deukmejian, and the Presidential Science Advisor's Office as well. One would have thought the "last days of Pompeii" was being played at Maxwell, with both Plaintiffs and other Maxwell employees and shareholders warning Alan that his S.D.I. "balloon" was going to burst. And this "IRT situation" is going to be Mt. Vesuvius!

Even when Alan's negligence caused the death of one Mr. Robert Martin - a Maxwell part-time employee (no one had warned Mr. Martin about wet floors and Maxwell's electrical components and so Mr. Martin ended up looking like a toasted marshmallow), such was "covered up." With Alan crying his famous "crocodile tears" yet once again and promising to take care of Mr. Martin's now destitute family(and with the Maxwell employees evn demanding such to be done) Alan and Karl simply pocketed this money as well, once again raising their salaries and legal fees! *

To state that this had an extremely negative impact on the employees is to state the obvious. Good relations between the Company and its employees are a fundamental corporate asset and are not to be wasted. Hence, again a Constructive Trust(with a proper insurance program for Maxwell's employees)is both necessary and equitable.

Post, Kirby, Noonan and Sweat's sole response to these matters on their Page 15 is to state that all these matters occurred in 1984 and that Statute of Frauds bars any such equitable relief or Constructive Trust through the cases of Jefferson v. J.E. French Co., 54 Cal.2d 717, 718, 7 Cal.Rptr. 899 (1960)

*Attorney Al O'Rourke reminds the Court that there is clear U.S. Government liability to the 85 Martin Family as Alan well knows. Mr. Martin was "cooked up" by a fraudulent U.S. Government contract device.

and Bainbridge v. Stoner, 16 Cal.2d 423, 429-430 (1940).

This is not factually true however, as the Maxwell waste of corporate assets referred to by Plaintiffs, are contemporary events which are occurring even now.

The Court may well ask if Maxwell's management has not worried about these issues itself. Certainly it has, but only in regard to Defendants own personal liability.

In 1987, worried about these issues there was another RORACK meeting with Alan and Karl (I believe around May or June) where these matters were particularly discussed. At that time Karl stated that Maxwell was reincorporating in Delaware "because of all these damn shareholder suits...I don't want to be broke and neither does Alan" or words similar. Plaintiffs also asked Karl and Alan about the status of Maxwell's insurance to cover liability on any suits. Sean Maloy came into the room and stated that Maxwell's "$20,000,000 insurance coverage existed to protect any such suits". Alan and Karl both denied the existence of any suits against Maxwell (as they always have in the past and as had been apparently the case due to any public announcements, news letters, annual reports, etc. talking about such suits). Supposedly Defendants were not even threatened with any litigation, except the "wild claims" of Plaintiffs and their "nut" lawyer Albert O'Rourke.

When Albert O'Rourke started to check the San Diego Superior Court File, however, a number of lawsuits from irate employees and shareholders had just been filed within the last couple of years i.e. approximately 1985 to 1987. Almost incredibly Maxwell's own insurance company, United Pacific, was even suing Maxwell for frauds, deceits, etc!

When I subsequently confronted Karl with this deception, he stated "Come on, Al,...you know any company gets sued as part of its business...it happens all the time" or words similar.

Certainly the Court must agree that Defendants are hardly "vestal virgins" smeared by Plaintiffs wrongfully, when even Defendants' insurance company is suing them!

Further(on the idea of *Constructive Trust) supposedly Maxwell has "ultra secret" technologies which are cloaked in "National Security". This is a fundamental corporate asset as well. Plaintiffs will allow for argument's sake that perhaps Alan and his German scientist friends (i.e. working with Rheinmetal or Rhinemetal Corporation in Germany) (see attached Exhibit S of Plaintiffs'), could conceivably have discovered such "miracle technology", even though all of Raymond O'Rourke's friends at Maxwell state that such is not the case.

However, Alan is not building upon this for Maxwell shareholders, but has announced at the December, 1987 Shareholders Meeting that such would be shipped to Rheinmetals Corporation in "duplicate" i.e. a "second" Checmate Rail-Gun. It seems to Plaintiffs that Alan and Karl are simply "laying the groundwork" to protect themselves(just as in the reincorporation in Delaware situation), This is to state they can always blame any ultimate Checmate failure on Rheinmetals Corporation and not themselves personally. This is their classic behavior pattern, (i.e. hoodwink and defraud people, and then set up "scape goats" to act as "legal buffers").

IV

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SANCTIONS, PLAINTIFFS "GOOD FAITH", PLAINTIFFS' CONSTRUCTIVE TRUST, OPPOSITIONS TO MOTIONS TO STRIKE, ETC.

(n_1) In regard to these "National Security" issues or classified projects of Maxwell, both Plaintiffs and the other Maxwell shareholders have even been treated to interference with their civil rights by the Presidential Counsel's Office, the Securities and Exchange Commission, various intelligence agencies, etc.

. In spite of the fact that such are clearly illegal under such Federal Statutes as 42 U.S.C. 1983, these Federal officials have deliberately conspired on Defendants' behalf (Alan and Karl have "no knowledge of such"), to ignore any claim made by Plaintiffs about Maxwell or its scientific projects throughout the 1980's. Dr. O'Rourke has always been labelled a "nut case" as Alan and Karl well know, for the same type of technical warnings as Dr. Roy Woodruff made Dr. Edward Teller in the X-ray laser project, and who was himself labelled as a "nut case" or "treasonous" because he was endangering favorite Republican "pet projects" of S.D.I. Alan's and Karl's friend Dr. Lowell Wood, serving as "hatchet man" against Dr. Woodruff.*

This is why you have a Government full of "amateurs and clowns" having no scientific background whatsoever, having run various Federal agencies. The list is endless and laughable, i.e. Max Huegle (apparently a stock promoter) heading the Director of Operations at the C.I.A. Also, Kenneth Adelman (apparently an English teacher or political scientist) heading up the U.S. Arms and Disarmament Agency. Even people such as Lt. General James Abrahamson and Air Force Major Alan Freitag have no scientific background whatsoever of any serious nature, and were yet made in control of all the scientists and scientific projects.

All these people are friends of Alan's and Karl's as they well know. In the "100 letters campaign" complained of by Alan

*This Dr. Lowell Wood is another "German connection" and highly dangerous to boot.

in his Declaration, the O'Rourkes tried repeatedly to stop Maxwell's "puffing up" its stock and business enterprises on scientific hyperbole, exaggeration, and even sheer preposterousness. Alan's "tearful" comments to such in a RORACK meeting was that Plaintiffs (the O'Rourkes) were "calling him a spy" and "ruining his reputation".

As Alan well knows, the O'Rourkes never said such a thing but did state that Alan was being manipulated by his "German friends" and Republican political friends as well.*

Just try to have a public stock offering of "super hot dogs" of "two feet apiece" (when such are really six inches) and see how fast the Securities and Exchange Commission stops such. The same S.E.C. rules did not apply to Defendants because of their political connections. The preposterous and fraudulent veil of "National Security" was quickly drawn over Defendants' activities, in spite of the fact that everything predicted by Plaintiffs about Defendants occurred exactly as predicted.**

Therefore a Constructive Trust must be placed upon Defendants' assets by the Court(whether State or Federal) to protect the shareholders and Plaintiffs from Defendants further fraudulent and corrupt use of Maxwell's assets. Since the administrative bodies are not going to do anything, the Courts must. This seems like a perfectly proper ground for a Constructive Trust to Plaintiffs.

(o) On Defendants page 16 of the Post, Kirby, Noonan, and Sweat Memorandum of Points and Authorities, in their Paragraph 3, they raise Rule 12 (b) (6) of the Federal Rules of Civil Procedure and Conley v. Gibson, 355 U. S. 41, 78 S.Ct. 99, 2L.Ed.80 (1957)

* These are the same "Germanic crowd" who were going to take over the White House, citing President Reagan's supposed indisposition. Luckily Nancy Reagan and Maureen Reagan "cleared house" in 1987 and 1988 and saved the country at that time. Naturally, the "Germans" hope to get back through George Bush.

** Bizarrely mentioned in part in Tom Clancy's "Cardinal From the Kremlin" (SEC)

This very Rule and the Conley Case quite clearly state as noted by Defendants themselves "The accepted Rule is that a Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief".

In this current Case however, there are in fact a number of basis of claim or claims by Plaintiffs, i.e. Breach of Contract, fraud, attorneys' fraud, Securities fraud, negligence, etc. Post, Kirby, Noonan and Sweat are entirely in error by their own Citation!

Further on, Post, Kirby, Noonan and Sweat raise the Case of Church of Scientology of California v. Flynn, 744 F.2d 694, 696, n. 2 (9th Cir. 1984). This Case states(as noted by Post, Kirby, Noonan, and Sweat) that "since the issue before the Court (i.e. Federal Court) is whether the complaint states a Cause of Action under California Law, however the standard for dismissal in State Court is highly relevant".

What State Court hearing that Plaintiffs' own attorney Karl Samuelian, Esq. interfered with the full exercise of Shareholders Dissenter Rights of his client RORACK, because such would expose the fraudulent nature of the merger to the other Shareholders, would not Rule that there is a valid Cause of Action pursuant to CCP Section 340.6? What State Court hearing that Defendants and Plaintiffs entered into a Written Contract for the exercise of Shareholders Dissenter Rights(with a 4-year Statute of Limitations pursuant to CCP, Section 337 and that Defendants refused to honor such) would not Rule that there is a valid Breach of Contract Action? What State Court hearing that Defendants had

manipulated the stock market and Maxwell stock to the detriment of the shareholders and to Plaintiffs, would not Rule that there has been Securities Fraud and "ultra vires" action by Defendants, and that such is actionable?

What State Court, hearing the long saga of squandering of corporate assets of Maxwell by Defendants for their own purposes, would not grant protection, relief, or judicial review ofan equitable nature i.e. a Constructive Trust, pursuant to 31 U.S.C. 3927.

The answer is quite obvious. The State Court would, (and even horrified by Defendants' actions) will grant Causes of Action. Furthermore, Plaintiffs' Causes of Action have already been defaulted by Defendants. Plaintiffs are entitled to Default judgments right now. To state that there are no valid State Causes of Action in the Complaint is ridiculous. Defendants simply chose to ignore the Complaint and then seek relief in Federal Court but did so too late, i.e. the 30-Day Violation of 28 U.S.C. 1446 (b). Now they have the sheer gall to try to tell the Federal Court to sweep all of this away, and with it any possible claims of Plaintiffs, any possible amendments of the Complaint, etc. One could argue that Post, Kirby, Noonan, and Sweat are simply defending a hopeless position with sheer "hutzpah and bravado ".

Post, Kirby, Noonan and Sweat's citing of Havas v. Thornton, 609 F.2d 372, 376 (9th Cir. 1979) and Fairyland Amusement Co. v. Metromedia Inc., 413 F. Supp. 1290, 1293 (E.D. Mo. 1976) are meaningless. The State Court action for all intents and purposes is over and done with, i.e. a Default Judgment is "Fast tracking" already upon the Civil Law and Motion Calendar of San Diego Superior Court. The Federal Court must follow the status

of the State Court action, even if there were a "Late Removal" or something similar allowed by the Federal Court. The Federal Court would only be "removing" a Case which has already been over and done with at the Superior Court level.

Plaintiffs acknowledge that pursuant to CCP, Section 585 and 585.5, the Superior Court will allow a Motion to set aside a Default Judgment or Default if there is "compelling reason", i.e the Defendants did not actually know of the lawsuit until the 30 days to answer had lapsed, were indigent and could not hire an attorney before the 30 days had lapsed, etc.

In the present Case however, such is not true. Plaintiffs even warned Defendants through Dr. Alan Kolb that they were in danger of a Default! Their puzzling legal actions only indicate that in their "egoistic" state, they did not take this lawsuit seriously for some reason and/or hire Post, Kirby, Noonan and Sweat when it was too late to be doing anything about it in Federal Court. Plaintiffs have given Defendants full and proper Notice, and Defendants have simply placed themselves in a legal quagmire.

(p) On page 17 at Paragraph 4 of Post, Kirby, Noonan and Sweat's Memorandum, they cite McDougall v. Donovan, 552 F.Sup. 1206, 1208 (N.D. Ill. 1982) and Rule 12 (e) of the Federal Rules of Civil Procedure to state in essence that they should be given "a more definite statement of Plaintiffs' Complaint and Causes of Action".

The fallacy here (once again) is that Plaintiffs are not obligated to give Defendants anything more at this time, other than a Demand for $30,000,000! A Defendant cannot refuse to answer a Complaint or properly Remove such Complaint, and then cite as a "Defense" his need for a "more definite statement".

When an Action has passed into a Default and Default Judgment stage, it is entirely irrelevant what technical mistakes of Pleadings or ambiguities existed in the Plaintiffs' Complaint. It is simply too late to argue about such as Post, Kirby, Noonan and Sweat well know. This is just another of their "legal smoke-screens" to try to get out of a Default situation.

(q) Likewise Post,Kirby, Noonan and Sweat's Paragraph 5 with all of its case citations fails for the same reason as above i.e. Rule 9 (b) of the Federal Rules of Civil Procedure is irrelevant, in that this Case was not properly and timely Removed pursuant to 28 U.S. C. 1446 (b) within the 30-day limit. Hence no Federal relief is possible or should be granted, especially demanding a change in the status of the State Court Action now passed to Default, because Plaintiffs State Court Action was arguably not as "particular" in regard to its fraud allegations as a corresponding initially Filed Federal Complaint should be.

(r) Post, Kirby, Noonan, and Sweat simply "run out of gas" on their Page 18, paragraph 6 of their Memorandum when stating "Every action shall be prosecuted in the name of the real party in interest" according to Rule 17 (a) of the Federal Rules of Civil Procedure.

They make no facts or claims as to why Plaintiffs are not real parties in interest and again state "this entire Action arises out of the 1983 to 1984 merger of S-Cubed into Maxwell", which is ludicrous due to the 1987 claims of Plaintiffs, and the fact that Plaintiffs and each and every one of them have been injured by Defendants, and not even denied to be such by Dr. Kolb or any other Party! Once again, too, since Default has taken place in State

Court, even were these claims true, it is simply too late to raise such. Moreover, Plaintiffs are obviously the real Parties in interest in this Action for the following reasons:

Attorney Albert O'Rourke, Dr. Raymond C. O'Rourke, RORACK, Yacht Charters Ltd., Computrad, O'Rourke and Associates (Lattice Electromagnetics) are direct clients of Parker, Milliken, Clark, O'Hara and Samuelian, and Frank Clark and Karl Samuelian do not even dispute this. Therefore, there is standing of Plaintiffs in regard to CCP Section 340.6 for Attorneys' fraud.

Furthermore, all such Parties are either stockholders of Maxwell or companies directly related to RORACK and affected by Defendants' actions under the Securities Fraud, Conversion, Breach of Contract, emotional distress (while such admittedly only applies to the persons, i.e. Albert O'Rourke and Raymond O'Rourke), etc. Post, Kirby, Noonan and Sweat cite no facts or law in support of their position but simply make a bold face assertion which is unsupported by the record or even the Complaint.

(s) In regard to the Conclusion of Post, Kirby, Noonan and Sweat, on their Page 19 paragraph 7, it is to be noted that there are numerous errors of a legal nature. Such are the following:

The Complaint lists quite clearly 8 Causes of Action which are totally verified and not even disputed by Post, Kirby, Noonan and Sweat with any Verified Response or Pleadings by the Defendant Parties.

Defendants' sole Declaration comes from Plaintiff Raymond O'Rourke's partner Alan C. Kolb, and then only in regard to a Motion to Strike which is not made by Post, Kirby, Noonan and Sweat in regard to this Motion to Dismiss!

Furthermore, even this Declaration of Dr. Kolb's is not something created by himself, but merely a legal Pleading given to him for signature (by Post, Kirby, Noonan and Sweat) while telling him that such would "strike" his name from the Plaintiffs' Caption in regard to RORACK supposedly. This is just another of Alan's endless "concealments" along with Karl Samuelian, as detailed previously. Alan simply wants to conceal from the Maxwell shareholders his personal involvement in these matters.

As stated previously, Plaintiffs have exhaustively informed Alan Kolb in "every way under the sun" that the fraudulent S-Cubed merger, the 1987 Stock Market manipulations by Defendants of Maxwell stock, etc. would eventually see "the light of day" in any event. The Pandora's Box is now open and Dr. Kolb and Karl Samuelian, Esq. must do something about the problem. If the Maxwell Shareholders wish to forgive Alan and Karl, that is their affair.

As Defendants well know (since Plaintiffs have expressed such to them repeatedly) Maxwell's stock price following the "average" of other over the counter stocks from the 1983 to 1988 period should have followed this pattern:

Being issued initially (with "after market" mark up) at around $25 to $30 per share in 1983, such stock during the "Bull Market" for such period should have tripled or more just as all the other stocks, especially since Maxwell's revenues and earnings were also tripled. Thus Maxwell's stock price should have soared to $75 to $90 and possibly over $100.

Even with "Black Monday" of October 19, 1987 and thereafter factored in (with over the counter stocks losing roughly one-half their value) the stock would have gone to $40 to $50 per share.

Nevertheless, even thereafter, the small over the counter stocks have recouped at least one-half or most of the "Black Monday" loss. Maxwell stock should therefore be around $60 to $75 at a minimum. The "$64.00 Question" therefore becomes Why such has not occurred?

Defendants have told the Shareholders(usually through "Dragon Lady" Myrna Jaro) that Alan and Karl are "out of town and unavailable for comment"..." Who can tell why stocks go up and down"..."We're working just as hard as we can to get that stock price up", etc. All of this is patently fraudulent.

The reason for Maxwell's absurd stock price is because Defendant Peter Saccerdote and Goldman and Sachs have been manipulating Maxwell's stock price ever since the new public issue of Maxwell in 1983 with knowledge of the S-Cubed merger's disastrous affects upon Maxwell and the Clients of Parker, Milliken, Clark, O'Hara and Samuelian and even members of the law firm "bailing out" of Maxwell stock while telling the shareholders that there was "no need to worry whatsoever."

Therefore, Plaintiffs Actions are well taken as Defendants clearly know. Had Defendants not even swindled Plaintiffs out of their Maxwell stock, there would still exist valid Causes of Action against Defendants for Fraud and Negligence and a Constructive Trust based solely on what has happened to Maxwell's stock price. The truth of the matter is that no broker believes anything Maxwell states any more, because they have been burned too many times in the past(i.e. Clients of Bateman, Eichler, and First Albany).

For Defendants to call Plaintiffs' actions and lawsuit harassing, Bad Faith, or frivolous is simply absurd.

Moreover, for Post, Kirby, Noonan and Sweat to continue to conceal and To deceive Maxwell Shareholders, just as Parker, Milliken has done raises issues of Their violation of CCP section 340.6 as well.

In particular, Plaintiffs refer the Court to those allegations in the Pleadings of Post, Kirby, Noonan and Sweat accusing Attorney Al O'Rourke or Raymond O'Rourke of "untruthful" allegations made by the latter under penalty of perjury, To which Post, Kirby, Noonan and Sweat do not dare to File Verified Declarations in their own name, or that of any of the Defendants, when they know that Plaintiffs are simply telling the truth. This has been a horrendous situation at Maxwell involving RORACK, Alan Kolb, Karl Samuelian, Albert O'Rourke, and Raymond O'Rourke, in regard to Plaintiffs' telling Defendants to solve these problems and tell the Shareholders the truth. Moreover, Plaintiffs are not the only Maxwell shareholders to have sued Defendants for Fraud, Lying, Corrupt Acts, etc. In fact, the lawsuits are starting to "snowball" against Defendants as they well know. The simple fact is that these people such as Defendants believe "anything goes in business" and you can "con anyone"..."as long as you get away with it". They have even corrupted Federal and State Regulatory Officials into helping them.

As noted previously, Defendants have put themselves into legal quicksand by not answering the Complaint in a timely manner.

These Federal Pleadings of Defendants are merely legal smokescreens to insulate the Defendants from justifiable shareholder wrath, while Defendants continue to plunder, swindle, and misuse Maxwell's assets, violate numerous Government Contract Fraud Statutes by promising "the moon" and delivering "the Emperor's new clothes" on their Government Contracts, violate Federal and State campaign funding laws, etc. If such were done by uneducated "street punks" it would be incredible enough. Here such is being done by legal counsel to Governor Deukmejian and Vice President George Bush, various "National Security Agents" such as Dr. Alan Kolb, etc. They are simply defining a new definition for the "Sleaze Factor", while calling all those opposing them such as Plaintiffs, liars, harassers, and even "politically unreliable".

CONCLUSION

For all the reasons listed above, it should be obvious to the Federal Court that Defendants are too late to seek Federal Removal of the State Court Action in the first place. Furthermore, their Federal Pleadings are not properly verified or even addressed to the substance or merits of Plaintiffs' Complaint, which they mistate as only involving events in 1984, and then claim they should be protected through the use of only partial Statute of Limitations issues, while ignoring all the while the basic Breach of Contract, Attorneys' Fraud, Securities Fraud Issues.

Therefore, the Federal Court should deny their Motions for Dismissal, to Strike, for a More Definite Statement, Sanctions, etc. and leave Defendants as they are in State Court (in Default and at the mercy of the Superior Court judges and arbitrators).

The above Factual Matters as to dates, conversations, notes, etc. are believed to be correct by Attorney Al O'Rourke, but since Attorney Al O'Rourke does not have the complete RORACK Records since such are out at Maxwell with Dr. Kolb, he may be mistaken about the time and place of a meeting several years past or the exact conversation, i.e., hence he has used "or words similar", etc.

DECLARATION

I, Attorney Al O'Rourke do hereby declare that the foregoing is true and correct to the best of my knowledge and belief and is sworn to be such under penalty of perjury at La Jolla, California, this 12 7th day of October, 1988.

ATTORNEY ALBERT O'ROURKE