

1 oral agreement by failing to honor their commitment to pay these
2 amounts to TODD when they became due.

3 38. Defendants breaches of contract have proximately
4 caused damages to TODD in an amount TODD is informed and believes
5 of \$290,343.80.

6 **SECOND CAUSE OF ACTION**
7 **(Breach of Written Contract)**
8 **(Against RE, REI, REC, RC and BREEN)**

9 39. TODD incorporates by this reference paragraphs 1
10 through 34 of this Complaint as though set forth in full herein.

11 40. On or about April 27, 1989, Defendants entered
12 into a written agreement with TODD whereby Defendants agreed that
13 they would pay to TODD an amount equal to ten percent (10%) of
14 all of non-previous clients of Defendants who purchased paging
15 applications from Defendants and one percent (1%) of all
16 individuals who purchased from Defendants.

17 41. As of the date of this Complaint and continuing
18 hereafter, TODD has only received the amount of \$22,430.00 from
19 Defendants in partial consideration of the amounts owing under
20 the written agreement, attached as Exhibit "A," even though TODD
21 knows such amounts have been received by Defendants.

22 42. Defendants' breaches of contract have proximately
23 caused damages to TODD in the amount of \$290,343.80.

24 **THIRD CAUSE OF ACTION**
25 **(Bad Faith Denial of Contract Existence)**
26 **(Against REC, RC, REI, RE, BREEN and PARKS)**

27 43. TODD incorporates by this reference paragraphs 1
28 through 34 of this Complaint as though set forth in full herein.

44. When TODD attempted to enforce the terms of the
written agreement, Defendants claimed there was no contract.

1 Defendants' denial of the existence of the written agreement was
2 an attempt to avoid all liability on TODD's meritorious claim on
3 the written agreement and was a stonewall position adopted
4 without probable cause and with no belief in the nonexistence of
5 the written agreement as a defense as Defendants had previously
6 acknowledged the existence of the written agreement, even after
7 performance had already been undertaken by TODD and Defendants
8 under the written agreement.

9 45. The aforementioned acts of Defendants were
10 willful, oppressive, fraudulent and malicious. Todd should
11 therefore be awarded punitive damages in an amount according to
12 proof at the time of trial.

13 **FOURTH CAUSE OF ACTION**
14 **(Fraud)**

15 **(Against REC, RC, REI, RE, BREEN and PARKS)**

16 46. TODD incorporates by this reference paragraphs 1
17 through 34 of this Complaint as though set forth in full herein.

18 47. Beginning on, or about, April 27, 1989, and
19 continuing through the present time, Defendants falsely and
20 fraudulently represented to TODD the following facts.

21 a. That in exchange for TODD bringing valuable
22 information to the attention of Defendants, TODD would receive
23 compensation as set forth in the written agreement;

24 b. That in exchange for the services rendered by
25 TODD to Defendants in organizing and participating in the paging
26 opportunity, Defendants would pay to TODD the compensation as set
27 forth in the written agreement; and

28 c. That Defendants would pay all amounts owing
to TODD on or before July 1, 1989.

1 48. The representations set forth in paragraph 46 were
2 in fact false. The true facts were that:

3 a. Defendants had no intention of compensating
4 TODD in the manner set forth in the written agreement for
5 bringing valuable information to the attention of Defendants;

6 b. Defendants had no intention of compensating
7 TODD in the manner set forth in the written agreement in exchange
8 for the services rendered by TODD to Defendants in organizing and
9 participating in the paging opportunity; and

10 c. Defendants had no intention of paying all
11 amounts owing to TODD on or before July 1, 1989.

12 49. Had TODD known the actual facts and Defendants
13 intentions, he would not have taken such actions. TODD's
14 reliance on Defendants' representations was justified because
15 TODD believed Defendants would act with him in good faith and
16 honor their agreements with him.

17 50. As a result of Defendants' fraud and deceit and
18 the facts as herein alleged, TODD was induced to:

19 a. Bring valuable information to the attention
20 of Defendants that allowed Defendants to enter into and
21 participate in the paging opportunity which brought revenues to
22 Defendants of over \$4 million in less than four weeks;

23 b. Organize the initial marketing of the paging
24 opportunity for Defendants;

25 c. Handle many of the incoming sales calls for
26 Defendants;

27 d. Supervise the sales department in the
28 solicitation of clients for the paging opportunity;

1 e. Participate in the process of locating FCC
2 counsel to represent Defendants; and

3 f. Establish initial operating procedures for
4 Defendants' staff.

5 51. As a result, TODD has been damaged in a sum in
6 excess of the minimum jurisdictional amount of this Court, but an
7 amount which is unknown with exactitude to TODD at this time. At
8 such time as TODD learns the true amount of his damages, he will
9 seek leave of Court to amend this Complaint.

10 52. Defendants did the acts complained of herein with
11 the intention of injuring TODD and Defendants have been guilty of
12 fraudulent, oppressive and malicious behavior. TODD is, by
13 reason thereof, entitled to recover, in addition to his actual
14 damages, damages for the sake of example and by way of punishing
15 Defendants in an amount to be proven at the time of trial.

16 **FIFTH CAUSE OF ACTION**
17 **(Intentional Misrepresentation)**
(Against REC, RC, RE, REI, BREEN and PARKS)

18 53. TODD incorporates by this reference paragraphs 1
19 through 50 of this Complaint as though set forth in full herein.

20 54. On, or about, April 29, 1989, Defendants agreed
21 with TODD that:

22 a. TODD was to take steps to assist in hiring
23 FCC counsel to assist in filing the paging applications;

24 b. TODD was to contact various newsletter
25 writers in order to market the paging opportunity to clients and
26 potential clients;

27 c. TODD was to prepare a mailing to be sent out
28 to all existing clients of Defendants in order to interest them

1 in the paging opportunity;

2 d. TODD was to hire salespeople to market the
3 paging opportunity to potential and existing clients of
4 Defendants; and

5 e. That in consideration for establishing the
6 paging opportunity for Defendants, Defendants would compensate
7 TODD in the manner set forth in the written agreement;

8 55. Defendants made these representations without
9 intending to perform their obligations and intending to induce
10 TODD to rely upon these representations.

11 56. TODD reasonably relied upon the representations of
12 Defendants because at the time the representations were made to
13 him he had been employed by Defendants in the past, Defendants
14 had treated him fairly and he had no reason to believe that
15 Defendants would not continue to treat him fairly in the future.
16 In fact:

17 a. TODD did take the steps necessary to
18 establish the paging opportunity for Defendants.

19 b. TODD did work at soliciting individual
20 clients to purchase paging applications from Defendants.

21 c. TODD did organize the initial marketing of
22 the paging opportunity for Defendants;

23 d. TODD did handle many of the incoming sales
24 calls for Defendants;

25 e. TODD did supervise the sales department in
26 the solicitation of clients for the paging opportunity;

27 f. TODD did participate in the process of
28 locating FCC counsel to represent Defendants; and

1 g. TODD did establish initial operating
2 procedures for Defendants' staff.

3 57. As a foreseeable result of TODD's justifiable
4 reliance, TODD has been damaged in a sum in excess of the minimum
5 jurisdictional amount of this Court, but which is unknown by TODD
6 with exactitude at this time. At such time as TODD learns the
7 exact amount of his damage as a result of Defendants' intentional
8 misrepresentations, TODD will seek leave of Court to amend this
9 Complaint to set forth the same.

10 58. The aforementioned conduct of Defendants was an
11 intentional misrepresentation, deceit or concealment of material
12 facts known to Defendants with the intention on the part of
13 Defendants to deprive TODD of Property or legal rights or
14 otherwise causing injury and was despicable conduct that has
15 subjected TODD to a cruel and unjust hardship in conscious
16 disregard of TODD's rights so as to justify an award of exemplary
17 and punitive damages in an amount to be proven at the time of
18 trial.

19 **SIXTH CAUSE OF ACTION**
20 **(Negligent Misrepresentation)**
21 **(Against REC, RE, REI, PARKS and BREEN)**

22 59. TODD incorporates by this reference paragraphs 1
23 through 56 of this Complaint as though set forth in full herein.

24 60. Defendants made the subject representation set
25 forth in paragraph 47 above with no reasonable ground for
26 believing them to be true.

27 61. The subject representations were made by
28 Defendants with the intent to induce TODD to act in the manner
herein above alleged and were, in fact, untrue.

1 62. TODD, at the time the subject representations in
2 paragraph 47 were made by Defendants to TODD and at the time TODD
3 took the actions herein alleged, was ignorant of the falsity of
4 Defendants representations and believed them to be true. In
5 reliance on the subject representations, TODD was induced to and
6 did in fact:

7 a. Take the steps necessary to establish the
8 paging opportunity for Defendants.

9 b. Work at soliciting individual clients to
10 purchase paging applications from Defendants.

11 c. Organize the initial marketing of the paging
12 opportunity for Defendants;

13 d. Handle many of the incoming sales calls for
14 Defendants;

15 e. Supervise the sales department in the
16 solicitation of clients for the paging opportunity;

17 f. Participate in the process of locating FCC
18 counsel to represent Defendants; and

19 g. Establish initial operating procedures for
20 Defendants' staff.

21 63. TODD reasonably relied upon the representations of
22 Defendants because at the time the representations were made to
23 him he had been employed by Defendants in the past, Defendants
24 had treated him fairly and he had no reason to believe that
25 Defendants would not continue to treat him fairly in the future.
26 In fact:

27 a. TODD did take the steps necessary to
28 establish the paging opportunity for Defendants.

1 b. TODD did work at soliciting individual
2 clients to purchase paging applications from Defendants.

3 c. TODD did organize the initial marketing of
4 the paging opportunity for Defendants;

5 d. TODD did handle many of the incoming sales
6 calls for Defendants;

7 e. TODD did supervise the sales department in
8 the solicitation of clients for the paging opportunity;

9 f. TODD did participate in the process of
10 locating FCC counsel to represent Defendants; and

11 g. TODD did establish initial operating
12 procedures for Defendants' staff.

13 64. As a proximate result, TODD has been damaged in a
14 sum in excess of the minimum jurisdictional amount of this Court
15 but is presently unknown with exactitude to him. At such time
16 as TODD learns of the exact amount of his damage he will seek
17 leave of Court to amend this Complaint.

18 **SEVENTH CAUSE OF ACTION**
19 **(Common Counts)**
 (Against REI, REC, RC, RE)

20 65. TODD incorporates by this reference paragraphs 1
21 through 34 of this Complaint as though set forth in full herein.

22 66. Within four years last past, at San Francisco
23 County, California, there was an account stated between TODD and
24 Defendants wherein Defendants owed to TODD certain sums of money
25 on an open-book account for monies in the possession of
26 Defendants belonging to TODD.

27 67. Despite TODD's repeated demands for delivery for
28 these monies from Defendants to TODD, Defendants have failed and

1 refused and continued to fail and refuse to render any and all
2 sums due, owing and payable by Defendants to TODD.

3 68. As a result of Defendants' actions, TODD is
4 entitled to payment of the sums owing to him from Defendant in an
5 amount of \$290,343.80.

6 **EIGHTH CAUSE OF ACTION**
7 **(Unjust Enrichment)**
8 **(Against REC, RC, REI, RE and BREEN)**

9 69. TODD incorporates by this reference paragraphs 1
10 through 34 of this Complaint as though set forth in full herein.

11 70. As a result of the activities engaged in as more
12 fully set forth in paragraphs 1 through 63 of this Complaint,
13 Defendants have been unjustly enriched at the hands and expense
14 of TODD as a consequence of their diversion, for their own
15 personal use, of monies belonging to TODD.

16 71. As a result of the aforementioned acts of
17 Defendants, TODD has incurred damages in the amount of
18 \$290,343.80.

19 **NINTH CAUSE OF ACTION**
20 **(Breach of the Covenant of Good Faith and Fair Dealing)**
21 **(Against REC, REI, RC, RE, BREEN and PARKS)**

22 72. TODD incorporates by this reference paragraphs 1
23 through 34 of this Complaint as though set forth in full herein.

24 73. With respect to the relationship between TODD and
25 the Defendants, the law of the State of California implies a
26 covenant of good faith and fair dealing. This covenant requires
27 that each party involved act with fairness and in good faith
28 toward the other party and that no party take any action to
prevent the other from reaping the benefits of the relationship.
The covenant further requires that such parties refrain from

1 needless injury or damage towards each other.

2 74. The actions and conduct of Defendants, as set
3 forth herein above, constitutes a breach of the covenant of good
4 faith and fair dealing in that Defendants breached their
5 fiduciary duty to TODD and defrauded TODD; so their conduct
6 represents a substantial factor in causing damage and injury to
7 TODD.

8 75. As a result of the aforementioned acts of
9 Defendants, TODD has incurred substantial damages in an amount of
10 excess of the minimum jurisdictional amount of this Court, but
11 which is presently unknown with exactitude to TODD as this time.
12 When the exact amount of TODD's damages become known to me, he
13 will seek leave of Court to amend this Complaint accordingly.

14 76. Because the acts taken toward TODD were carried
15 out by Defendants acting in a deliberate, cold, callous and
16 intentional manner in order to injure and damage TODD, TODD is
17 entitled to an award of exemplary and punitive damages in an
18 amount to be proven at the time of trial.

19 **TENTH CAUSE OF ACTION**
20 **(Constructive Trust)**

21 **(Against REI, REC, RE, RC, BREEN and PARKS)**

22 77. TODD incorporates by this reference paragraphs 1
23 through 62 of this Complaint as though set forth in full herein.

24 78. At all times relevant herein, TODD and Defendants,
25 and each of them, were involved in a confidential business
26 relationship.

27 79. On April 27, 1989, Defendants entered into an oral
28 and written agreement with TODD with the intent of defrauding
TODD by inducing TODD to participate in the paging opportunity,

1 take those steps necessary to allow Defendants to become involved
2 in the paging opportunity and to gain substantial monetary
3 benefits as a result of TODD's activities in the paging
4 opportunity.

5 80. As a result of Defendants' breach of fiduciary
6 duty and perpetration of fraud upon TODD, Defendants have
7 received benefits from their actions all to the damage of TODD.

8 81. By reason of the fraudulent nature of Defendants'
9 actions and Defendants' breach of fiduciary duty, Defendants are
10 involuntary and constructive trustees holding their benefit in
11 trust for TODD with a duty to reconvey same to TODD.

12 WHEREFORE, TODD prays judgment against Defendants and
13 each of them as follows:

14 FIRST CAUSE OF ACTION:

- 15 1. For damages in the amount of \$290,343.80;

16 SECOND CAUSE OF ACTION:

- 17 2. For damages in the amount of \$290,343.80;

18 THIRD CAUSE OF ACTION:

- 19 3. For punitive damages in an amount to be proved at
20 the time of trial;

21 FOURTH CAUSE OF ACTION:

- 22 4. For damages according to proof at the time of
23 trial;

- 24 5. For punitive damages in an amount to be proved at
25 the time of trial;

26 FIFTH CAUSE OF ACTION:

- 27 6. For damages according to proof at the time of
28 trial;

1 7. For punitive damages in an amount to be proved at
2 the time of trial;

3 SIXTH CAUSE OF ACTION:

4 8. For damages according to proof at the time of
5 trial;

6 SEVENTH CAUSE OF ACTION:

7 9. For damages in the sum of \$290,343.80;

8 EIGHTH CAUSE OF ACTION:

9 10. For damages in the sum of \$290,343.80;

10 NINTH CAUSE OF ACTION:

11 11. For damages in an amount to be proved at the time
12 of trial;

13 12. For punitive damages in an amount to be proved at
14 the time of trial;

15 TENTH CAUSE OF ACTION:

16 13. For imposition of a constructive trust;

17 ON ALL CAUSES OF ACTION

18 14. For attorneys fees; and

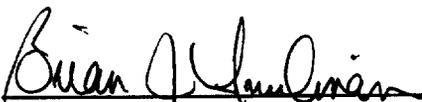
19 15. For costs of suit incurred herein;

20 16. For interest at the rate of ten percent (10%) per
21 annum from July 1, 1989; and

22 17. For such other and further relief as the Court
23 deems just and proper.

24 DATED: June 11, 1991

FRIEDMAN & FRIEDMAN

25
26 By: 
27 BRIAN J. FRIEDMAN
28 Attorneys for Plaintiff,
TODD A. PITTS

....\k\pitts\complaint.2

State of California
City and County of San Francisco



Co. Clerk F 1238

Romulus Corporation, a Nevada Corporation;
Romulus Corporation, a Delaware Corporation;
In this action the Defendant
Romulus Engineering Inc, a Delaware Corporation
Romulus Corporation and the Easton Corporation

having been regularly served with process, and having failed to appear and answer the Plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said Defendants in the premises is hereby duly entered according to law.

ATTEST
DATED

OCT 31 1991

DONALD W. DICKINSON, Clerk

By *[Signature]*
Deputy Clerk

Exhibit A

[Handwritten mark]

[Faint, illegible text]

4/27

TODD DEAN

10% ON A/C
NEW RE CLIENTS

1% OVERALL

OVERALL

Total

A. PRESS



Exhibit B

ROMULU'S ENGINEERING

50 CALIFORNIA STREET, SUITE 725
SAN FRANCISCO, CA 94111
(415) 397-1870

April 29, 1989

EMERGENCY NOTICE

Dear Client,

Every once in an extremely rare while, an extraordinary business opportunity happens which requires your immediate attention.

Such an event occurred several years ago when the Federal Communications Commission opened up cellular to the public. By striking while the iron was hot, our clients have been able to make millions of dollars, and build up assets which will be worth many times that.

Now, it has happened once again. But the opportunity evaporates just 18 days from now!

On April 13, 1989, the FCC issued a Public Notice that it will accept applications for a single nationwide paging license - covering all cities in all states - to be issued on an exclusive basis to only one winner. Like cellular, this sole national license will be awarded by lottery. Unlike cellular, however, the rules are much better for the applicant.

Now here's the catch: ALL applications must be submitted to the FCC during the three-day filing window of May 17th through May 19th only. The winner is expected to be announced shortly thereafter.

This is an absolutely extraordinary business opportunity.

First, unlike cellular, applicants for the national paging license can join together to form an alliance - where each application counts as another spoke on the lottery wheel. This dramatically improves the probability of winning as both partial and full settlement groups can be formed either prior to or after filing occurs. This was prohibited in cellular.

Second, we have secured both firm financing and operations management commitments up front for our clients. This means that the business development risk has also been minimized.

Third, this is a unique one-time opportunity. There are only two other such nationwide licenses that have been created by the FCC - and these were issued several years ago to giant paging companies which are now operating their coast-to-coast paging systems. (You probably have seen their ads in the airline in-flight magazines nationwide).

Fourth, the license can be effectively "subdivided" by selling off "franchises" to local paging companies in each city throughout the country. There are literally thousands of such paging operators in business today, but most of them are not connected together yet. This new license can fill that need.

Fifth, unlike cellular, paging is not a political hot potato with the giant phone companies lobbying to prevent the small businessman from entering the marketplace. Most local paging companies are still owned by small businesses - the way cable TV once was.

We think that this new license is a good opportunity for ourselves and until several days ago we originally intended to file only for our own personal account because of the very tight filing times involved.

Then, last week, one of our "competitors" began calling some of our clients - and offering to charge them what we think is an outrageous \$36,000, per application, to file! (They were even offering to form cost-sharing partnerships to boot!).

Because we think that is ridiculously overpriced we have decided to immediately offer our filing service to our clients for \$6,000 per application. Moreover, you will own 100% of this application totally by yourself.

If you wish to participate in this one-time-only national paging opportunity, you must contact our office immediately by telephone, FAX, or Mailgram. We will then send you a complete filing application package and issue you a work order confirmation number to hold your place in our production schedule.

As before, we expect the demand for our services to far exceed our limited engineering production capacity, and we must have all completed and signed paperwork in hand by no later than Wednesday, May 10th. As usual, we offer our standard full money-back guarantee for any filing work that we take on.

You can reach us by calling: 1-800-237-0101 (toll-free US WATS) or 415-397-1970, or by FAX at 415-781-6049.

Thank-you,



Todd Pitts
Chief Operating Officer
Romulus Engineering, Inc.

Exhibit C

ROMULUS ENGINEERING

50 CALIFORNIA STREET, SUITE 725
SAN FRANCISCO, CA 94111
(415) 387-1870

May 3, 1989

Dear Nationwide Paging Applicant:

Our thanks for your request for materials so you can file an application for Nationwide Paging Authorization with the FCC.

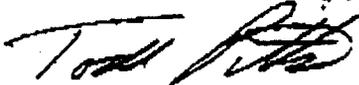
As you know, the "window" for filing Nationwide Paging Applications is the three days of May 17-19, 1989. This means that the filing process is on a very tight schedule. We must all act promptly in order to accomplish the following:

- A. Our transformation of the information you provide into an FCC application ready for your signature;
- B. Our delivering the completed application to you by Fed Ex for signature;
- C. Your returning the signed application to us by Fed Ex;
- D. Our microfiching of the signed application;
- E. And finally, our filing of the application with the FCC on your behalf.

Enclosed are a number of documents for your review. Please return as indicated in the enclosed Fed Ex envelope. TO ASSURE THAT WE CAN FILE YOUR APPLICATION BY MAY 17-19, YOU MUST SEND THE DOCUMENTS REQUIRING SIGNATURE BACK TO US NO LATER THAN MAY 5, 1989.

The enclosed instruction sheet explains what you have to do, and how to do it. If you have questions, please call your client service representative at 1-800-237-0101.

Yours sincerely,



Todd Pitts
Chief Operating Officer

A:qlb:ee
FAGLTR.REI
5/2/89

Exhibit D

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ROMULUS ENGINEERING

50 CALIFORNIA STREET, SUITE 725
SAN FRANCISCO, CA 94111
(415) 397-1970

May 5, 1989

EMERGENCY NOTICE

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Because we think that is ridiculously overpriced we have decided to immediately offer our filing service to our clients for \$6,000 per application. Moreover, you will own 100% of this application totally by yourself.

If you wish to participate in this one-time-only national paging opportunity, you must contact our office immediately by telephone, FAX, or Mailgram. We will then send you a complete filing application package and issue you a work order confirmation number to hold your place in our production schedule.

As before, we expect the demand for our services to far exceed our limited engineering production capacity, and we must have all completed and signed paperwork in hand by no later than Monday, May 15th. As usual, we offer our standard full money-back guarantee for any filing work that we take on.

You can reach us by calling: 1-800-237-0101 (toll-free US WATS) or 415-397-1970, or by FAX at 415-781-6049.

Thank-you,

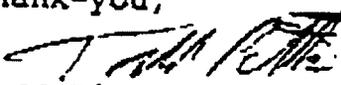

Todd Pitts
Chief Operating Officer
Romulus Engineering, Inc.

Exhibit E

