From: Client's Name

DATE: 3/28/2008

To: Connect Computers
26071 Merit Circle Suite:114
Laguna Hills, CA 92653

RE: DEMAND LETTER W/RE 2100XP PERSONAL COMPUTER

To Connect Computers,

With regard to the **2100XP personal computer** purchased by Mr. Client from your company over the phone, we've not been able to resolve the present dilemma. We have disagreements with the state of our situation and how to resolve it. Mr. Client has written below the facts of the matter and legal information that will help conform our perspective. Mr. Client has provided the documents referred to below (copies of legal material, legally binding documents, and evidence to support this letter). Please read carefully and thoroughly.

On November of 2002 Connect Computers delivered a computer to Client through their contracted carrier UPS. The computer was received as nonworking and Mr. Client informed UPS and Connect Computer of the damaged package. UPS picked up the package for inspection on the week of Nov. 11, 2002. Since then the status of the package has not changed (a duration of 5 months). Mr. Client, the buyer, has made and is still making a great effort to resolve the unusual situation that the seller has put him in (proper phone documentation has been provided showing the phone calls made to Connect Computers and UPS).

The seller (who is defined by UPS' General Tariff as the shipper) stands to their belief that it is the buyer's (who is defined by UPS as the receiver of the package) responsibility to further resolve the claim, which is a no claimer by the shipper's agreement to the 'UPS General Tariff' exclusively to Item 510,

> "No claims will be voluntarily paid unless filed in writing by or on behalf of the shipper."

This shows all claims are between the shipper and UPS. The shipper has demonstrated knowledge of the claim and acceptance of the claim by erroneously inferring that it is the receiver's responsibility to completely handle the claim in whole. But by 'UPS General Tariff' exclusively to Item 510, "No claims will be voluntarily paid unless filed in writing by or on behalf of the shipper", shows it is the shipper's responsibility.

Now moving on to defining the relationship between the seller and buyer. By the sale of the computer Connect Computers has made a contract with Mr. Client, stated by,

> California COMMERCIAL CODE: SECTIONS 2101-2107 subsection 2106:
> (1) In this division unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes

> both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price...

and part of that contract is the warranty you provide, which the 'US Federal Code TITLE 15: CHAPTER 50: Sec. 2304. 'Federal minimum standards for warranties' required of all merchants. So the contract in question is a present sale of a computer and a warranty for the computer with the duration set in the contract. The contract on the shipper's end is not being upheld.

Since Connect Computes is responsible for dealing with the claim (shown above), they have to fulfill their end of the contract by repairing or replacing the computer, either of which is up to the seller, regardless of the state of the computer between the Seller and UPS. This is shown in subsection (b) below.

> US Federal Code: TITLE 15: CHAPTER 50: Sec. 2304:
> (b) Duties and conditions imposed on consumer by warrantor
> (1) In fulfilling the duties under subsection (a) of this section respecting a written warranty, **the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty**, *unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.*
> (2) ...

In reference to the *italicized* portion of the above text, the stipulation is immaterial to the prior consequent because even though Connect Computers in their warranty requests the materialization of the computer in order for the buyer to fulfill his end of the contract, by:

> US Federal Code: TITLE 15: CHAPTER 50: Sec. 2304:
> (b) Duties and conditions imposed on consumer by warrantor
> (2) Notwithstanding paragraph (1), *a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances,* **except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.**

the **bold** portion of the text above states a counter stipulation that if the buyer is asked for what he reasonably cannot do, then the first part of sec. 2304.B.1 is still in affect. This is because of Connect Computer's noncompliance to UPS' General Tariff's item on claims they have not received the computer or reimbursement for it, and only Connect Computers' has the right to the computer because of UPS' policy to the seller (shown above).
It is now shown that the buyer's end of the contract is in conformity, now we look at the state of the shipper's side of the contract. In the code below.

> California COMMERCIAL CODE: SECTION 2501-2515, subsection 250:
> (1) The **buyer** obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the

> **goods** so identified **are nonconforming and he has an option to return or reject them**....

we see that the buyer had the right to reject the computer, and did. At this point what has happened to the computer is between the shipper and the carrier. Since the carrier was contracted by the shipper and the computer is back into the carrier's possession. Any more resolutions the shipper needs on the computer is between the two. The code below also supports the receivers case that the loss never entered his hands, but the state the receiver is in; he fulfilled his end of the contract with Connect Computers but is not in possession of a computer from the contract, but the buyer at this point bears the loss which never entered his hands all along, shown below.

> California COMMERCIAL CODE: SECTION 2501-2515 Subsection 2510:
> (1) Where a tender or **delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller** until cure or acceptance.
> (2) Where the **buyer rightfully revokes acceptance** he may to the extent of any deficiency in his effective insurance coverage **treat the risk of loss as having rested on the seller from the beginning**.

The code below,

> California COMMERCIAL CODE: SECTION 2601-2616 Subsection 2613:
> **Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer,** or in a proper case under a "no arrival, no sale" term (Section 2324) then
> (a) **If the loss is total the contract is avoided;** and
> (b) If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option **either treat the contract as avoided** or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

prevents the loss from falling on the buyer giving him a remedy by stating that the contract was never fulfilled, but has not been avoided because the payment by the buyer to the shipper binds the shipper to do good on the contract or refund the buyer, stated in the code below.

> California COMMERCIAL CODE: SECTION 2501-2515 subsection 2502:
> (1) Subject to subdivisions (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section (2501) **may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if either:**
> (a) **In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract. …**

The buyer paying before he received the package does not imply that he has accepted the package before or when he received the goods. So the codes above are still ruling, supported by the following code.

> California COMMERCIAL CODE: SECTION 2501-2515 subsection 2512:
> (1) **Where the contract requires payment before** inspection nonconformity of the goods does not excuse the buyer from so making payment unless (a) the nonconformity appears without inspection or …
> (2) **Payment pursuant to subdivision (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.**

Even if the shipper believes the subdivision (2) above is disputable, the below code protects the buyer from loss by the sellers nonconformity.

> California COMMERCIAL CODE: SECTION 2701-2725 subsection 2714:
> (1) Where the buyer has **accepted goods and given notification** (subdivision (3) of Section 2607) **he or she may recover, as damages for any nonconformity of tender, the loss resulting in the ordinary course of events from the seller's breach** as determined in any manner that is reasonable.
> (2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount. *(which is the whole amount)*
> (3) In a proper case any incidental and consequential damages under Section 2715 also may be recovered.

Subsection (3) above also states the buyer can recover incidental and consequential damages incurred by the seller's breach of contract. Which damages are defined below.

> California COMMERCIAL CODE: SECTION 2701-2725 subsection 2715:
> (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, **any commercially reasonable charges, expenses** or commissions in connection with effecting cover **and any other reasonable expense incident to the delay or other breach.**

Where if brought before a judge, she would decide the extent of the relief to the buyer. That relief would not be less than what the buyer paid under the contract. Shown below.

> California COMMERCIAL CODE: SECTION 2701-2725 subsection 2716:
> (2) The decree for specific performance may include such terms and conditions as to payment of the **price, damages, or other relief as the court may deem just.**

The buyer can pursue this path, and will if after the seller receives this letter and states verbally they will not conform to the contract or by nonconformity to the contract.

> California COMMERCIAL CODE: SECTION 2101-2107 subsection 2106:
> (4) "**Cancellation" occurs when either party puts an end to the contract for breach by the other** and its effect is the same as that of "termination" except that the **canceling party also retains any remedy for breach of the whole contract or any unperformed balance.**

The above subsection (4), cancellation can only be performed by the buyer because only the seller is in breach. Further Federal Law states that; if not within reasonable time (five months), imposing an unreasonable duty upon the consumer as a condition of securing remedy (placing the burden of the materialization of the computer on the buyer while the seller is the only one with the right to that action), and incidental expenses which are so incurred in any action against the warrantor (which covers legal and processing expenses, ect), then the buyer shall be entitled to recover reasonable incidental expenses. Shown in subsection (d) below,

> US Federal Code: TITLE 15: CHAPTER 50: Sec. 2304 (d) **Remedy without charge:** For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, *if any incidental expenses are incurred because the remedy is not made within a* **reasonable time** *or because the warrantor* **imposed an unreasonable duty upon the consumer as a condition of securing remedy***, then the consumer shall be* **entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.**

It is determinedly shown above the obligations Connect Computers still holds to Mr. Client, and the course of remedy required of the seller to perform by contract to Mr. Client. And if no remedy is made Mr. Client has legal recourse he can pursue, shown above 'California COMMERCIAL CODE: SECTION 2701-2725 subsection 2715'

Mr. Client has included an email from rma@generalprocurment.com showing that the Client had a CD burner in the computer while it was in your possession "AND WITH A 48X12X48 CDRW THAT WAS NOT PURCHASED FROM US." Now months have passed since Mr. Client was shipped the nonworking computer which went back into UPS' possession, and by their policy if a claim is left suspended by inactivity they usually send the package off to be sold at some auctions, they say to cover costs. This is what probably happened to the computer if they don't have it now. Which by Connect Computers' noncompliance to the claim is at fault for the fate of the CDRW, and responsible to replace for the buyer (shown in codes above, California COMMERCIAL CODE: SECTION 2701-2725 subsection 2716). Now further on UPS selling of the computer, if this is what has happened to the computer then the damage claim cannot be collected on but has changed over to where UPS, you can say not lost the computer but doesn't have it anymore. Since UPS was in possession of the computer, now owes the shipper reimbursement for the computer by their Policy. This information was given to Mr. Client by a UPS supervisor.

Now to progress compliance on our contract Connect Computers has to treat our contract separate from their situation with UPS. Connect Computers can verify from UPS they have or had the computer. And between UPS and Mr. Client, UPS was last in possession of the computer (which can also be verified by the tracking numbers provided). The condition of our contract is not a consequent of how and when Connect Computers resolves theirs with UPS. Given that Mr. Client has worked to have that circumstances resolved because Connect Computers has unduly placed that burden on him, which has been shown only resolvable by Connect Computers' right, and also has and is incurring him incidental expenses over the past five months to present, illustrates the magnitude of the unjustness of Connect Computers' actions. After reading this letter We hope your company can come to an accord with Mr. Client or further legal action will be commenced.

Sincerely,

Client Name
1234 Street.
City, State 12345
(000) 000-00000