

Hon. Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

TIMOTHY S. VERNOR, an individual,

Plaintiff,

v.

AUTODESK, INC., a Delaware  
corporation,

Defendant.

No. 2:07-cv-01189-RAJ

DECLARATION OF EVELYN LAHAIE  
IN SUPPORT OF DEFENDANT  
AUTODESK, INC.'S MOTION TO  
DISMISS OR, IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT

Note on Motion Calendar:  
**February 8, 2008**

ORAL ARGUMENT REQUESTED

I, Evelyn LaHaie, declare as follows:

1. I am employed as an Enforcement Manager in the License Compliance department of Autodesk, Inc. ("Autodesk"), a business located at 111 McInnis Parkway, San Rafael, California. The License Compliance department directs Autodesk's efforts to stop unauthorized use of Autodesk's computer software products, including AutoCAD®, Release 14 software (the "Autodesk Products"). I have worked for Autodesk in the License Compliance department, or as it was previously known, Piracy Prevention or Anti-Piracy, since August 1991.

1           2.       I am proficient in the operation of personal computers and am familiar with  
2 how computer software programs operate on personal computers, including the Autodesk  
3 Products. Autodesk's Products are the recognized computer-software-industry standard for  
4 architects, engineers, and other professionals who have a need to create complex design on  
5 personal computers. Autodesk has made a substantial investment of time, effort, and  
6 expense in the design, development, testing, manufacturing, and marketing of the Autodesk  
7 Products.

8           3.       Autodesk maintains a database of all of its software products registered by  
9 customers. I have reviewed our database for the name Timothy S. Vernor ("Vernor"). The  
10 database reflects that, as of August 1, 2007, Vernor had no registered packages of any  
11 Autodesk Products.

12           4.       Autodesk serializes each package of AutoCAD<sup>®</sup> software with a separate  
13 serial number and maintains an extensive database which tracks the registered owners for  
14 every package of AutoCAD<sup>®</sup> software. The Autodesk database referenced above reflects  
15 that serial number 110-98482363 was assigned to one single-user package of AutoCAD<sup>®</sup>,  
16 Release 14 software and serial number 110-98482364 was also assigned to one single-user  
17 package of AutoCAD<sup>®</sup>, Release 14 software. Both of these serial numbers were registered  
18 on April 2, 1999 to Cardwell/Thomas & Associates, Inc. ("Cardwell/Thomas"). The  
19 database indicates that both serial numbers have been upgraded to later versions of  
20 AutoCAD<sup>®</sup> software that were also registered to Cardwell/Thomas. The suggested retail  
21 price for an upgraded license of AutoCAD<sup>®</sup> 2000 software from AutoCAD<sup>®</sup>, Release 14  
22 software was Four Hundred Ninety-five Dollars (\$495). The suggested retail price for a  
23 new license of AutoCAD<sup>®</sup> 2000 software was Three Thousand Seven Hundred Fifty  
24 Dollars (\$3,750).

1           5. Autodesk licensed but did not sell AutoCAD<sup>®</sup>, Release 14 software. The  
2 license agreement applicable to AutoCAD<sup>®</sup>, Release 14 software ("License Agreement")  
3 prohibits the transfer of that software without prior written consent from Autodesk.

4           6. Autodesk records do not contain any information regarding any requests  
5 from Cardwell/Thomas to transfer the AutoCAD<sup>®</sup>, Release 14 software licensed by it to a  
6 third party, nor did Autodesk ever grant Cardwell/Thomas that right.

7           7. In or about March 1999, Autodesk and Cardwell/Thomas entered into a  
8 Settlement Agreement resulting from a report our department received regarding the  
9 unauthorized use by Cardwell/Thomas of Autodesk Products. Cardwell/Thomas was  
10 represented by counsel in this matter. A true and correct copy of the Settlement Agreement  
11 is attached hereto as Exhibit A.

12           8. The Settlement Agreement entered into between Cardwell/Thomas and  
13 Autodesk provides that Autodesk would ship ten (10) packages of AutoCAD<sup>®</sup>, Release 14  
14 software to Cardwell/Thomas conditioned upon Cardwell/Thomas' execution of the  
15 Settlement Agreement and payment of the settlement amount.

16           9. After Cardwell/Thomas signed the Settlement Agreement and paid the  
17 settlement amount, Autodesk shipped ten (10) packages of AutoCAD<sup>®</sup>, Release 14 software  
18 to Cardwell/Thomas, including serial numbers 110-98482363 and 110-98482364.

19           10. AutoCAD<sup>®</sup>, Release 14 software was packaged in boxes.

20           11. Inside each box of AutoCAD<sup>®</sup>, Release 14 software was a jewel case  
21 enclosing a CD-ROM containing Autodesk's registered AutoCAD<sup>®</sup>, Release 14 software  
22 code. The jewel case was sealed with a warning sticker that stated: "This software is  
23 licensed subject to the license agreement that appears during the installation process or is  
24 included in the package. If after reading the agreement you do not wish to accept its terms,  
25 you may return the software." A copy of the jewel case sticker is attached as Exhibit B.  
26

1 12. To install AutoCAD<sup>®</sup>, Release 14 software, the end user must break the  
2 sticker on the jewel case referenced above.

3 13. In order to install and use each copy of the AutoCAD<sup>®</sup>, Release 14 software  
4 on its computers, the end user must reply to a screen stating as follows: "I have read the  
5 terms and conditions of the Autodesk Software License Agreement contained in the  
6 Autodesk product box. By pressing <Accept>, I agree to these terms and conditions and  
7 understand that Software will be installed. By pressing <Reject> I understand that the  
8 installation process will be terminated, AutoCAD will not be installed, and I may return the  
9 product for a full refund." The screen further states: "Do you accept all the terms described  
10 above? If you choose Reject, Setup will close. To install AutoCAD Release 14, you must  
11 accept this agreement." A copy of the assent click-through screen is attached hereto as  
12 Exhibit C.


13 14. Each box of AutoCAD<sup>®</sup>, Release 14 software also contained a printout of the  
14 Autodesk Software License Agreement.

15 15. In accordance with the Autodesk Software License Agreement, which was  
16 an Exhibit to the Settlement Agreement between Cardwell/Thomas and Autodesk, upon  
17 Cardwell/Thomas' upgrade of AutoCAD<sup>®</sup>, Release 14 software serial numbers 110-  
18 98482363 and 110-98482364, all of Cardwell/Thomas' rights to use or transfer that  
19 software were extinguished upon the acquisition of upgraded product.

20 The foregoing is based upon my personal knowledge. If called to testify as a  
21 witness, I could and would testify competently thereto.

22 I declare under penalty of perjury under the laws of the United States that the  
23 foregoing is true and correct.

24 Executed this 15<sup>th</sup> day of January, 2008 at San Rafael, California.

25   
26 Evelyn LaHaie

RECEIVED  
MAR 18 1999

SETTLEMENT AGREEMENT

J.M.

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 1999 between Autodesk, Inc., a Delaware corporation ("Autodesk"), and Cardwell/Thomas & Associates, Inc., a Washington corporation ("Cardwell/Thomas").

RECITALS

A. Autodesk is a producer of computer-assisted design software marketed in the United States and internationally under the proprietary trademark "AutoCAD®" and "AutoCAD LT®";

B. Cardwell/Thomas is a user of AutoCAD® software and AutoCAD LT® software in its business operations and has agreed to certain changes in the manner by which AutoCAD® software and other Autodesk products are employed in its business.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. Cardwell/Thomas agrees that, upon execution of this Agreement, it shall tender to Autodesk the sum of Forty-four Thousand Three Hundred Twenty-four Dollars (\$44,324) (the "Settlement Amount") to be applied to the settlement of this matter, which includes the acquisition by Cardwell/Thomas of ten (10) packages of AutoCAD®, Release 14 software and one (1) package of AutoCAD LT® software. Said software shall

be shipped directly from Autodesk's San Rafael, California headquarters. The Settlement Amount also includes applicable sales tax and shipping and handling costs, and is to be paid in accordance with the terms of Section 14 hereof.

2. Cardwell/Thomas warrants to Autodesk that, as of January 12, 1999, (a) Cardwell/Thomas had AutoCAD®, Release 12 software installed on nine (9) computers; (b) Cardwell/Thomas had AutoCAD®, Release 14 software installed on two (2) computers; and (c) Cardwell/Thomas had AutoCAD LT® software installed on six (6) computers.

3. Cardwell/Thomas warrants to Autodesk that, upon completion of the transaction set forth in this Agreement, it shall have Autodesk software installed on seventeen (17) computers, and that each such computer shall have a properly licensed package of Autodesk software installed on it. Cardwell/Thomas further warrants to Autodesk that it shall not in the future operate or install any unauthorized copy of any Autodesk software product on its computers and that it shall not in the future simultaneously operate any one (1) licensed package of any Autodesk software product on more than one (1) computer.

4. Cardwell/Thomas further warrants to Autodesk that it shall adhere to all terms and conditions of the Autodesk Software License Agreement attached hereto as Exhibit A and incorporated herein by reference, and that Cardwell/Thomas maintains a written policy against unauthorized software duplication, substantially in the form of the memorandum attached hereto as Exhibit B and incorporated herein by reference, that is circulated to all employees, independent contractors and agents who have contact with any Autodesk

product. Cardwell/Thomas agrees to post on each of its computers installed with Autodesk software a warning sticker provided by Autodesk.

5. It is understood and agreed that upon Autodesk's receipt of the consideration recited in Section 1 hereof, Autodesk shall ship ten (10) packages of AutoCAD®, Release 14 software and one (1) package of AutoCAD LT® software to Cardwell/Thomas. Upon receipt of this software, Cardwell/Thomas agrees to register said software with Autodesk.

6. Conditioned upon the factual accuracy and continuing performance of the representations and warranties set forth herein, Autodesk does hereby release and forever discharge Cardwell/Thomas, its officers, directors, employees, agents, attorneys and assigns (collectively the "Released Parties") of and from any and all actions, causes of action, claims, demands, damages and costs on account of any actual or alleged improper use of Autodesk software through and including the execution date hereof. This Agreement shall not extend, however, to any claim by Autodesk that Cardwell/Thomas or its principals, agents and employees have engaged in the sale, rental and/or distribution of any Autodesk software product to any person or entity not affiliated with Cardwell/Thomas, or that any proprietary right of Autodesk has been infringed by the incorporation of any proprietary product of Autodesk, or any part thereof, into any other software product used, produced or sold by Cardwell/Thomas or its principals, agents or employees.

7. It is understood and agreed that the payment of monetary sums under this Agreement and other consideration recited herein does not constitute an admission on the

part of the Released Parties of any liability whatsoever, and that it represents a compromise of disputed liability covering certain claims by Autodesk arising out of Autodesk software usage by the Released Parties.

8. It is understood and agreed that if the terms of this Agreement are breached by Cardwell/Thomas, Autodesk shall be entitled to recover its actual attorneys' fees incurred in the pursuit of its investigation and settlement of this matter. In the event litigation or arbitration is required to enforce the terms of this Agreement, the prevailing party in any such litigation shall further be entitled to an award of all costs of such litigation or arbitration including an award of actual attorneys' fees.

9. It is understood and agreed that the United States District Court for the Northern District of California, or the appropriate state court located in Marin County, California, shall have exclusive jurisdiction over any legal action or proceeding arising out of or relating to this Agreement, and the undersigned expressly consent to the in personam jurisdiction of such court for the purpose of any such action or proceeding.

10. This Agreement shall be governed by and construed in accordance with California law, without regard to its conflict of laws rules.

11. In case any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. This Agreement sets forth the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.


13. This Agreement is binding upon the parties hereto, and their respective successors, transferees and assigns.

14. Autodesk hereby authorizes Cardwell/Thomas to satisfy its obligation to pay the Settlement Amount by providing a certified or cashier's check payable to "Donahue, Gallagher, Woods & Wood, LLP," attorneys for Autodesk, to be held in trust for Autodesk, Inc., and authorizes delivery of said check to the law offices of Donahue, Gallagher, Woods and Wood, LLP.

CARDWELL/THOMAS &  
ASSOCIATES, INC.

By Richard Cardwell  
(Signature)

President  
(Title)

AUTODESK, INC.  
By 

Charles Harris  
Assistant General Counsel and  
Assistant Secretary



**IMPORTANT** BY OPENING THE SEALED SOFTWARE PACKET(S), YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT. THESE ARE THE ONLY TERMS UPON WHICH AUTODESK SOFTWARE PRODUCTS ARE LICENSED. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY, WITHIN FIFTEEN (15) DAYS, RETURN THIS ENTIRE PACKAGE, INCLUDING THE UNOPENED SOFTWARE PACKET(S), TO THE LOCATION WHERE YOU ACQUIRED IT FOR A FULL REFUND. WITH SOME PRODUCTS MORE THAN ONE COMPUTER PROGRAM MAY BE RESIDENT ON THE MEDIA. ONE OR MORE OF THESE ADDITIONAL PROGRAMS MAY BE ACCESSIBLE ONLY BY PAYMENT OF ADDITIONAL LICENSE FEES AND RECEIPT OF AN AUTHORIZATION CODE. THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT SHALL APPLY TO ALL PRODUCTS CONTAINED IN THE MEDIA, REGARDLESS OF WHEN ACCESS TO THEM IS OBTAINED, EXCEPT THAT THE RIGHTS GRANTED IN THE GRANT OF LICENSE SECTION SHALL BECOME EFFECTIVE ONLY UPON AUTHORIZED ACCESS TO THE APPLICABLE PRODUCTS.

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(i) the maximum number of concurrent users being one (1) so that multiple individuals may access the Software, but that only one person at a time may do so, or

(ii) the maximum number of concurrent users being two (2) or more, in which case you must buy the first complete Software package and also a specified number of licenses for each additional concurrent user.

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**Restrictions** YOU MAY NOT USE OR TRANSFER THE SOFTWARE OUTSIDE OF THE WESTERN HEMISPHERE, REGARDLESS OF WHETHER SUCH TRANSFER WAS ACCOMPLISHED BY PHYSICAL OR ELECTRONIC MEANS.

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NOTE: Upgrades and updates to 3D Studio MAX and 3D Studio VIZ automatically perform a copy control function.

Autodesk reserves the right to require you to show satisfactory proof that previous copies of the software have been destroyed. If the hardware lock is not returned within the stipulated period, Autodesk reserves the right to charge you the difference in price between the upgrade license price and the suggested retail price of this Software.

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**Kinetix Software** The following applies to Software and Documentation developed by Kinetix, a division of Autodesk:

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**3D Studio:** Notwithstanding the single-user/one-computer "Grant of License" in this License Agreement, you may install 3D Studio Software on more than one computer for the exclusive purpose of network rendering of your files.

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**Year 2000 Compliance** Autodesk warrants that the Software under normal use shall be able to accurately process date and time data from, into, and beyond the year 2000 including leap year calculations. In the event of a breach of this warranty, Autodesk shall (a) use reasonable commercial efforts consistent with its standard policy on bug-fixes to restore such functionality, (b) replace the Software with conforming Software, or (c) in the event that neither (a) nor (b) is possible, refund the purchase price.

**Remedies** The entire liability of Autodesk and your exclusive remedy under the warranty provided herein will be, at the option of Autodesk, to attempt to correct or work around errors, to replace the media, or to refund the purchase price and terminate this Agreement. This remedy is subject to return of the Software to Autodesk or to the Authorized Autodesk Reseller from whom it was obtained with a copy of your receipt.

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**Canadian Sales** If you purchased this product in Canada, you agree to the following: The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including Notices, have been and shall be written in the English language only. Les parties aux présentes confirment leur volonté que cette Convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise.

**General** This Agreement shall not be governed by the UN Convention on Contracts for the Sale of Goods; rather this Agreement shall be governed by the laws of the State of California, including its Uniform Commercial Code without reference to conflict-of-laws principles. This Agreement is the entire agreement between us and supersedes any other communications or advertising with respect to the Software and Documentation. If you have any questions, please contact in writing: Autodesk, Inc., Customer Service, 111 McInnis Parkway, San Rafael, California 94903.

**MEMORANDUM**

To: All Employees and Independent Contractors  
From: Management  
Re: **UNAUTHORIZED SOFTWARE DUPLICATION**

This is to inform you that duplication of software products for simultaneous use is in direct contravention of the license agreements between this organization and the software producers. In addition, unauthorized software duplication constitutes copyright infringement and is punishable in a federal criminal action pursuant to 17 U.S.C. § 506(a) by a fine of up to \$250,000 and imprisonment for up to five years. Federal civil penalties provided in 17 U.S.C. § 504(c) provide for the recovery of the infringed party's actual damages based upon the number of copies produced or statutory damages ranging up to \$100,000 for willful copyright infringement. The statute also provides for payment of the prevailing party's attorneys' fees by the infringer.

Please be advised that this organization actively cooperates with the producers of software products in reporting violations of copyright law. Individuals who load illegal copies of software onto any computer here or who make illegal copies of software installed on any system by this organization will be subject to disciplinary action and may face prosecution.

**EXHIBIT B**

This software is licensed subject to the license agreement that appears during the installation process or is included in the package. If after reading the agreement you do not wish to accept its terms, you may return the software.

**IMPORTANT!** This product requires an authorization code. To obtain it, please follow the instructions inside this package or contact your Authorized Autodesk® Dealer or local Autodesk office.

93100-010000-7712

Take advantage of accelerated power and refined efficiency —

designed to let you do your  
st work in the shortest time.

- + Supplemental bonus utilities
- Tutorial
- Quick Tour
- What's New
- Customization Guide
- Command Reference
- Help
- Installation Guide
- Documentation

Autodesk Release 14 software,  
Autodesk Release 14 drawings

SER. NO. [blacked out]  
 CD Key: JMLT  
 PART. NO 00114-014808-4942



 Autodesk  
Autodesk, Inc.  
111 McInnis Parkway

